

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

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 adding to the definition of “neglect”; creating a crime of neglect by a parent, guardian or
20 custodian in which the parent, guardian or custodian is under the influence of a controlled
21 substance and knowingly causes or permits a minor to be present in a location with the
22 parent guardian or custodian, and no bodily injury occurs to the minor child; and
23 establishing criminal penalties.

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

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

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

19 (d) Notwithstanding any other provision of law to the contrary, a person is ineligible for
20 parole for a period of two years if he or she is sentenced to the custody of the Commissioner of
21 Corrections for service of a sentence of incarceration and is convicted of a felony violation under

22 W.Va. Code §60A-4-409(b)(2), and who caused or permitted a person under the age of eighteen
23 to be present at the time and location of the offense upon which the conviction is based.

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

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

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

30 (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.

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

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

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

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

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

43 husband and wife, where such spouse or other person shares actual physical possession or care
44 and custody of a child with the parent, guardian or custodian.

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

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

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

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

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

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

60 (iii) For purposes of this article, a parent, guardian or custodian of a minor child is deemed
61 to have failed to exercise a minimum degree of care to assure the minor child's physical safety or
62 health if such parent, guardian or custodian of a minor child is unlawfully under the influence of a
63 controlled substance and knowingly causes or permits a minor to be present in a location with the
64 parent, guardian or custodian while under the influence.

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

67 (9) "Sexual contact" means sexual contact as that term is defined in section one, article

68 eight-b, chapter sixty-one of this code.

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

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

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

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

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

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

§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) May be required to complete parenting classes, substance abuse counseling, anger
46 management counseling, or other appropriate services, or any combination thereof, as
47 determined by Department of Health and Human Resources, Bureau for Children and Families
48 through its services assessment evaluation, which shall be submitted to the court of conviction
49 upon written request;

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

52 (3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental

53 rights automatically restricted.