

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 288**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

STOLLINGS

[Originating in the Committee on the Judiciary;

reported on March 18, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §61-8D-1a; and to amend and reenact §61-8D-2a of said code, all relating to  
3 naming the law and increasing the penalty for death of child by a parent, guardian,  
4 custodian or other person by child abuse to an indeterminate term of fifteen years to life.

*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 §61-8D-1a; and that §61-8D-2a of said code be amended and reenacted, all  
3 to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-1a. Emmaleigh's law.**

1 The amendments made to this article during the 2017 legislative session shall be known  
2 as Emmaleigh's Law.

**§61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child  
abuse; criminal penalties.**

1 (a) If any parent, guardian or custodian ~~shall~~ maliciously and intentionally ~~inflict~~ inflicts  
2 upon a child under his or her care, custody or control substantial physical pain, illness or any  
3 impairment of physical condition by other than accidental means, thereby causing the death of  
4 such child, then such parent, guardian or custodian ~~shall be~~ is guilty of a felony.

5 (b) If any parent, guardian or custodian ~~shall~~ knowingly ~~allow~~ allows any other person to  
6 maliciously and intentionally inflict upon a child under the care, custody or control of such parent,  
7 guardian or custodian substantial physical pain, illness or any impairment of physical condition by  
8 other than accidental means, which thereby causes the death of such child, then such other  
9 person and such parent, guardian or custodian ~~shall~~ are each ~~be~~ guilty of a felony.

10 (c) Any person convicted of a felony described in subsection (a) or (b) of this section shall  
11 ~~be punished by a definite term of imprisonment in the penitentiary~~ be imprisoned in a state  
12 correctional facility for a period of fifteen years to life ~~which is not less than ten nor more than forty~~

13 ~~years.~~ A person imprisoned pursuant to the provisions of this section is not eligible for parole prior  
14 to having served a minimum of ~~ten~~ fifteen years of his or her sentence ~~or the minimum period~~  
15 ~~required by the provisions of section thirteen, article twelve, chapter sixty-two of this code,~~  
16 ~~whichever is greater.~~

17 (d) The provisions of this section ~~shall not apply~~ are not applicable to any parent, guardian  
18 or custodian or other person who, without malice, fails or refuses, or allows another person to,  
19 without malice, fail or refuse, to supply a child under the care, custody or control of such parent,  
20 guardian or custodian with necessary medical care, when such medical care conflicts with the  
21 tenets and practices of a recognized religious denomination or order of which such parent,  
22 guardian or custodian is an adherent or member. The provisions of this section ~~shall not apply~~  
23 are not applicable to any health care provider who fails or refuses, or allows another person to fail  
24 or refuse, to supply a child with necessary medical care when such medical care conflicts with  
25 the tenets and practices of a recognized religious denomination or order of which the parent,  
26 guardian or custodian of the child is an adherent or member, or where such failure or refusal is  
27 pursuant to a properly executed do not resuscitate form.

1

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