

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2218

FISCAL  
NOTE

BY DELEGATE FAST

[INTRODUCED JANUARY 10, 2019; REFERRED  
TO THE COMMITTEE ON SENIORS, CHILDREN, AND FAMILY  
ISSUES THEN THE JUDICIARY.]

1 A BILL to amend and reenact §61-8D-1 and §61-8D-4 of the Code of West Virginia, 1931, as  
 2 amended, all relating to modifying the definitions of child abuse and neglect to exclude  
 3 accidents.

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

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-1. Definitions.**

1 As used in this article, accidental physical, mental or emotional injury to a child, arising  
 2 from a reasonable failure by a parent, guardian or custodian to recognize or foresee the threat  
 3 arising from circumstances leading to an incidental or unplanned event which has resulted in  
 4 injury to the child is not abuse or neglect. In this article, unless a different meaning is plainly  
 5 required:

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

8 (2) "Child" means any person under 18 years of age not otherwise emancipated by law.

9 (3) "Controlled substance" means controlled substance as that term is defined in §60A-1-  
 10 101(d) of this code.

11 (4) "Custodian" means a person over the age of 14 years who has or shares actual  
 12 physical possession or care and custody of a child on a full-time or temporary basis, regardless  
 13 of whether such person has been granted custody of the child by any contract, agreement or legal  
 14 proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian  
 15 or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of  
 16 husband and wife, where such spouse or other person shares actual physical possession or care  
 17 and custody of a child with the parent, guardian or custodian.

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

20 (6) "Gross neglect" means reckless or intentional conduct, behavior or inaction by a

21 parent, guardian or custodian that evidences a clear disregard for a minor child's health, safety or  
22 welfare.

23 (7) "Neglect" means the unreasonable failure by a parent, guardian or custodian of a minor  
24 child to exercise a minimum degree of care to assure the minor child's physical safety or health.  
25 For purposes of this article, the following do not constitute "neglect" by a parent, guardian or  
26 custodian:

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

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

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

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

35 (9) "Sexual contact" means sexual contact as that term is defined in §61-8B-1, of this code.

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

37 (A) A parent, custodian, guardian or other person in a position of trust to a child, whether  
38 for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually  
39 explicit conduct as that term is defined in §61-8C-1 of this code; or

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

46 (11) "Sexual intercourse" means sexual intercourse as that term is defined in §61-8B-1 of

47 this code.

48 (12) "Sexual intrusion" means sexual intrusion as that term is defined in §61-8B-1, of this  
49 code.

50 (13) A "person in a position of trust in relation to a child" refers to any person who is acting  
51 in the place of a parent and charged with any of a parent's rights, duties or responsibilities  
52 concerning a child or someone responsible for the general supervision of a child's welfare, or any  
53 person who by virtue of their occupation or position is charged with any duty or responsibility for  
54 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 §61-8B-1 of this code, then the parent, guardian or  
3 custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor  
4 more than \$1,000 ~~dollars~~ or imprisoned in a state correctional facility for not less than one nor  
5 more than three years, or in the discretion of the court, be confined in jail for not more than one  
6 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 §61-8B-1 of this code, then the parent,  
9 guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less  
10 than \$300 nor more than \$3,000 ~~dollars~~ or imprisoned in a state correctional facility for not less  
11 than one nor more than 10 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 §61-8B-1 of this code, of the child then the parent, guardian or custodian is guilty of a felony and,  
15 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 or imprisoned  
16 in a state correctional facility for not less than one nor more than five years, or both.

17 (d)(1) If a parent, guardian or custodian who has not been previously convicted under this  
18 section, section three of this article or a law of another state or the federal government with the  
19 same essential elements neglects a child and by that neglect creates a substantial risk of bodily  
20 injury, as defined in §61-8B-1 of this code, to the child, then the parent, guardian or custodian, is  
21 guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less  
22 than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and  
23 confined.

24 (2) For a second offense under this subsection or for a person with one prior conviction  
25 under this section, §61-8D-3 of this code or a law of another state or the federal government with  
26 the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and,  
27 upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than 30  
28 days nor more than one year, or both.

29 (3) For a third or subsequent offense under this subsection or for a person with two or  
30 more prior convictions under this section, §61-8D-3 of this code or a law of another state or the  
31 federal government with the same essential elements, the parent, guardian or custodian is guilty  
32 of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a  
33 state correctional facility not less than one year nor more than three years, or both fined and  
34 imprisoned.

35 (e) The provisions of this section shall not apply if the neglect by the parent, guardian or  
36 custodian is due primarily to a lack of financial means on the part of such parent, guardian or  
37 custodian.

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

39 (1) May be required to complete parenting classes, substance abuse counseling, anger  
40 management counseling, or other appropriate services, or any combination thereof, as  
41 determined by Department of Health and Human Resources, Bureau for Children and Families  
42 through its services assessment evaluation, which shall be submitted to the court of conviction

43 upon written request;

44 (2) Shall not be required to register pursuant to the requirements of §15-13-1 of this code;

45 and

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

48 (g) As used in this article, accidental physical, mental or emotional injury to a child, arising  
49 from a reasonable failure by a parent, guardian or custodian to recognize or foresee the threat  
50 arising from circumstances leading to an incidental or unplanned event which has resulted in  
51 injury to the child is not abuse or neglect.

NOTE: The purpose of this bill is to modify the definitions of child abuse and neglect to exclude accidental injury.

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