

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4872**

BY DELEGATES SHOTT, LOVEJOY, CAPITO, N. BROWN,  
CANESTRARO, PHILLIPS, MANDT, BYRD, NELSON AND  
MILLER

[Introduced February 11, 2020; Referred to the  
Committee on the Judiciary.]



1 A BILL to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as  
2 amended, all relating to modifying the criminal penalties imposed on a parent, guardian or  
3 custodian for child abuse resulting in injury and child abuse or neglect creating risk of  
4 injury; providing that a prior conviction under this section subjects a person to increased  
5 penalties; defines a prior conviction; and establishing that a judicial officer has discretion  
6 to impose a misdemeanor sentence.

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

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.**

1 (a) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such the~~  
2 abuse ~~cause such~~ causes the child bodily injury as ~~such the~~ term is defined in §61-8B-1 of this  
3 code, then ~~such the~~ parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction  
4 thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state  
5 correctional facility for not less than ~~one~~ two nor more than ~~five~~ 10 years, or in the discretion of  
6 the court, be adjudged guilty of a misdemeanor to be confined in jail for not more than one year.

7 (b) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such the~~  
8 abuse ~~cause said~~ causes the child serious bodily injury as ~~such the~~ term is defined in §61-8B-1  
9 of this code, then ~~such the~~ parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon  
10 conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and ~~committed to the~~  
11 ~~custody of the Division of Corrections~~ imprisoned in a state correctional facility not less than ~~two~~  
12 five nor more than ~~ten~~ 15 years.

13 (c) ~~Any~~ A parent, guardian or custodian who abuses a child and by the abuse creates a  
14 substantial risk of death or serious bodily injury to the child, as serious bodily-injury is defined in  
15 §61-8B-1 of this code, ~~to the child~~ is guilty of a felony and, upon conviction thereof, shall be fined

16 not more than \$3,000 or imprisoned in a state correctional facility for not less than ~~one~~ two nor  
17 more than ~~five~~ 10 years, or both fined and imprisoned.

18 ~~(d)(1) If a parent, guardian or custodian who has not previously been convicted under this~~  
19 ~~section, section four of this article or a law of another state or the federal government with the~~  
20 ~~same essential elements abuses a child and by the abuse creates a substantial risk of bodily~~  
21 ~~injury, as bodily injury is defined in section one, article eight b of this chapter, to the child is guilty~~  
22 ~~of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than~~  
23 ~~\$1,000 or confined in jail not more than six months, or both. (2) For a second offense under this~~  
24 ~~subsection or for a person with one prior conviction under this section, section four of this article~~  
25 ~~or a law of another state or the federal government with the same essential elements, the parent,~~  
26 ~~guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not~~  
27 ~~more than \$1,500 and confined in jail not less than thirty days nor more than one year, or both~~

28 (d) A person convicted of any offense under this section with any prior conviction under  
29 this section or §61-8D-4 of this code, or a law of another state or the federal government with the  
30 same essential elements, is subject to the following increased penalties:

31 (1) A person with one or more prior convictions is guilty of a felony and, upon conviction  
32 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not  
33 less than five years nor more than 15 years, or both fined and imprisoned: *Provided*, That a person  
34 convicted of a crime under subsection (b) of this section is subject to the higher penalty in that  
35 subsection.

36 (2) A person with two or more prior convictions is guilty of a felony and, upon conviction  
37 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not  
38 less than five years nor more than 15 years, or both fined and imprisoned.

39 ~~(3) For a third or subsequent offense under this subsection or for a person with two or~~  
40 ~~more prior convictions under this section, section four of this article or a law of another state or~~  
41 ~~the federal government with the same essential elements, the parent, guardian or custodian is~~

42 ~~guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned~~  
43 ~~in a state correctional facility not less than one year nor more than three years, or both~~

44 (e) Any person convicted of ~~a misdemeanor~~ an 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~~ May not be required to register pursuant to §15-13-1 *et seq.* of this code; and

51 (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation, or  
52 parental rights automatically restricted.

53 (f) ~~Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian or custodian from  
54 providing reasonable discipline to a 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, is guilty of a misdemeanor and, upon  
6 conviction thereof, shall be confined in jail for not more than one year, or both fined and confined.

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 fined and imprisoned.

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 of the child as serious bodily injury is  
14 defined in ~~section one, article eight b of this chapter §61-8B-1~~ of this code, ~~of the child~~ then the  
15 parent, guardian, or custodian is guilty of a felony and, upon conviction thereof, shall be fined not  
16 less than ~~\$1000~~ \$100 nor more than ~~\$3,000~~ \$1,000 or imprisoned in a state correctional facility  
17 for not ~~less than one nor more than five~~ two years, or both fined and imprisoned.

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

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

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

36 (d) A person convicted of any offense under this section with any prior conviction is subject  
37 to the following increased penalties. A prior conviction includes any offense under this section,

38 §61-8D-3 of this code, or a law of another state or the federal government with the same essential  
39 elements:

40 (1) A person with one prior conviction is guilty of a felony and shall be fined not more than  
41 \$3,000 or imprisoned in a state correctional facility for not less than three nor more than 15 years,  
42 or both fined and imprisoned.

43 (2) A person with two or more prior convictions is guilty of a felony and, upon conviction  
44 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less  
45 than five years nor more than 15 years, or both fined and imprisoned.

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

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

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

55 (2) ~~Shall~~ May not be required to register pursuant to the requirements of §15-13-1 *et seq.*  
56 of this code; and

57 (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or  
58 parental rights automatically restricted.

NOTE: The purpose of this bill is to modify the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury and child abuse or neglect creating risk of 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.