

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5662

BY DELEGATES KELLY, HOTT, AND STEELE

[Passed March 7, 2024; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §61-8D-1, §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-
2 4, and §61-8D-4a of the Code of West Virginia, 1931, as amended, all relating to defining
3 terms; providing that a person in position of trust in relation to a child may be held criminally
4 liable for murder of a child by refusal or failure to supply necessities, or by allowing another
5 person to fail or refuse to supply necessities, or the delivery, administration or ingestion of
6 a controlled substance, death of a child by child abuse, child abuse resulting in injury, child
7 abuse creating risk of injury, female genital mutilation, child neglect resulting in injury, child
8 neglect creating risk of injury, child neglect resulting in death; and limiting application of
9 exceptions to criminal penalties in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

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

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

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

6 (3) "Controlled substance" means controlled substance as that term is defined in §60A-1-
7 101(d) of this code.

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

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

17 (6) "Gross neglect" means reckless or intentional conduct, behavior, or inaction by a
18 parent, guardian or custodian, or person in a position of trust in relation to a child, that evidences
19 a clear disregard for a minor child's health, safety, or welfare.

20 (7) "Neglect" means the unreasonable failure by a parent, guardian or custodian, or person
21 in a position of trust in relation to a child, to exercise a minimum degree of care to assure the
22 minor child's physical safety or health. For purposes of this article, the following do not constitute
23 "neglect" by a parent, guardian or custodian, or person in a position of trust in relation to a child:

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

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

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

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

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

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

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

37 (B) A parent, guardian, custodian or other person in a position of trust in relation to a child
38 persuades, induces, entices, or coerces the child to display his or her sex organs for the sexual
39 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or
40 to display his or her sex organs under circumstances in which the parent, guardian, custodian or

41 other person in a position of trust knows the display is likely to be observed by others who would
42 be affronted or alarmed.

43 (11) "Sexual intercourse" means sexual intercourse as that term is defined in §61-8B-1 of
44 this code.

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

47 (13) A "person in a position of trust in relation to a child" refers to any person who, under
48 law or agreement, is acting in the place of a parent and charged with any of a parent's rights,
49 duties, or responsibilities concerning a child or someone responsible for the general supervision
50 of a child's welfare, or any person who by virtue of his or her occupation or position is charged
51 with any duty or responsibility for the health, education, welfare, or supervision of the child.

**§61-8D-2. Murder of a child by a parent, guardian or custodian or other person, or person
in a position of trust in relation to a child, by refusal or failure to supply necessities,
or by delivery, administration or ingestion of a controlled substance; penalties.**

1 (a) If any parent, guardian or custodian, or person in a position of trust in relation to a
2 child, shall maliciously and intentionally cause the death of a child under his or her care, custody
3 or control by his or her failure or refusal to supply the child with necessary food, clothing, shelter,
4 or medical care, then the parent, guardian or custodian, or person in a position of trust in relation
5 to a child shall be is guilty of murder in the first degree.

6 (b) If any parent, guardian or custodian, or person in a position of trust in relation to a child,
7 shall cause the death of a child under his or her care, custody, or control by knowingly allowing
8 any other person to maliciously and intentionally fail or refuse to supply the child with necessary
9 food, clothing, shelter, or medical care, then the other person and the parent, guardian or
10 custodian, or person in a position of trust in relation to a child are each guilty of murder in the first
11 degree.

12 (c) The penalty for offenses defined by this section shall be that which is prescribed for
13 murder in the first degree under the provisions of §61-2-2 of this code.

14 (d) The provisions of this section shall not apply to any parent, guardian or custodian, or
15 person in a position of trust in relation to a child who fails or refuses, or allows another person to
16 fail or refuse, to supply a child under the care, custody, or control of such parent, guardian or
17 custodian, or person in a position of trust in relation to a child with necessary medical care, when
18 such medical care conflicts with the tenets and practices of a recognized religious denomination
19 or order of which the parent, guardian or custodian, or person in a position of trust in relation to a
20 child is an adherent or member: *Provided*, That the provisions of this subsection do not apply to
21 a person in a position of trust in relation to a child who, by virtue of his or her occupation or
22 position, is charged with any duty or responsibility for the health, education, welfare, or
23 supervision of a child.

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

1 (a) If any parent, guardian or custodian, or person in a position of trust in relation to a child
2 maliciously and intentionally inflicts upon a child under his or her care, custody, or control
3 substantial physical pain, illness, or any impairment of physical condition by other than accidental
4 means, thereby causing the death of the child, then the parent, guardian or custodian, or person
5 in a position of trust in relation to a child is guilty of a felony.

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

13 (c) Any person convicted of a felony described in subsection (a) or (b) of this section shall
14 be imprisoned in a state correctional facility for a period of 15 years to life. A person imprisoned
15 pursuant to the provisions of this section is not eligible for parole prior to having served a minimum
16 of 15 years of his or her sentence.

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

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

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

8 (b) If any parent, guardian or custodian, or person in a position of trust in relation to a child
9 shall abuse a child and by the abuse cause the child serious bodily injury as that term is defined

10 in §61-8B-1 of this code, then such parent, guardian or custodian shall be guilty of a felony and,
11 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed
12 to the custody of the Division of Corrections not less than two nor more than 10 years.

13 (c) Any parent, guardian or custodian, or person in a position of trust in relation to a child
14 who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury,
15 as serious bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a felony and,
16 upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional
17 facility for not less than one nor more than five years, or both.

18 (d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child
19 who has not previously been convicted under this section, §61-8D-4 of this code, or a law of
20 another state or the federal government with the same essential elements abuses a child and by
21 the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1, to the
22 child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100
23 nor more than \$1,000 or confined in jail not more than six months, or both.

24 (2) For a second offense under this subsection or for a person with one prior conviction
25 under this section, §61-8D-4 of this code, or a law of another state or the federal government with
26 the same essential elements, the parent, guardian or custodian, or person in a position of trust in
27 relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more
28 than \$1,500 and confined in jail not less than 30 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-4 of this code, or a law of another state or the
31 federal government with the same essential elements, the parent, guardian or custodian, or
32 person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof,
33 shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than
34 one year nor more than three years, or both.

35 (e) Any person convicted of a misdemeanor offense under this section:

36 (1) May be required to complete parenting classes, substance abuse counseling, anger
37 management counseling, or other appropriate services, or any combination thereof, as
38 determined by Department of Human Services through its services assessment evaluation, which
39 shall be submitted to the court of conviction upon written request;

40 (2) Shall not be required to register pursuant to §15-13-1, *et seq.* of this code; and

41 (3) Shall not, solely by virtue of the conviction, have his or her custody, visitation, or
42 parental rights automatically restricted.

43 (f) Nothing in this section shall preclude a parent, guardian or custodian from providing
44 reasonable discipline to a child.

§61-8D-3a. Female genital mutilation; penalties; definitions.

1 (a) Except as otherwise provided in subsection (b) of this section, any person who
2 circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of
3 a female under the age of 18, or any parent, guardian or custodian, or person in a position of
4 trust in relation to a child, of a female under the age of 18 who allows the circumcision, excision
5 or infibulation, in whole or in part, of the female's labia majora, labia minora, or clitoris, shall be
6 guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
7 for not less than two nor more than 10 years and fined not less than \$1,000 nor more than \$5,000.

8 (b) A surgical procedure is not a violation of this section if the procedure:

9 (1) Is necessary to preserve the health of the child on whom it is performed and is
10 performed by a licensed medical professional authorized to practice medicine in this state; or

11 (2) The procedure is performed on a child who is in labor or has just given birth and is
12 performed for legitimate medical purposes connected with that labor or birth by a licensed medical
13 professional authorized to practice medicine in this state.

14 (c) A person's belief that the conduct described in subsection (a) of this section: (1) Is
15 required as a matter of custom, ritual or standard practice; or (2) was consented to by the female

16 on which the circumcision, excision, or infibulation was performed shall not constitute a defense
17 to criminal prosecution under subsection (a) of this section.

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

1 (a) If a parent, guardian or custodian, or person in a position of trust in relation to a child
2 neglects a child and by the neglect causes the child bodily injury, as bodily injury is defined in
3 §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position of trust in
4 relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than
5 \$100 nor more than \$1,000 or imprisoned in a state correctional facility for not less than one nor
6 more than three years, or in the discretion of the court, be confined in jail for not more than one
7 year, or both.

8 (b) If a parent, guardian or custodian, or person in a position of trust in relation to a child
9 neglects a child and by such neglect causes the child serious bodily injury, as serious bodily injury
10 is defined in §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position
11 of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not
12 less than \$300 nor more than \$3,000 or imprisoned in a state correctional facility for not less than
13 one nor more than 10 years, or both.

14 (c) If a parent, guardian or custodian, or person in a position of trust in relation to a child
15 grossly neglects a child and by that gross neglect creates a substantial risk of death or serious
16 bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, of the child then the
17 parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a
18 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000
19 dollars or imprisoned in a state correctional facility for not less than one nor more than five years,
20 or both.

21 (d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child
22 who has not been previously convicted under this section, §61-8D-3 of this code, or a law of

23 another state or the federal government with the same essential elements neglects a child and
24 by that neglect creates a substantial risk of bodily injury, as defined in §61-8B-1 of this code, to
25 the child, then the parent, guardian or custodian, or person in a position of trust in relation to a
26 child is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not
27 less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined
28 and confined.

29 (2) For a second offense under this subsection or for a person with one prior conviction
30 under §61-8D-3 of this code or a law of another state or the federal government with the same
31 essential elements, the parent, guardian or custodian, or person in a position of trust in relation
32 to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
33 \$1,000 and confined in jail not less than 30 days nor more than one year, or both.

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

40 (e) The provisions of this section shall not apply if the neglect by the parent, guardian or
41 custodian or person in a position of trust in relation to a child is due primarily to a lack of financial
42 means on the part of the parent, guardian or custodian or person in a position of trust in relation
43 to a child.

44 (f) 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 Human Services through its services assessment evaluation, which
48 shall be submitted to the court of conviction upon written request;

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

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

§61-8D-4a. Child neglect resulting in death; criminal penalties.

1 (a) If any parent, guardian or custodian, or person in a position of trust in relation to a child
2 shall neglect a child under his or her care, custody or control and by such neglect cause the death
3 of said child, then such parent, guardian or custodian, or person in a position of trust in relation to
4 a child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000
5 nor more than \$5,000 or committed to the custody of the Division of Corrections for not less than
6 three nor more than 15 years, or both fined and imprisoned.

7 (b) No child who in lieu of medical treatment was under treatment solely by spiritual means
8 through prayer in accordance with a recognized method of religious healing with a reasonable
9 proven record of success shall, for that reason alone, be considered to have been neglected
10 within the provisions of this section. A method of religious healing shall be presumed to be a
11 recognized method of religious healing if fees and expenses incurred in connection with the
12 treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to
13 regulations or rules promulgated by the United States Internal Revenue Service: *Provided*, That
14 the provisions of this subsection do not apply to a person in a position of trust in relation to a child
15 who, by virtue of his or her occupation or position, is charged with any duty or responsibility for
16 the health, education, welfare, or supervision of a child.

17 (c) A child whose parent, guardian or legal custodian, or person in a position of trust in
18 relation to that child has inhibited or interfered with the provision of medical treatment in
19 accordance with a court order may be considered to have been neglected for the purposes of this
20 section.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

.....
Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2024.

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Governor