WEST virginia legislature

2024 regular session

Committee Substitute

for

House Bill 5662

By Delegates Kelly, Hott, and Steele

[Originating in the Committee on the Judiciary;
Reported on February 19, 2024]

A BILL to amend and reenact §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, and §61-8D-4a of the Code of West Virginia, 1931, as amended, all relating to murder of a child; child abuse resulting in injury; child abuse creating risk of injury; female genital mutilation; child neglect resulting in injury; child neglect creating risk of injury; child neglect resulting in death.

Be it enacted by the Legislature of West Virginia:

article 8D. child abuse.

§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.

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

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

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

(d) The provisions of this section shall not apply to any parent, guardian or custodian, who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian, with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian, is an adherent or member.

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

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

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

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

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

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

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

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall abuse a child and by such abuse cause said child serious bodily injury as such term is defined in §61-8B-1, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 and committed to the custody of the Division of Corrections not less than two nor more than 10 years.

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

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

(2) For a second offense under this subsection or for a person with one prior conviction under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,500 and confined in jail not less than 30 days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not more than $3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both.

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

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

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

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

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

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

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

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

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

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

(c) A persons belief that the conduct described in subsection (a) of this section: (i) Is required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female on which the circumcision, excision or infibulation was performed shall not constitute a defense 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.

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

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

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

(d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child who has not been previously convicted under this section, §61-8D-3 or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in §61-8B-1, to the child, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than $100 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to add person in a position of trust in relation to a child for murder, death of a child, child abuse resulting in injury, child abuse creating risk of injury, female genital mutilation, child neglect resulting in injury, child neglect creating risk of injury, and child neglect resulting in death.

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