

# **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]





16 care conflicts with the tenets and practices of a recognized religious denomination or order of  
17 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.**

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 such child, then such parent, guardian or custodian, or  
5 person 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 substantial physical pain, illness or  
9 any impairment of physical condition by other than accidental means, which thereby causes the  
10 death of such child, then such other person and such parent, guardian or custodian or person in a  
11 position of trust in relation to a child are each guilty of a felony.

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

16 (d) The provisions of this section are not applicable to any parent, guardian or custodian, ~~or~~  
17 ~~other person~~ who, without malice, fails or refuses, or allows another person to, without malice, fail  
18 or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian  
19 with necessary medical care, when such medical care conflicts with the tenets and practices of a  
20 recognized religious denomination or order of which such parent, guardian or custodian is an  
21 adherent or member. The provisions of this section are not applicable to any health care provider  
22 who fails or refuses, or allows another person to fail or refuse, to supply a child with necessary

23 medical care when such medical care conflicts with the tenets and practices of a recognized  
24 religious denomination or order of which the parent, guardian or custodian of the child is an  
25 adherent or member, or where such failure or refusal is pursuant to a properly executed do not  
26 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 such abuse cause such child bodily injury as such term is defined in  
3 §61-8B-1, then such parent, guardian or custodian, or person in a position of trust in relation to a  
4 child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor  
5 more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than  
6 five years, or in the discretion of the court, be confined in jail for not more than one year.

7 (b) If any parent, guardian or custodian, or person in a position of trust in relation to a child  
8 shall abuse a child and by such abuse cause said child serious bodily injury as such term is  
9 defined in §61-8B-1, then such parent, guardian or custodian shall be 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 not less than two nor more than 10 years.

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

17 (d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child  
18 who has not previously been convicted under this section, ~~section four of this article §61-8D-4 of~~  
19 this code, or a law of another state or the federal government with the same essential elements  
20 abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is

21 defined in §61-8B-1, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be  
22 fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.

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

29 (3) For a third or subsequent offense under this subsection or for a person with two or more  
30 prior convictions under this section, ~~section four of this article §61-8D-4 of this code,~~ or a law of  
31 another state or the federal government with the same essential elements, the parent, guardian or  
32 custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon  
33 conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional  
34 facility not less than 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 Bureau for Children and Families through its services assessment evaluation,  
39 which 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.*; and

41 (3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental  
42 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 a  
3 female under the age of eighteen, or any parent, person in a position of trust in relation to a child,  
4 guardian or custodian, of a female under the age of 18 who allows the circumcision, excision or  
5 infibulation, in whole or in part, of such female's labia majora, labia minora or clitoris, shall be guilty  
6 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not  
7 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: (i) Is  
15 required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female  
16 on which the circumcision, excision or infibulation was performed shall not constitute a defense to  
17 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 such neglect causes the child bodily injury, as bodily injury is defined in  
3 §61-8B-1 of this chapter, 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 \$100  
5 nor more than \$1,000 dollars 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 cause the child serious bodily injury, as serious bodily injury is  
10 defined in §61-8B-1 of this chapter, 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 less  
12 than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less  
13 than 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 the child then the parent, guardian  
17 or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon  
18 conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned  
19 in a state correctional facility for not less than one nor more than five years, or both.

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

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

32 (3) For a third or subsequent offense under this subsection or for a person with two or more  
33 prior convictions under this section, §61-8D-3, or a law of another state or the federal government



34 with the same essential elements, the parent, guardian or custodian, or person in a position of trust  
35 in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not more than  
36 \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three  
37 years, or both fined and imprisoned.

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

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

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

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

49 (3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental  
50 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 a  
4 child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor  
5 more than \$5,000 or committed to the custody of the Division of Corrections for not less than three  
6 nor more than 15 years, or both such fine and imprisonment.

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 within  
10 the provisions of this section. A method of religious healing shall be presumed to be a recognized  
11 method of religious healing if fees and expenses incurred in connection with such treatment are  
12 permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or  
13 rules promulgated by the United States Internal Revenue Service: Provided, That the provisions of  
14 this subsection do not apply to persons in a position of trust in relation to a child who by virtue of  
15 their occupation is charged with any duty or responsibility for the health, education, welfare, or  
16 supervision of the 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.

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.