

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4356

(BY DELEGATES FLEISCHAUER, BROWN,
IRELAND, LAWRENCE, MANYPENNY, MARCUM, MILEY, SKAFF,
STOWERS, R. PHILLIPS AND HALL)

(Originating in the Committee on the Judiciary)
[February 3, 2012]

A BILL to amend and reenact §61-8D-4 of the Code of West Virginia, 1931, as amended, relating to creating a new offense for child neglect by a parent, guardian or custodian which creates a substantial risk of bodily injury and providing penalties upon conviction.

Be it enacted by the Legislature of West Virginia:

That §61-8D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

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

1 (a) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
2 neglects a child and by such neglect ~~cause said~~ causes a child
3 bodily injury, as ~~such term is~~ defined in section one, article
4 eight-b of this chapter, then ~~such~~ the parent, guardian or
5 custodian ~~shall be~~ is guilty of a felony and, upon conviction
6 thereof, shall be fined not less than \$100 nor more than
7 \$1,000 dollars or committed to the custody of the Division of
8 Corrections for not less than one nor more than three years,
9 or in the discretion of the court, be confined in ~~the county~~ jail
10 for not more than one year, or both such fine and
11 confinement or imprisonment.

12 (b) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
13 neglects a child and by such neglect ~~cause said~~ the child
14 serious bodily injury, as ~~such term is~~ defined in section one,
15 article eight-b of this chapter, then ~~such~~ the parent, guardian
16 or custodian ~~shall be~~ is guilty of a felony and, upon

17 conviction thereof, shall be fined not less than \$300 nor more
18 than \$1,000 dollars or committed to the custody of the
19 Division of Corrections for not less than one nor more than
20 ten years, or both ~~such fine and imprisonment~~ fined and
21 imprisoned.

22 (c) If a parent, guardian or custodian grossly neglects a
23 child and by that gross neglect creates a substantial risk of
24 serious bodily injury, as defined in section one, article eight-b
25 of this chapter, or of death to the child, then the parent,
26 guardian or custodian is guilty of a felony and, upon
27 conviction thereof, shall be fined not more than \$3,000
28 dollars and confined to the custody of the Division of
29 Corrections for not less than one nor more than five years.

30 (d) If a parent, guardian or custodian neglects a child and
31 by that neglect creates a substantial risk of bodily injury, as
32 defined in section one, article eight-b of this chapter, to the
33 child, then the parent, guardian or custodian, is guilty of a
34 misdemeanor and, upon conviction thereof, for a first
35 offense, shall be fined not less than \$500 nor more than

36 \$1,000 or confined in jail not less than thirty days nor more
37 than six months or both fined and confined. All persons
38 convicted of a first offense under this subsection shall also be
39 required to complete a parenting plan and parenting
40 education class. For a second offense, the parent, guardian or
41 custodian is guilty of a misdemeanor and, upon conviction
42 thereof, shall be fined no more than \$1,000 and confined in
43 jail not less than thirty days nor not more than one year. For
44 a third or subsequent offense, the parent, guardian or
45 custodian is guilty of a felony and, upon conviction thereof,
46 shall be fined not more than \$2,000 and imprisoned in a state
47 correctional facility not less than one year nor more than
48 three years.

49 (e) The provisions of this section shall not apply;

50 (1) If the neglect by the parent, guardian or custodian is
51 due primarily to a lack of financial means on the part of such
52 parent, guardian or custodian;

53 ~~(d) The provisions of this section shall not apply~~

54 (2) To any parent, guardian or custodian who fails or
55 refuses, or allows another person to fail or refuse, to supply
56 a child under the care, custody or control of such parent,
57 guardian or custodian with necessary medical care, when
58 such medical care conflicts with the tenets and practices of a
59 recognized religious denomination or order of which such
60 parent, guardian or custodian is an adherent or member.

61 ~~(e) Any person who grossly neglects a child and by the~~
62 ~~gross neglect creates a substantial risk of serious bodily~~
63 ~~injury or of death to the child is guilty of a felony and, upon~~
64 ~~conviction thereof, shall be fined not more than three~~
65 ~~thousand dollars and confined to the custody of the division~~
66 ~~of corrections for not less than one nor more than five years.~~