

COMMITTEE SUBSTITUTE

FOR

**H. B. 4356**

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

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(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 the misdemeanor offense for child neglect by a parent, guardian or custodian which creates a substantial risk of bodily injury; penalties; and exceptions.

*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 or  
16 custodian ~~shall be~~ is guilty of a felony and, upon conviction

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

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

29 (d) If a parent, guardian or custodian neglects a child and  
30 by that neglect creates a substantial risk of bodily injury, as  
31 defined in section one, article eight-b of this chapter, to the  
32 child is guilty of a misdemeanor and, upon conviction  
33 thereof, shall be fined not more than \$1,000 or shall be  
34 confined in jail for not more than one year or both fined and  
35 confined.

36 (e) The provisions of this section shall not apply:

37 (1) if the neglect by the parent, guardian or custodian is  
38 due primarily to a lack of financial means on the part of such  
39 parent, guardian or custodian;

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

41 (2) to any parent, guardian or custodian who fails or  
42 refuses, or allows another person to fail or refuse, to supply  
43 a child under the care, custody or control of such parent,  
44 guardian or custodian with necessary medical care, when  
45 such medical care conflicts with the tenets and practices of a  
46 recognized religious denomination or order of which such  
47 parent, guardian or custodian is an adherent or member.

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