

1 **H. B. 2374**

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3 (By Delegates Kump, Rowan and Householder)
4 [Introduced February 13, 2013; referred to the
5 Committee on the Judiciary.]
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**FISCAL
NOTE**

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10 A BILL to amend and reenact §61-2-29 and §61-2-29a of the Code of
11 West Virginia, 1931, as amended; and to amend and reenact §61-
12 8D-2, §61-8D-2a, §61-8D-4a and §61-8D-5 of said code, all
13 relating to eliminating eligibility for parole for the
14 offenses of abuse, neglect or death of an incapacitated adult;
15 eliminating eligibility for parole for the murder of a child
16 by a parent, guardian or custodian by refusal to supply
17 necessities; eliminating eligibility for parole for death of
18 a child by a parent, guardian or custodian by child abuse;
19 eliminating eligibility for parole for child neglect resulting
20 in death; and eliminating eligibility for parole for sexual
21 abuse of a child by a parent, guardian or custodian.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §61-2-29 and §61-2-29a of the Code of West Virginia,
24 1931, as amended, be amended and reenacted; and that §61-8D-2, §61-

1 8D-2a, §61-8D-4a and §61-8D-5 be amended and reenacted, all to
2 read as follows:

3 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

4 **§61-2-29. Abuse or neglect of incapacitated adult; definitions;**
5 **penalties.**

6 (a) The following words, when used in this section and
7 sections twenty -nine-a and twenty-nine-b of this article, have the
8 meaning ascribed, unless the context clearly indicates otherwise:

9 (1) "Abuse" means the intentional infliction of bodily injury
10 on an incapacitated adult;

11 (2) "Bodily injury" means substantial physical pain, illness
12 or any impairment of physical condition;

13 (3) "Caregiver" means any person who has assumed the legal
14 responsibility or a contractual obligation for the care of an
15 incapacitated adult, or has voluntarily assumed responsibility for
16 the care of an incapacitated adult. The term includes a facility
17 operated by any public or private agency, organization or
18 institution which provides services to, and has assumed
19 responsibility for the care of an incapacitated adult.

20 (4) "Incapacitated adult" means any person eighteen years of
21 age or older who by reason of advanced age, physical, mental or
22 other infirmity is unable to carry on the daily activities of life
23 necessary to sustaining life and reasonable health;

24 (5) "Neglect" means the unreasonable failure by a caregiver to

1 provide the care necessary to assure the physical safety or health
2 of an incapacitated adult; and

3 (6) "Serious bodily injury" means bodily injury which creates
4 a substantial risk of death, which causes serious or prolonged
5 disfigurement, prolonged impairment of health or prolonged loss or
6 impairment of the function of any bodily organ.

7 (b) A caregiver who neglects an incapacitated adult or who
8 knowingly permits another person to neglect an incapacitated adult
9 is guilty of a misdemeanor and, upon conviction thereof, shall be
10 fined not less than \$100 nor more than \$500 or confined in jail for
11 not more than one year, or both fined and confined.

12 (c) A caregiver who abuses an incapacitated adult or who
13 knowingly permits another person to abuse an incapacitated adult is
14 guilty of a misdemeanor and, upon conviction thereof, shall be
15 fined not less than \$100 nor more than \$500 or confined in jail for
16 not less than ninety days nor more than one year, or both fined and
17 confined.

18 (d) A caregiver of an incapacitated adult who intentionally
19 and maliciously abuses or neglects an incapacitated adult and
20 causes the incapacitated adult bodily injury is guilty of a felony
21 and, upon conviction thereof, shall be fined not less than \$100 nor
22 more than \$1,000 and imprisoned in a state correctional facility
23 not less than two years nor more than ten years.

24 (e) A caregiver of an incapacitated adult who intentionally

1 and maliciously abuses or neglects an incapacitated adult and
2 causes the incapacitated adult serious bodily injury is guilty of
3 a felony and, upon conviction thereof, shall be fined not less than
4 \$1,000 nor more than \$5,000 and imprisoned in a state correctional
5 facility not less than three years nor more than fifteen years.

6 (f) Nothing in this section or in section twenty-nine-a of
7 this article shall be construed to mean an adult is abused or
8 neglected for the sole reason that his or her independent decision
9 is to rely upon treatment by spiritual means in accordance with the
10 tenets and practices of a recognized church or religious
11 denomination or organization in lieu of medical treatment.

12 (g) Nothing in this section or in section twenty-nine-a of
13 this article shall be construed to mean an incapacitated adult is
14 abused or neglected if deprivation of life-sustaining treatment or
15 other act has been provided by the West Virginia Health Care
16 Decisions Act, pursuant to article thirty, chapter sixteen of this
17 code.

18 (h) Notwithstanding any provision in this code to the
19 contrary, a person convicted of an offense under this section is
20 not eligible for parole.

21 **§61-2-29a. Death of an incapacitated adult by a caregiver.**

22 (a) A caregiver who intentionally and maliciously neglects an
23 incapacitated adult causing death is guilty of a felony and, upon
24 conviction thereof, shall be fined not more than \$5,000 and be

1 imprisoned in a state correctional facility for a definite term of
2 not less than five nor more than fifteen years.

3 (b) A caregiver of an incapacitated adult who causes the death
4 of an incapacitated adult by knowingly allowing any other person to
5 intentionally or maliciously neglect the incapacitated adult is
6 guilty of a felony and, upon conviction thereof, shall be fined not
7 more than \$5,000 and be imprisoned in a state correctional facility
8 for a definite term of not less than five nor more than fifteen
9 years.

10 (c) A caregiver of an incapacitated adult who intentionally
11 and maliciously abuses an incapacitated adult which causes the
12 death of the incapacitated adult is guilty of a felony and, upon
13 conviction thereof, shall be imprisoned in a state correctional
14 facility for a definite term of not less than five nor more than
15 forty years.

16 (d) A caregiver of an incapacitated adult who causes the death
17 of an incapacitated adult by knowingly allowing any other person to
18 intentionally and maliciously abuse an incapacitated adult is
19 guilty of a felony and, upon conviction thereof, shall be
20 imprisoned in a state correctional facility for a definite term of
21 not less than five nor more than forty years.

22 (e) The provisions of this section do not apply to any
23 caregiver or health care provider who, without malice, fails or
24 refuses, or allows another person to, without malice, fail or

1 refuse, to supply an incapacitated adult with necessary medical
2 care when the medical care conflicts with the tenets and practices
3 of a recognized religious denomination or order of which the
4 incapacitated adult is an adherent member.

5 (f) Notwithstanding any provision in this code to the
6 contrary, a person convicted of an offense under this section is
7 not eligible for parole.

8 **ARTICLE 8D. CHILD ABUSE.**

9 **§61-8D-2. Murder of a child by a parent, guardian or custodian or**
10 **other person by refusal or failure to supply**
11 **necessities, or by delivery, administration or**
12 **ingestion of a controlled substance; penalties.**

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

19 (b) If any parent, guardian or custodian shall cause the death
20 of a child under his or her care, custody or control by knowingly
21 allowing any other person to maliciously and intentionally fail or
22 refuse to supply such child with necessary food, clothing, shelter
23 or medical care, then such other person and such parent, guardian

1 or custodian shall each be guilty of murder in the first degree.

2 (c) The penalty for offenses defined by this section shall be
3 that which is prescribed for murder in the first degree under the
4 provisions of section two, article two of this chapter.
5 Notwithstanding any provision in this code to the contrary, a
6 person convicted of an offense under this section is not eligible
7 for parole.

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

16 **§61-8D-2a. Death of a child by a parent, guardian or custodian or**
17 **other person by child abuse; criminal penalties.**

18 (a) If any parent, guardian or custodian shall maliciously and
19 intentionally inflict upon a child under his or her care, custody
20 or control substantial physical pain, illness or any impairment of
21 physical condition by other than accidental means, thereby causing
22 the death of such child, then such parent, guardian or custodian
23 shall be guilty of a felony.

24 (b) If any parent, guardian or custodian shall knowingly allow

1 any other person to maliciously and intentionally inflict upon a
2 child under the care, custody or control of such parent, guardian
3 or custodian substantial physical pain, illness or any impairment
4 of physical condition by other than accidental means, which thereby
5 causes the death of such child, then such other person and such
6 parent, guardian or custodian shall each be guilty of a felony.

7 (c) Any person convicted of a felony described in subsection
8 (a) or (b) of this section shall be punished by a definite term of
9 imprisonment in ~~the penitentiary~~ a correctional facility which is
10 not less than ten nor more than forty years. ~~A person imprisoned~~
11 ~~pursuant to the provisions of this section is not eligible for~~
12 ~~parole prior to having served a minimum of ten years of his or her~~
13 ~~sentence or the minimum period required by the provisions of~~
14 ~~section thirteen, article twelve, chapter sixty-two of this code,~~
15 ~~whichever is greater.~~ Notwithstanding any provision in this code
16 to the contrary, a person convicted of an offense under this
17 section is not eligible for parole.

18 (d) The provisions of this section shall not apply to any
19 parent, guardian or custodian or other person who, without malice,
20 fails or refuses, or allows another person to, without malice, fail
21 or refuse, to supply a child under the care, custody or control of
22 such parent, guardian or custodian with necessary medical care,
23 when such medical care conflicts with the tenets and practices of
24 a recognized religious denomination or order of which such parent,

1 guardian or custodian is an adherent or member. The provisions of
2 this section shall not apply to any health care provider who fails
3 or refuses, or allows another person to fail or refuse, to supply
4 a child with necessary medical care when such medical care
5 conflicts with the tenets and practices of a recognized religious
6 denomination or order of which the parent, guardian or custodian of
7 the child is an adherent or member, or where such failure or
8 refusal is pursuant to a properly executed do not resuscitate form.
9 **§61-8D-4a. Child neglect resulting in death; criminal penalties.**

10 (a) If any parent, guardian or custodian shall neglect a child
11 under his or her care, custody or control and by such neglect cause
12 the death of said child, then such parent, guardian or custodian
13 shall be guilty of a felony and, upon conviction thereof, shall be
14 fined not less than \$1,000 nor more than \$5,000 or committed to the
15 custody of the Division of Corrections for not less than three nor
16 more than fifteen years, or both such fine and imprisonment.
17 Notwithstanding any provision in this code to the contrary, a
18 person convicted of an offense under this section is not eligible
19 for parole.

20 (b) No child who in lieu of medical treatment was under
21 treatment solely by spiritual means through prayer in accordance
22 with a recognized method of religious healing with a reasonable
23 proven record of success shall, for that reason alone, be
24 considered to have been neglected within the provisions of this

1 section. A method of religious healing shall be presumed to be a
2 recognized method of religious healing if fees and expenses
3 incurred in connection with such treatment are permitted to be
4 deducted from taxable income as "medical expenses" pursuant to
5 regulations or rules promulgated by the United States Internal
6 Revenue Service.

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

11 **§61-8D-5. Sexual abuse by a parent, guardian, custodian or person**
12 **in a position of trust to a child; parent, guardian,**
13 **custodian or person in a position of trust allowing**
14 **sexual abuse to be inflicted upon a child; displaying**
15 **of sex organs by a parent, guardian, or custodian;**
16 **penalties.**

17 (a) In addition to any other offenses set forth in this code,
18 the Legislature hereby declares a separate and distinct offense
19 under this subsection, as follows: If any parent, guardian or
20 custodian of or other person in a position of trust in relation to
21 a child under his or her care, custody or control, shall engage in
22 or attempt to engage in sexual exploitation of, or in sexual
23 intercourse, sexual intrusion or sexual contact with, a child under

1 his or her care, custody or control, notwithstanding the fact that
2 the child may have willingly participated in such conduct, or the
3 fact that the child may have consented to such conduct or the fact
4 that the child may have suffered no apparent physical injury or
5 mental or emotional injury as a result of such conduct, then such
6 parent, guardian, custodian or person in a position of trust shall
7 be guilty of a felony and, upon conviction thereof, shall be
8 imprisoned in a correctional facility not less than ten nor more
9 than twenty years, or fined not less than \$500 nor more than \$5,000
10 and imprisoned in a correctional facility not less than ten years
11 nor more than twenty years.

12 (b) Any parent, guardian, custodian or other person in a
13 position of trust in relation to the child who knowingly procures,
14 authorizes, or induces another person to engage in or attempt to
15 engage in sexual exploitation of, or sexual intercourse, sexual
16 intrusion or sexual contact with, a child under the care, custody
17 or control of such parent, guardian, custodian or person in a
18 position of trust when such child is less than sixteen years of
19 age, notwithstanding the fact that the child may have willingly
20 participated in such conduct or the fact that the child may have
21 suffered no apparent physical injury or mental or emotional injury
22 as a result of such conduct, such parent, guardian, custodian or
23 person in a position of trust shall be guilty of a felony and, upon
24 conviction thereof, shall be imprisoned in a correctional facility

1 not less than five years nor more than fifteen years, or fined not
2 less than \$1,000 nor more than \$10,000 and imprisoned in a
3 correctional facility not less than five years nor more than
4 fifteen years.

5 (c) Any parent, guardian, custodian or other person in a
6 position of trust in relation to the child who knowingly procures,
7 authorizes, or induces another person to engage in or attempt to
8 engage in sexual exploitation of, or sexual intercourse, sexual
9 intrusion or sexual contact with, a child under the care, custody
10 or control of such parent, guardian, custodian or person in a
11 position of trust when such child is sixteen years of age or older,
12 notwithstanding the fact that the child may have consented to such
13 conduct or the fact that the child may have suffered no apparent
14 physical injury or mental or emotional injury as a result of such
15 conduct, then such parent, guardian, custodian or person in a
16 position of trust shall be guilty of a felony and, upon conviction
17 thereof, shall be imprisoned in a correctional facility not less
18 than one year nor more than five years.

19 (d) The provisions of this section shall not apply to a
20 custodian or person in a position of trust whose age exceeds the
21 age of the child by less than four years.

22 (e) Notwithstanding any provision in this code to the
23 contrary, a person convicted of an offense under this section is
24 not eligible for parole.

NOTE: The purpose of this bill is to eliminate eligibility for parole for the offenses of abuse, neglect or death of an incapacitated adult, murder of a child by parent, guardian or custodian, death of a child by parent, guardian or custodian by child abuse, child neglect resulting in death, or sexual abuse of a child by parent, guardian or custodian.

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