

H. B. 2460

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(By Delegates Marcum, Phillips, R., Ferro, Diserio, Ferns, Lawrence, Campbell, White, Pethtel, Marshall and Fleischauer)

[Introduced February 14, 2013; referred to the Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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.

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

1 thereof, shall be fined not less than \$100 nor more than \$1,000
2 dollars or ~~committed to the custody of the Division of Corrections~~
3 imprisoned in a state correctional facility for not less than one
4 nor more than three years, or in the discretion of the court, be
5 confined in ~~the county jail~~ for not more than one year, or both
6 ~~such fine and confinement or imprisonment.~~ fined and confined or
7 imprisoned.

8 (b) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
9 neglects a child and by such neglect cause ~~said~~ the child serious
10 bodily injury, as ~~such term is~~ defined in section one, article
11 eight-b of this chapter, then ~~such~~ the parent, guardian or
12 custodian ~~shall be~~ is guilty of a felony and, upon conviction
13 thereof, shall be fined not less than \$300 nor more than \$1,000
14 dollars or ~~committed to the custody of the Division of Corrections~~
15 imprisoned in a state correctional facility for not less than one
16 nor more than ten years, or both ~~such fine and imprisonment~~ fined
17 and imprisoned.

18 (c) If a parent, guardian or custodian grossly neglects a
19 child and by that gross neglect creates a substantial risk of
20 serious bodily injury, as defined in section one, article eight-b
21 of this chapter, or of death to the child, then the parent,
22 guardian or custodian is guilty of a felony and, upon conviction
23 thereof, shall be fined not more than \$3,000 dollars and imprisoned
24 in a state correctional facility for not less than one nor more

1 than five years.

2 (d) If a parent, guardian or custodian neglects a child and by
3 that neglect creates a substantial risk of bodily injury, as
4 defined in section one, article eight-b of this chapter, to the
5 child, then the parent, guardian or custodian, is guilty of a
6 misdemeanor and, upon conviction thereof, for a first offense,
7 shall be fined not less than \$500 nor more than \$1,000 or confined
8 in jail not less than thirty days nor more than six months or both
9 fined and confined. Persons convicted of a first offense under this
10 subsection shall also be required to complete a parenting plan and
11 parenting education class. For a second offense, the parent,
12 guardian or custodian is guilty of a misdemeanor and, upon
13 conviction thereof, shall be fined no more than \$1,000 and confined
14 in jail not less than thirty days nor more than one year. For a
15 third or subsequent offense, the parent, guardian or custodian is
16 guilty of a felony and, upon conviction thereof, shall be fined not
17 more than \$2,000 and imprisoned in a state correctional facility
18 not less than one year nor more than three years.

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

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

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

24 (2) To ~~any~~ a parent, guardian or custodian who fails or

1 refuses, or allows another person to fail or refuse, to supply a
2 child under the care, custody or control of such parent, guardian
3 or custodian with necessary medical care, when such medical care
4 conflicts with the tenets and practices of a recognized religious
5 denomination or order of which ~~such~~ the parent, guardian or
6 custodian is an adherent or member.

7 ~~(e) Any person who grossly neglects a child and by the gross~~
8 ~~neglect creates a substantial risk of serious bodily injury or of~~
9 ~~death to the child is guilty of a felony and, upon conviction~~
10 ~~thereof, shall be fined not more than three thousand dollars and~~
11 ~~confined to the custody of the Division of Corrections for not less~~
12 ~~than one nor more than five years.~~

NOTE: The purpose of this bill is to create a new offense for child neglect by a parent, guardian or custodian which creates a substantial risk of bodily injury, to provide penalties upon conviction and make stylistic changes.

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