

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4005**

5 (By Delegates L. Phillips, Rowan, Fleischauer,  
6 Border, Lawrence, Guthrie, P. Smith, Marshall and Poore)

7  
8 [Passed March 8, 2014; in effect ninety days from passage.]  
9

10 AN ACT to amend and reenact §61-8D-1, §61-8D-3, §61-8D-4 and §61-  
11 8D-9 of the Code of West Virginia, 1931, as amended, relating  
12 to offenses of child abuse and neglect by a parent, guardian  
13 or custodian; defining terms and creating exceptions to terms;  
14 creating a criminal offense for child abuse by a parent,  
15 guardian or custodian which creates a substantial risk of  
16 bodily injury; establishing misdemeanor penalties for a first  
17 and second offense; providing that those convicted of a first  
18 or second offense may be required to undergo certain  
19 counseling; making a conviction of a third or subsequent  
20 offense a felony and establishing criminal penalties; stating  
21 that reasonable discipline of a child is not precluded by the  
22 child abuse crimes; making it a felony for a parent, guardian  
23 or custodian to grossly neglect a child which creates  
24 substantial risk of serious bodily injury or death; creating

1 a criminal offense of child neglect by a parent, guardian or  
2 custodian which creates a substantial risk of bodily injury  
3 with misdemeanor penalties for first and second offenses and  
4 felony penalties for third and subsequent offenses; providing  
5 that a parent, guardian or custodian convicted of a  
6 misdemeanor is not required to register as a person convicted  
7 of child abuse or neglect or suffer other potential collateral  
8 consequences; permitting a person convicted of a misdemeanor  
9 to also be required to complete certain counseling; providing  
10 that a parent, guardian or custodian convicted of a  
11 misdemeanor is not required to register as a person convicted  
12 of child abuse or neglect and may not, solely because of the  
13 conviction, have their custody, visitation or parental rights  
14 automatically restricted; and requiring the court to declare  
15 a person an abusing parent under article six, chapter forty-  
16 nine of this code if they are convicted of a felony offense  
17 under this article.

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

19 That §61-8D-1, §61-8D-3, §61-8D-4 and §61-8D-9 of the Code of West  
20 Virginia, 1931, as amended, be amended and reenacted to read as  
21 follows:

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

23 **§61-8D-1. Definitions.**

24 In this article, unless a different meaning is plainly

1 required:

2 (1) "Abuse" means the infliction upon a minor of physical  
3 injury by other than accidental means.

4 (2) "Child" means any person under eighteen years of age not  
5 otherwise emancipated by law.

6 (3) "Controlled substance" means controlled substance as that  
7 term is defined in subsection (d), section one hundred one, article  
8 one, chapter sixty-a of this code.

9 (4) "Custodian" means a person over the age of fourteen years  
10 who has or shares actual physical possession or care and custody of  
11 a child on a full-time or temporary basis, regardless of whether  
12 such person has been granted custody of the child by any contract,  
13 agreement or legal proceeding. "Custodian" shall also include, but  
14 not be limited to, the spouse of a parent, guardian or custodian,  
15 or a person cohabiting with a parent, guardian or custodian in the  
16 relationship of husband and wife, where such spouse or other person  
17 shares actual physical possession or care and custody of a child  
18 with the parent, guardian or custodian.

19 (5) "Guardian" means a person who has care and custody of a  
20 child as the result of any contract, agreement or legal proceeding.

21 (6) "Gross neglect" means reckless or intentional conduct,  
22 behavior or inaction by a parent, guardian or custodian that  
23 evidences a clear disregard for a minor child's health, safety or  
24 welfare.

1           (7) "Neglect" means the unreasonable failure by a parent,  
2 guardian or custodian of a minor child to exercise a minimum degree  
3 of care to assure the minor child's physical safety or health. For  
4 purposes of this article, the following do not constitute "neglect"  
5 by a parent, guardian or custodian:

6           (A) Permitting a minor child to participate in athletic  
7 activities or other similar activities that if done properly are  
8 not inherently dangerous, regardless of whether that participation  
9 creates a risk of bodily injury;

10           (B) Exercising discretion in choosing a lawful method of  
11 educating a minor child; or

12           (C) Exercising discretion in making decisions regarding the  
13 nutrition and medical care provided to a minor child based upon  
14 religious conviction or reasonable personal belief.

15           (8) "Parent" means the biological father or mother of a child,  
16 or the adoptive mother or father of a child.

17           (9) "Sexual contact" means sexual contact as that term is  
18 defined in section one, article eight-b, chapter sixty-one of this  
19 code.

20           (10) "Sexual exploitation" means an act whereby:

21           (A) A parent, custodian, guardian or other person in a  
22 position of trust to a child, whether for financial gain or not,  
23 persuades, induces, entices or coerces the child to engage in  
24 sexually explicit conduct as that term is defined in section one,

1 article eight-c, chapter sixty-one of this code; or

2 (B) A parent, guardian, custodian or other person in a  
3 position of trust in relation to a child persuades, induces,  
4 entices or coerces the child to display his or her sex organs for  
5 the sexual gratification of the parent, guardian, custodian, person  
6 in a position of trust or a third person, or to display his or her  
7 sex organs under circumstances in which the parent, guardian,  
8 custodian or other person in a position of trust knows such display  
9 is likely to be observed by others who would be affronted or  
10 alarmed.

11 (11) "Sexual intercourse" means sexual intercourse as that  
12 term is defined in section one, article eight-b, chapter sixty-one  
13 of this code.

14 (12) "Sexual intrusion" means sexual intrusion as that term is  
15 defined in section one, article eight-b, chapter sixty-one of this  
16 code.

17 (13) A "person in a position of trust in relation to a child"  
18 refers to any person who is acting in the place of a parent and  
19 charged with any of a parent's rights, duties or responsibilities  
20 concerning a child or someone responsible for the general  
21 supervision of a child's welfare, or any person who by virtue of  
22 their occupation or position is charged with any duty or  
23 responsibility for the health, education, welfare, or supervision  
24 of the child.

1 **§61-8D-3. Child abuse resulting in injury; child abuse creating**  
2 **risk of injury; criminal penalties.**

3 (a) If any parent, guardian or custodian shall abuse a child  
4 and by such abuse cause such child bodily injury as such term is  
5 defined in section one, article eight-b of this chapter, then such  
6 parent, guardian or custodian shall be guilty of a felony and, upon  
7 conviction thereof, shall be fined not less than \$100 nor more than  
8 \$1,000 and imprisoned in a state correctional facility for not less  
9 than one nor more than five years, or in the discretion of the  
10 court, be confined in jail for not more than one year.

11 (b) If any parent, guardian or custodian shall abuse a child  
12 and by such abuse cause said child serious bodily injury as such  
13 term is defined in section one, article eight-b of this chapter,  
14 then such parent, guardian or custodian shall be guilty of a felony  
15 and, upon conviction thereof, shall be fined not less than \$1,000  
16 nor more than \$5,000 and committed to the custody of the Division  
17 of Corrections not less than two nor more than ten years.

18 (c) Any parent, guardian or custodian who abuses a child and  
19 by the abuse creates a substantial risk of death or serious bodily  
20 injury, as serious bodily injury is defined in section one, article  
21 eight-b of this chapter, to the child is guilty of a felony and,  
22 upon conviction thereof, shall be fined not more than \$3,000 or  
23 imprisoned in a state correctional facility for not less than one  
24 nor more than five years, or both.

1 (d) (1) If a parent, guardian or custodian who has not  
2 previously been convicted under this section, section four of this  
3 article or a law of another state or the federal government with  
4 the same essential elements abuses a child and by the abuse creates  
5 a substantial risk of bodily injury, as bodily injury is defined in  
6 section one, article eight-b of this chapter, to the child is  
7 guilty of a misdemeanor and, upon conviction thereof, shall be  
8 fined not less than \$100 nor more than \$1,000 or confined in jail  
9 not more than six months, or both.

10 (2) For a second offense under this subsection or for a person  
11 with one prior conviction under this section, section four of this  
12 article or a law of another state or the federal government with  
13 the same essential elements, the parent, guardian or custodian is  
14 guilty of a misdemeanor and, upon conviction thereof, shall be  
15 fined not more than \$1,500 and confined in jail not less than  
16 thirty days nor more than one year, or both.

17 (3) For a third or subsequent offense under this subsection or  
18 for a person with two or more prior convictions under this section,  
19 section four of this article or a law of another state or the  
20 federal government with the same essential elements, the parent,  
21 guardian or custodian is guilty of a felony and, upon conviction  
22 thereof, shall be fined not more than \$3,000 and imprisoned in a  
23 state correctional facility not less than one year nor more than  
24 three years, or both.

1 (e) Any person convicted of a misdemeanor offense under this  
2 section:

3 (1) May be required to complete parenting classes, substance  
4 abuse counseling, anger management counseling, or other appropriate  
5 services, or any combination thereof, as determined by Department  
6 of Health and Human Resources, Bureau for Children and Families  
7 through its services assessment evaluation, which shall be  
8 submitted to the court of conviction upon written request;

9 (2) Shall not be required to register pursuant to article  
10 thirteen, chapter fifteen of this code; and

11 (3) Shall not, solely by virtue of the conviction, have their  
12 custody, visitation or parental rights automatically restricted.

13 (f) Nothing in this section shall preclude a parent, guardian  
14 or custodian from providing reasonable discipline to a child.

15 **§61-8D-4. Child neglect resulting in injury; child neglect creating**  
16 **risk of injury; criminal penalties.**

17 (a) If a parent, guardian or custodian neglects a child and by  
18 such neglect causes the child bodily injury, as bodily injury is  
19 defined in section one, article eight-b of this chapter, then the  
20 parent, guardian or custodian is guilty of a felony and, upon  
21 conviction thereof, shall be fined not less than \$100 nor more than  
22 \$1,000 dollars or imprisoned in a state correctional facility for  
23 not less than one nor more than three years, or in the discretion  
24 of the court, be confined in jail for not more than one year, or



1 both.

2 (b) If a parent, guardian or custodian neglects a child and by  
3 such neglect cause the child serious bodily injury, as serious  
4 bodily injury is defined in section one, article eight-b of this  
5 chapter, then the parent, guardian or custodian is guilty of a  
6 felony and, upon conviction thereof, shall be fined not less than  
7 \$300 nor more than \$3,000 dollars or imprisoned in a state  
8 correctional facility for not less than one nor more than ten  
9 years, or both.

10 (c) If a parent, guardian or custodian grossly neglects a  
11 child and by that gross neglect creates a substantial risk of death  
12 or serious bodily injury, as serious bodily injury is defined in  
13 section one, article eight-b of this chapter, of the child then the  
14 parent, guardian or custodian is guilty of a felony and, upon  
15 conviction thereof, shall be fined not less than \$1,000 nor more  
16 than \$3,000 dollars or imprisoned in a state correctional facility  
17 for not less than one nor more than five years, or both.

18 (d) (1) If a parent, guardian or custodian who has not been  
19 previously convicted under this section, section three of this  
20 article or a law of another state or the federal government with  
21 the same essential elements neglects a child and by that neglect  
22 creates a substantial risk of bodily injury, as defined in section  
23 one, article eight-b of this chapter, to the child, then the  
24 parent, guardian or custodian, is guilty of a misdemeanor and, upon

1 conviction thereof, for a first offense, shall be fined not less  
2 than \$100 nor more than \$1,000 or confined in jail not more than  
3 six months, or both fined and confined.

4 (2) For a second offense under this subsection or for a person  
5 with one prior conviction under this section, section three of this  
6 article or a law of another state or the federal government with  
7 the same essential elements, the parent, guardian or custodian is  
8 guilty of a misdemeanor and, upon conviction thereof, shall be  
9 fined not more than \$1,000 and confined in jail not less than  
10 thirty days nor more than one year, or both.

11 (3) For a third or subsequent offense under this subsection or  
12 for a person with two or more prior convictions under this section,  
13 section three of this article or a law of another state or the  
14 federal government with the same essential elements, the parent,  
15 guardian or custodian is guilty of a felony and, upon conviction  
16 thereof, shall be fined not more than \$2,000 and imprisoned in a  
17 state correctional facility not less than one year nor more than  
18 three years, or both fined and imprisoned.

19 (e) The provisions of this section shall not apply if the  
20 neglect by the parent, guardian or custodian is due primarily to a  
21 lack of financial means on the part of such parent, guardian or  
22 custodian.

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

1 (1) May be required to complete parenting classes, substance  
2 abuse counseling, anger management counseling, or other appropriate  
3 services, or any combination thereof, as determined by Department  
4 of Health and Human Resources, Bureau for Children and Families  
5 through its services assessment evaluation, which shall be  
6 submitted to the court of conviction upon written request;

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

9 (3) Shall not, solely by virtue of the conviction, have their  
10 custody, visitation or parental rights automatically restricted.

11 **§61-8D-9. Convictions for offenses against children.**

12 In any case where a person is convicted of a felony offense  
13 against a child as set forth in this article and the person has  
14 custodial, visitation or other parental rights to the child who is  
15 the victim of the offense or any child who resides in the same  
16 household as the victim, the court shall, at the time of  
17 sentencing, find that the person is an abusing parent within the  
18 meaning of article six, chapter forty-nine of this code as to the  
19 child victim, and may find that the person is an abusing parent as  
20 to any child who resides in the same household as the victim, and  
21 shall take such further action in accord with the provisions of  
22 said article.