

1 **H. B. 4005**

2  
3 (By Delegates L. Phillips, Rowan, Fleischauer,  
4 Border, Lawrence, Guthrie, P. Smith,  
5 Marshall and Poore)

6 [Introduced January 8, 2014; referred to the  
7 Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

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9  
10 A BILL to amend and reenact §61-8D-4 of the Code of West Virginia,  
11 1931, as amended, relating to offenses for child neglect by  
12 a parent, guardian or custodian; making it a felony for a  
13 parent, guardian or custodian to grossly neglect a child which  
14 creates a substantial risk of bodily injury; creating a  
15 misdemeanor offense for child neglect by a parent, guardian or  
16 custodian which creates a substantial threat of bodily injury;  
17 establishing misdemeanor penalties for a first conviction and  
18 requiring those convicted to complete a parenting plan and  
19 parenting education class; increasing penalties for a second  
20 child neglect conviction; making third and subsequent offenses  
21 of child neglect a felony; establishing criminal penalties;  
22 and providing that a parent, guardian or custodian convicted  
23 of a misdemeanor is not required to register as a person  
24 convicted of child abuse or neglect.

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

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

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

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

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

17 (b) If any parent, guardian or custodian ~~shall neglect~~  
18 neglects a child and by such neglect cause said child serious  
19 bodily injury, as ~~such term is~~ defined in section one, article  
20 eight-b of this chapter, then ~~such that~~ parent, guardian or  
21 custodian shall be guilty of a felony and, upon conviction thereof,  
22 shall be fined not less than \$300 nor more than \$3,000 or ~~committed~~  
23 ~~to the custody of the Division of Corrections~~ imprisoned in a state  
24 correctional facility for not less than one nor more than ten

1 years, or both ~~such fine and imprisonment~~ fined and confined or  
2 imprisoned.

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

11 (d) If a parent, guardian or custodian neglects a child and by  
12 that neglect creates a substantial risk of bodily injury, as  
13 defined in section one, article eight-b of this chapter, to the  
14 child, then that parent, guardian or custodian, is guilty of a  
15 misdemeanor and, upon conviction thereof, for a first offense,  
16 shall be fined not less than \$100 nor more than \$1,000 or confined  
17 in jail not less than thirty days nor more than six months, or both  
18 fined and confined. Persons convicted of a first offense under this  
19 subsection shall also be required to complete a parenting plan and  
20 parenting education class. For a second offense, the parent,  
21 guardian or custodian is guilty of a misdemeanor and, upon  
22 conviction thereof, shall be fined no more than \$1,000 and confined  
23 in jail not less than thirty days nor more than one year. For a  
24 third or subsequent offense, the parent, guardian or custodian is

1 guilty of a felony and, upon conviction thereof, shall be fined not  
2 more than \$2,000 and imprisoned in a state correctional facility  
3 not less than one year nor more than three years. A person  
4 convicted of a misdemeanor offense under this subsection is not  
5 required to register pursuant to article thirteen, chapter fifteen  
6 of this code.

7 ~~(c) The provisions of (e) This section shall~~ does not apply:

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

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

12 (2) To ~~any~~ a parent, guardian or custodian who fails or  
13 refuses, or allows another person to fail or refuse, to supply a  
14 child under the care, custody or control of ~~such~~ that parent,  
15 guardian or custodian with necessary medical care, when ~~such~~ the  
16 medical care conflicts with the tenets and practices of a  
17 recognized religious denomination or order of which ~~such~~ that  
18 parent, guardian or custodian is an adherent or member.

19 ~~(e) Any person who grossly neglects a child and by the gross~~  
20 ~~neglect creates a substantial risk of serious bodily injury or of~~  
21 ~~death to the child is guilty of a felony and, upon conviction~~  
22 ~~thereof, shall be fined not more than \$3,000 and confined to the~~  
23 ~~custody of the Division of Corrections for not less than one nor~~  
24 ~~more than five years.~~

NOTE: The purpose of this bill is to make it a felony for a parent, guardian or custodian to grossly neglect a child which creates a substantial risk of bodily injury. The bill creates a misdemeanor offense for child neglect by a parent, guardian or custodian which creates a substantial threat of bodily injury. The bill establishes misdemeanor penalties for a first conviction and increases penalties for a second conviction. The bill requires first offenders to complete a parenting plan and parenting education class. The bill makes third and subsequent offenses of child neglect a felony. The bill establishes criminal penalties. The bill also provides that parents, guardians or custodians convicted of a misdemeanor are not required to register as person convicted of child abuse or neglect.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the House Select Committee for Crimes Against Children.