

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 288

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

STOLLINGS, *original sponsors*

[Passed April 7, 2017; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-8D-1a; and to amend and reenact §61-8D-2a of said code, all relating to
3 naming the law and increasing the penalty for death of child by a parent, guardian,
4 custodian or other person by child abuse to an indeterminate term of fifteen years to life.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §61-8D-1a; and that §61-8D-2a of said code be amended and reenacted, all
3 to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1a. Emmaleigh’s law.

1 The amendments made to this article during the 2017 legislative session shall be known
2 as Emmaleigh’s Law.

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

1 (a) If any parent, guardian or custodian maliciously and intentionally inflicts upon a child
2 under his or her care, custody or control substantial physical pain, illness or any impairment of
3 physical condition by other than accidental means, thereby causing the death of such child, then
4 such parent, guardian or custodian is guilty of a felony.

5 (b) If any parent, guardian or custodian knowingly allows any other person to maliciously
6 and intentionally inflict upon a child under the care, custody or control of such parent, guardian or
7 custodian substantial physical pain, illness or any impairment of physical condition by other than
8 accidental means, which thereby causes the death of such child, then such other person and such
9 parent, guardian or custodian are each guilty of a felony.

10 (c) Any person convicted of a felony described in subsection (a) or (b) of this section shall
11 be imprisoned in a state correctional facility for a period of fifteen years to life. A person imprisoned

12 pursuant to the provisions of this section is not eligible for parole prior to having served a minimum
13 of fifteen years of his or her sentence.

14 (d) The provisions of this section are not applicable to any parent, guardian or custodian
15 or other person who, without malice, fails or refuses, or allows another person to, without malice,
16 fail or refuse, to supply a child under the care, custody or control of such parent, guardian or
17 custodian with necessary medical care, when such medical care conflicts with the tenets and
18 practices of a recognized religious denomination or order of which such parent, guardian or
19 custodian is an adherent or member. The provisions of this section are not applicable to any
20 health care provider who fails or refuses, or allows another person to fail or refuse, to supply a
21 child with necessary medical care when such medical care conflicts with the tenets and practices
22 of a recognized religious denomination or order of which the parent, guardian or custodian of the
23 child is an adherent or member, or where such failure or refusal is pursuant to a properly executed
24 do not resuscitate form.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2017.

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Governor