

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2933

BY DELEGATES SHOTT AND LOVEJOY

[Passed March 9, 2019; in effect ninety days from

passage.]

1 AN ACT to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as
2 amended, relating to modifying the criminal penalties imposed on a parent, guardian or
3 custodian for child abuse resulting in injury and child abuse or neglect creating risk of
4 injury.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8D. CHILD ABUSE.

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

1 (a) If a parent, guardian or custodian abuses a child and by the abuse causes the child
2 bodily injury as the term is defined in §61-8B-1 of this code, then the parent, guardian or custodian
3 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than
4 \$1,000 and imprisoned in a state correctional facility for not less than two nor more than 10 years,
5 or in the discretion of the court, be confined in jail for not more than one year.

6 (b) If a parent, guardian, or custodian abuses a child and by the abuse causes the child
7 serious bodily injury as the term is defined in §61-8B-1 of this code, then the parent, guardian or
8 custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor
9 more than \$5,000 and committed to the custody of the Division of Corrections and Rehabilitation
10 not less than five nor more than 15 years.

11 (c) A parent, guardian or custodian who abuses a child and by the abuse creates a
12 substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of
13 this code, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more
14 than \$3,000 or imprisoned in a state correctional facility for not less than two nor more than ten
15 years, or both fined and imprisoned.

16 (d) A person convicted of any offense under this section with any prior conviction under
17 this section, §61-8D-4 of this code, or a law of another state or the federal government with the
18 same essential elements is subject to the following increased penalties:

19 (1) A person with one prior conviction is guilty of a felony and, upon conviction thereof,
20 shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than
21 three nor more than 15 years, or both fined and imprisoned. *Provided, however,* That a person
22 convicted of a crime under subsection (b) of this section is subject to the higher penalty in that
23 subsection.

24 (2) A person with two or more prior convictions is guilty of a felony and, upon conviction
25 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not
26 less than five years nor more than 15 years, or both fined and imprisoned.

27 (e) Any person convicted of an offense under this section:

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

33 (2) Is not required to register pursuant to §15-13-1 *et seq.* of this code; and

34 (3) May not, solely by virtue of the conviction, have their custody, visitation or parental
35 rights automatically restricted.

36 (f) This section does not preclude a parent, guardian, or custodian from providing
37 reasonable discipline to a child.

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

1 (a) If a parent, guardian, or custodian neglects a child and by such neglect causes the
2 child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian,
3 or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100
4 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor

5 more than three years, or in the discretion of the court, be confined in jail for not more than one
6 year, or both fined and confined.

7 (b) If a parent, guardian, or custodian neglects a child and by such neglect causes the
8 child serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, then the
9 parent, guardian, or custodian is guilty of a felony and, upon conviction thereof, shall be fined not
10 less than \$300 nor more than \$3,000 or imprisoned in a state correctional facility for not less than
11 one nor more than 10 years, or both fined and imprisoned.

12 (c) If a parent, guardian, or custodian neglects a child and by that neglect creates a
13 substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of
14 this code, of the child, then the parent, guardian, or custodian is guilty of a felony and, upon
15 conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not
16 more than two years, or both fined and confined.

17 (d) A person convicted of any offense under this section with any prior conviction is
18 subject to the following increased penalties. A prior conviction includes any offense under this
19 section, §61-8D-3 of this code, or a law of another state or the federal government with the same
20 essential elements:

21 (1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned
22 in a state correctional facility for not less than three nor more than 15 years, or both fined and
23 imprisoned.

24 (2) A person with two or more prior convictions is guilty of a felony and, upon conviction
25 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less
26 than five years nor more than 15 years, or both fined and imprisoned.

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

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

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

36 (2) Shall not be required to register pursuant to the requirements of §15-13-1 *et seq.* of
37 this code; and

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor