

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4032**

BY DELEGATES SMITH, STEELE, BROWN, LOVEJOY,  
MCGEEHAN, ROWAN, ELLINGTON, SKAFF, HANSHAW (MR.  
SPEAKER), CAPITO, AND GARCIA

[Introduced January 12, 2022; referred to the  
Committee on the Judiciary]



1 A BILL to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as  
2 amended, all 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; providing that a prior conviction under this section subjects a person to increased  
5 penalties; and providing a definition for a prior conviction.

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

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

13 (c) ~~Any~~ A parent, guardian or custodian who abuses a child and by the abuse creates a  
14 substantial risk of death or serious bodily injury to the child, as serious bodily-injury is defined in  
15 §61-8B-1 of this code, ~~to the child~~ is guilty of a felony and, upon conviction thereof, shall be fined  
16 not more than \$3,000 or imprisoned in a state correctional facility for not less than ~~one~~ two nor  
17 more than ~~five~~ 10 years, or both fined and imprisoned.

18 (d)(1) If a parent, guardian or custodian who has not previously been convicted under this  
19 section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal  
20 government with the same essential elements abuses a child and by the abuse creates a  
21 substantial risk of bodily injury, as bodily injury is defined in ~~section one, article eight b of this~~  
22 ~~chapter~~ §61-8B-1 of this code, to the child is guilty of a misdemeanor and, upon conviction thereof,  
23 shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months,  
24 or both.

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

30 ~~(3)~~ (2) For a ~~third or subsequent~~ second offense under this subsection or for a person with  
31 ~~two or more~~ one prior convictions under this subsection, ~~section four of this article~~ §61-8D-4(d) of  
32 this code, or a law of another state or the federal government with the same essential elements,  
33 the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined  
34 not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor  
35 more than ~~three~~ five years, or both.

36 (e) Any person convicted of a second or subsequent felony offense under this section,  
37 under §61-8D-4 of this code, or under a law of another state or the federal government with the  
38 same essential elements, may be imprisoned for a term up to twice the term otherwise authorized,  
39 fined an amount up to twice that otherwise authorized, or both.

40 ~~(e)~~(f) Any person convicted of a misdemeanor offense under this section:

41 (1) May be required to complete parenting classes, substance abuse counseling, anger  
42 management counseling, or other appropriate services, or any combination thereof, as  
43 determined by Department of Health and Human Resources, Bureau for Children and Families

44 through its services assessment evaluation, which shall be submitted to the court of conviction  
45 upon written request;

46 (2) ~~Shall~~ May not be required to register pursuant to §15-13-1 *et seq.* of this code; and

47 (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or  
48 parental rights automatically restricted.

49 ~~(f)(g) Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian or custodian from  
50 providing 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 child  
2 bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian or  
3 custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor  
4 more than \$1,000 or imprisoned in a state correctional facility for not less than one nor more than  
5 three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

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

11 (c) If a parent, guardian or custodian grossly neglects a child and by that gross neglect  
12 creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in  
13 §61-8B-1 of this code, of the child then the parent, guardian or custodian is guilty of a felony and,  
14 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 ~~dollars~~ or  
15 imprisoned in a state correctional facility for not less than one nor more than ~~five~~ 10 years, or both  
16 fined and imprisoned.

17 (d)(1) If a parent, guardian or custodian who has not been previously convicted under this  
18 section, ~~section three of this article~~ §61-8D-3 of this code, or a law of another state or the federal  
19 government with the same essential elements neglects a child and by that neglect creates a  
20 substantial risk of bodily injury, as defined in ~~section one, article eight b of this chapter~~ §61-8B-1  
21 of this code, to the child, then the parent, guardian or custodian, is guilty of a misdemeanor and,  
22 upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000  
23 or confined in jail not more than six months, or both fined and confined.

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

29 ~~(32) For a third or subsequent~~ second offense under this subsection or for a person with  
30 ~~two or more~~ one prior convictions under this subsection, ~~section three of this article~~ §61-8D-3(d)  
31 of this code, or a law of another state or the federal government with the same essential elements,  
32 the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined  
33 not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor  
34 more than ~~three~~ five years, or both fined and imprisoned.

35 (e) Any person convicted of a second or subsequent felony offense under this section,  
36 under §61-8D-3 of this code, or under a law of another state or the federal government with the  
37 same essential elements, may be imprisoned for a term up to twice the term otherwise authorized,  
38 fined an amount up to twice that otherwise authorized, or both.

39 ~~(e)(f)~~ The provisions of this section shall may not apply if the neglect by the parent,  
40 guardian or custodian is due primarily to a lack of financial means on the part of such parent,  
41 guardian or custodian.

42 ~~(f)(g)~~ Any person convicted of a misdemeanor offense under this section:

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

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

50           (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or  
51 parental rights automatically restricted.

NOTE: The purpose of this bill is to modify the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury and child abuse or neglect creating risk of injury.

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