

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2397

By Delegate Fast

[Introduced January 11, 2023; Referred to the
Committee on Senior, Children, and Family Issues
then the Judiciary]

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

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

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

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

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

33 (9) "Sexual contact" means sexual contact as that term is defined in §61-8B-1, of this code.

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

35 (A) A parent, custodian, guardian, or other person in a position of trust to a child, whether
36 for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually
37 explicit conduct as that term is defined in §61-8C-1 of this code; or

38 (B) A parent, guardian, custodian or other person in a position of trust in relation to a child
39 persuades, induces, entices or coerces the child to display his or her sex organs for the sexual
40 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to
41 display his or her sex organs under circumstances in which the parent, guardian, custodian or
42 other person in a position of trust knows such display is likely to be observed by others who would
43 be affronted or alarmed.

44 (11) "Sexual intercourse" means sexual intercourse as that term is defined in §61-8B-1 of
45 this code.

46 (12) "Sexual intrusion" means sexual intrusion as that term is defined in §61-8B-1, of this

47 code.

48 (13) A "person in a position of trust in relation to a child" refers to any person who is acting
49 in the place of a parent and charged with any of a parent's rights, duties or responsibilities
50 concerning a child or someone responsible for the general supervision of a child's welfare, or any
51 person who by virtue of their occupation or position is charged with any duty or responsibility for
52 the health, education, welfare, or supervision of the 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 ~~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.

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

12 (c) If a parent, guardian, or custodian grossly neglects a child and by that gross neglect
13 creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-
14 8B-1 of 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 \$1,000 nor more than \$3,000 or imprisoned in a
16 state correctional facility for not less than one nor more than five years, or both.

17 (d)(1) If a parent, guardian, or custodian who has not been previously convicted under this
18 section, section three of this article or a law of another state or the federal government with the

19 same essential elements neglects a child and by that neglect creates a substantial risk of bodily
20 injury, as defined in §61-8B-1 of this code, to the child, then the parent, guardian, or custodian, is
21 guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less
22 than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and
23 confined.

24 (2) For a second offense under this subsection or for a person with one prior conviction
25 under this section, §61-8D-3 of this code or a law of another state or the federal government with
26 the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and,
27 upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than 30
28 days nor more than one year, or both.

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

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

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

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

43 (2) Shall not be required to register pursuant to the requirements of §15-13-1 of this code;
44 and

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

47 (g) As used in this article, accidental physical, mental, or emotional injury to a child, arising
48 from a reasonable failure by a parent, guardian, or custodian to recognize or foresee the threat
49 arising from circumstances leading to an incidental or unplanned event which has resulted in injury
50 to the child is not abuse or neglect.

NOTE: The purpose of this bill is to modify the definitions of child abuse and neglect to exclude accidental 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.