

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4302**

By Delegate Smith

[Originating in the Committee on the Judiciary;

January 16, 2024]





16 and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state  
17 correctional facility for not less than ~~one~~ two nor more than ~~five~~ 10 years, or both fined and  
18 imprisoned.

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

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

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

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

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

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

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

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

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

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

13 (c) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child  
14 grossly neglects a child and by that gross neglect creates a substantial risk of death or serious

15 bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, of the child then the  
16 parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not  
17 less than \$1,000 nor more than \$3,000 ~~dollars~~ or imprisoned in a state correctional facility for not  
18 less than one nor more than ~~five~~ 10 years, or both fined and imprisoned.

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

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

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

38 (e) Any person convicted of a second or subsequent felony offense under this section,  
39 under §61-8D-3 of this code, or under a law of another state or the federal government with the

40 same essential elements, may be imprisoned for a term up to twice the term otherwise authorized,  
41 fined an amount up to twice that otherwise authorized, or both.

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

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

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

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

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

NOTE: The purpose of this bill is to modify the criminal penalties imposed on a parent, guardian, custodian, or person in a position of trust in relation to a child 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.