

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 780

By Senators Weld, Woelfel, and Deeds

[Introduced February 14, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8D-1, §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4,
 2 and §61-8D-4a of the Code of West Virginia, 1931, as amended, all relating to murder of a
 3 child; death of a child; child abuse resulting in injury; child abuse creating risk of injury;
 4 female genital mutilation; child neglect resulting in injury; child neglect creating risk of
 5 injury; and child neglect resulting in death.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

1 In this article, unless a different meaning is plainly required:

2 (1) "Abuse" means the infliction upon a minor of physical injury by other than accidental
 3 means.

4 (2) "Child" means any person under eighteen years of age not otherwise emancipated by
 5 law.

6 (3) "Controlled substance" means controlled substance as that term is defined in
 7 subsection (d), section one hundred one, article one, chapter sixty-a of this code.

8 (4) "Custodian" means a person over the age of fourteen years who has or shares actual
 9 physical possession or care and custody of a child on a full-time or temporary basis, regardless of
 10 whether such person has been granted custody of the child by any contract, agreement or legal
 11 proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian
 12 or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of
 13 husband and wife, where such spouse or other person shares actual physical possession or care
 14 and custody of a child with the parent, guardian or custodian.

15 (5) "Guardian" means a person who has care and custody of a child as the result of any
 16 contract, agreement or legal proceeding.

17 (6) "Gross neglect" means reckless or intentional conduct, behavior or inaction by a parent,
 18 guardian or custodian, or person in a position of trust in relation to a child, that evidences a clear

19 disregard for a minor child's health, safety or welfare.

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

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

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

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

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

32 (9) "Sexual contact" means sexual contact as that term is defined in section one, article
33 eight-b, chapter sixty-one 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 section one, article eight-c, chapter sixty-one of this
38 code; or

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

45 (11) "Sexual intercourse" means sexual intercourse as that term is defined in section one,
46 article eight-b, chapter sixty-one of this code.

47 (12) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article
48 eight-b, chapter sixty-one of this code.

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

§61-8D-2. Murder of a child by a parent, guardian or custodian or other person, or person in a position of trust in relation to a child, by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance; penalties.

1 (a) If any parent, guardian or custodian, or person in a position of trust in relation to a child,
2 shall maliciously and intentionally cause the death of a child under his or her care, custody or
3 control by his or her failure or refusal to supply such child with necessary food, clothing, shelter or
4 medical care, then such parent, guardian or custodian shall be guilty of murder in the first degree.

5 (b) If any parent, guardian or custodian, or person in a position of trust in relation to a child
6 shall cause the death of a child under his or her care, custody or control by knowingly allowing any
7 other person to maliciously and intentionally fail or refuse to supply such child with necessary food,
8 clothing, shelter or medical care, then such other person and such parent, guardian or custodian
9 shall each be guilty of murder in the first degree.

10 (c) The penalty for offenses defined by this section shall be that which is prescribed for
11 murder in the first degree under the provisions of section two article, two of this chapter.

12 (d) The provisions of this section shall not apply to any parent, guardian or custodian, or
13 person in a position of trust in relation to a child who fails or refuses, or allows another person to fail
14 or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian

15 or person in a position of trust in relation to a child with necessary medical care, when such
16 medical care conflicts with the tenets and practices of a recognized religious denomination or
17 order of which such parent, guardian or custodian or person in a position of trust in relation to a
18 child is an adherent or member.

§61-8D-2a. Death of a child by a parent, guardian or custodian or other person or person in a position of trust in relation to a child, by child abuse; criminal penalties.

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

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

12 (c) Any person convicted of a felony described in subsection (a) or (b) of this section shall
13 be imprisoned in a state correctional facility for a period of fifteen years to life. A person imprisoned
14 pursuant to the provisions of this section is not eligible for parole prior to having served a minimum
15 of fifteen years of his or her sentence.

16 (d) The provisions of this section are not applicable to any parent, guardian or custodian or
17 other person who, without malice, fails or refuses, or allows another person to, without malice, fail
18 or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian
19 with necessary medical care, when such medical care conflicts with the tenets and practices of a
20 recognized religious denomination or order of which such parent, guardian or custodian is an

21 adherent or member. The provisions of this section are not applicable to any health care provider
22 who fails or refuses, or allows another person to fail or refuse, to supply a child with necessary
23 medical care when such medical care conflicts with the tenets and practices of a recognized
24 religious denomination or order of which the parent, guardian or custodian of the child is an
25 adherent or member, or where such failure or refusal is pursuant to a properly executed do not
26 resuscitate form.

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

1 (a) If any parent, guardian or custodian or person in a position of trust in relation to a child
2 shall abuse a child and by such abuse cause such child bodily injury as such term is defined in
3 section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty
4 of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000
5 and imprisoned in a state correctional facility for not less than one nor more than five years, or in
6 the discretion of the court, be confined in jail for not more than one year.

7 (b) If any parent, guardian or custodian or person in a position of trust in relation to a child
8 shall abuse a child and by such abuse cause said child serious bodily injury as such term is
9 defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall
10 be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
11 \$5,000 and committed to the custody of the Division of Corrections not less than two nor more than
12 ten years.

13 (c) Any parent, guardian or custodian or person in a position of trust in relation to a child
14 who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as
15 serious bodily injury is defined in section one, article eight-b of this chapter, to the child is guilty of a
16 felony 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 nor more than five years, or both.

18 (d)(1) If a parent, guardian or custodian or person in a position of trust in relation to a child

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

24 (2) For a second offense under this subsection or for a person with one prior conviction
25 under this section, section four of this article or a law of another state or the federal government
26 with the same essential elements, the parent, guardian or custodian or person in a position of trust
27 in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
28 more than \$1,500 and confined in jail not less than thirty 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, section four of this article or a law of another state or the
31 federal government with the same essential elements, the parent, guardian or custodian is guilty of
32 a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a
33 state correctional facility not less than one year nor more than three years, or both.

34 (e) Any person convicted of a misdemeanor offense under this section:

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

40 (2) Shall not be required to register pursuant to article thirteen, chapter fifteen of this code;

41 and

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

44 (f) Nothing in this section shall preclude a parent, guardian or custodian from providing

45 reasonable discipline to a child.

§61-8D-3a. Female genital mutilation; penalties; definitions.

1 (a) Except as otherwise provided in subsection (b) of this section, any person who
2 circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of a
3 female under the age of eighteen, or any parent, guardian or custodian or person in a position of
4 trust of a female under the age of eighteen who allows the circumcision, excision or infibulation, in
5 whole or in part, of such female's labia majora, labia minora or clitoris, shall be guilty of a felony
6 and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than
7 two nor more than ten years and fined not less than \$1,000 nor more than \$5,000.

8 (b) A surgical procedure is not a violation of this section if the procedure:

9 (1) Is necessary to preserve the health of the child on whom it is performed and is
10 performed by a licensed medical professional authorized to practice medicine in this state; or

11 (2) The procedure is performed on a child who is in labor or has just given birth and is
12 performed for legitimate medical purposes connected with that labor or birth by a licensed medical
13 professional authorized to practice medicine in this state.

14 (c) A person's belief that the conduct described in subsection (a) of this section: (i) Is
15 required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female
16 on which the circumcision, excision or infibulation was performed shall not constitute a defense to
17 criminal prosecution under subsection (a) of this section.

§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 section one, article eight-b of this chapter, then the parent, guardian or custodian or person in a
4 position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined
5 not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not

6 less than one nor more than three years, or in the discretion of the court, be confined in jail for not
7 more than one year, or both.

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

14 (c) If a parent, guardian or custodian or person in a position of trust in relation to a child
15 grossly neglects a child and by that gross neglect creates a substantial risk of death or serious
16 bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, of the
17 child then the parent, guardian or custodian or person in a position of trust in relation to a child is
18 guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
19 \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five
20 years, or both.

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

29 (2) For a second offense under this subsection or for a person with one prior conviction
30 under this section, section three of this article or a law of another state or the federal government
31 with the same essential elements, the parent, guardian or custodian or person in a position of trust

32 in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
33 more than \$1,000 and confined in jail not less than thirty days nor more than one year, or both.

34 (3) For a third or subsequent offense under this subsection or for a person with two or more
35 prior convictions under this section, section three of this article or a law of another state or the
36 federal government with the same essential elements, the parent, guardian or custodian or person
37 in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be
38 fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor
39 more than three years, or both fined and imprisoned.

40 (e) The provisions of this section shall not apply if the neglect by the parent, guardian or
41 custodian or person in a position of trust in relation to a child is due primarily to a lack of financial
42 means on the part of such parent, guardian or custodian or person in a position of trust in relation
43 to a child.

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

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

50 (2) Shall not be required to register pursuant to the requirements of article thirteen, chapter
51 fifteen of this code; and

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

§61-8D-4a. Child neglect resulting in death; criminal penalties.

1 (a) If any parent, guardian or custodian or person in a position of trust in relation to a child
2 shall neglect a child under his or her care, custody or control and by such neglect cause the death
3 of said child, then such parent, guardian or custodian or person in a position of trust in relation to a

4 child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor
5 more than \$5,000 or committed to the custody of the Division of Corrections for not less than three
6 nor more than fifteen years, or both such fine and imprisonment.

7 (b) No child who in lieu of medical treatment was under treatment solely by spiritual means
8 through prayer in accordance with a recognized method of religious healing with a reasonable
9 proven record of success shall, for that reason alone, be considered to have been neglected within
10 the provisions of this section. A method of religious healing shall be presumed to be a recognized
11 method of religious healing if fees and expenses incurred in connection with such treatment are
12 permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or
13 rules promulgated by the United States Internal Revenue Service.

14 (c) A child whose parent, guardian or legal custodian or person in a position of trust in
15 relation to a child has inhibited or interfered with the provision of medical treatment in accordance
16 with a court order may be considered to have been neglected for the purposes of this section.

NOTE: The purpose of this bill is to add person in a position of trust in relation to a child for murder of a child; death of a child; child abuse resulting in injury; child abuse creating risk of injury; female genital mutilation; child neglect resulting in injury; child neglect creating risk of injury; and child neglect resulting in death.

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