

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2123

By Delegates D. Smith, Akers, Ellington, Rohrbach,
Hanshaw (Mr. Speaker), Gearheart, Maynor, Worrell,
Hillenbrand, Cooper, and Zatezalo

[Introduced on February 12, 2025; referred
to the Committee on the Judiciary]

A BILL to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as amended, all relating to modifying 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 bodily injury, serious bodily injury, and child neglect resulting in bodily injury, serious bodily injury, and child abuse or child neglect creating risk of injury; providing that a prior conviction under this section subjects a person to increased 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.

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

(b) If ~~any~~ a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child ~~shall abuse~~ abuses a child and by the abuse ~~cause~~ causes the child serious bodily injury as the term is defined in §61-8B-1 of this code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and ~~committed to the custody of the Division of Corrections~~ imprisoned in a state correctional facility not less than ~~two~~ five nor more than ~~40~~ 15 years.

(c) ~~Any~~ A parent, guardian, or custodian, or person in a position of trust in relation to a child who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury to

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

20 (d)(1) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child
21 who has not previously been convicted under this section, §61-8D-4 of this code, or a law of
22 another state or the federal government with the same essential elements abuses a child and by
23 the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1 of this
24 code, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
25 than \$100 nor more than \$1,000 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 §61-8D-4(d) of this code, or a law of another state
33 or the federal government with the same essential elements, the parent, guardian or custodian, or
34 person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof,
35 shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one
36 year nor more than ~~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, or under a law of another state or the federal government with the same essential
39 elements, may be imprisoned for a term up to twice the term otherwise authorized, fined an
40 amount up to twice that otherwise authorized, or both.

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

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

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

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

~~(f)(g) Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian, or custodian from providing reasonable discipline to a child.

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

(a) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child neglects a child and by ~~the~~ such neglect causes the child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

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

(c) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child 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 §61-8B-1 of this code, of the child then the
17 parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child is guilty of a
18 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000
19 dollars or imprisoned in a state correctional facility for not less than one nor more than five 10
20 years, or both fined and imprisoned.

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, §61-8D-3 of this code, 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 §61-8B-1 of this code, to the
25 child, then the parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child is
26 guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less
27 than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and
28 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 is guilty of a misdemeanor~~
32 ~~and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than~~
33 ~~thirty days nor more than one year, or both~~

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

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

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

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

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

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

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

(3) ~~Shall~~ May not, solely by virtue of the conviction, have ~~his or her~~ their custody, visitation or parental 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.