

HB 5002

RECEIVED

1994 APR -5 PM 4: 22

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994



ENROLLED

HOUSE BILL No. 5002

(By Delegate & Faircloth, Huntwork, Kessel,
Pino, Trump, L. White and Whitman)



Passed March 15, 1994

In Effect 90 Days from Passage

ENROLLED
H. B. 5002

(By DELEGATES FAIRCLOTH, HUNTWORK, KESSEL, PINO,
TRUMP, L. WHITE AND WHITMAN)

[Passed March 15, 1994; in effect ninety days from passage.]

AN ACT to amend article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to prohibiting conduct whereby a parent, guardian or custodian maliciously and intentionally inflicts, or knowingly allows another to so inflict, upon a child substantial physical pain, illness or any impairment of physical condition by other than accidental means, thereby causing the death of such child; providing that such conduct is a felony; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a, to read as follows:

ARTICLE 8D. CHILD ABUSE.

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

- 1 (a) If any parent, guardian or custodian shall mali-
- 2 ciously and intentionally inflict upon a child under his
- 3 or her care, custody or control substantial physical pain,
- 4 illness or any impairment of physical condition by other

5 than accidental means, thereby causing the death of
6 such child, then such parent, guardian or custodian shall
7 be guilty of a felony.

8 (b) If any parent, guardian or custodian shall know-
9 ingly allow any other person to maliciously and inten-
10 tionally inflict upon a child under the care, custody or
11 control of such parent, guardian or custodian substantial
12 physical pain, illness or any impairment of physical
13 condition by other than accidental means, which thereby
14 causes the death of such child, then such other person
15 and such parent, guardian or custodian shall each be
16 guilty of a felony.

17 (c) Any person convicted of a felony described in
18 subsection (a) or (b) of this section shall be punished by
19 a definite term of imprisonment in the penitentiary
20 which is not less than ten nor more than forty years. A
21 person imprisoned pursuant to the provisions of this
22 section is not eligible for parole prior to having served
23 a minimum of ten years of his or her sentence or the
24 minimum period required by the provisions of section
25 thirteen, article twelve, chapter sixty-two of this code,
26 whichever is greater.

27 (d) The provisions of this section shall not apply to any
28 parent, guardian or custodian or other person who,
29 without malice, fails or refuses, or allows another person
30 to, without malice, fail or refuse, to supply a child under
31 the care, custody or control of such parent, guardian or
32 custodian with necessary medical care, when such
33 medical care conflicts with the tenets and practices of
34 a recognized religious denomination or order of which
35 such parent, guardian or custodian is an adherent or
36 member. The provisions of this section shall not apply
37 to any health care provider who fails or refuses, or
38 allows another person to fail or refuse, to supply a child
39 with necessary medical care when such medical care
40 conflicts with the tenets and practices of a recognized
41 religious denomination or order of which the parent,
42 guardian or custodian of the child is an adherent or
43 member, or where such failure or refusal is pursuant
44 to a properly executed do not resuscitate form.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten signature]
.....
Chairman Senate Committee

Ernest E. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

Russell Palmer
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Kevin S. Giddette
.....
President of the Senate

Paul Helm
.....
Speaker of the House of Delegates

The within *is approved* this the *5th*
day of *April* 1994.
Caston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/94

Time 9:34 am