WEST VIRGINIA CODE CHAPTER 61 ARTICLE 8D

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§61-8D-1. Definitions.

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

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

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

(3) "Controlled substance" means controlled substance as that term is defined in §60A-1-101(d) of this code.

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

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

(6) "Gross neglect" means reckless or intentional conduct, behavior, or inaction by a parent, guardian or custodian, or person in a position of trust in relation to a child, that evidences a clear disregard for a minor child's health, safety, or welfare.

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

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

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

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

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

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

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

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

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

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

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

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

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§61-8D-1a. Emmaleigh's law.

The amendments made to this article during the 2017 legislative session shall be known as Emmaleigh's Law.

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§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.

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

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

(c) The penalty for offenses defined by this section shall be that which is prescribed for murder in the first degree under the provisions of §61-2-2 of this code.

(d) The provisions of this section shall not apply to any parent, guardian or custodian, or person in a position of trust in relation to a child who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of such parent, guardian or custodian, or person in a position of trust in relation to a child with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the parent, guardian or custodian, or person in a position of trust in relation to a child is an adherent or member: *Provided*, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.

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§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.

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

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

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

(d) The provisions of this section are not applicable to any parent, guardian or custodian, who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to supply a child under the care, custody or control of the parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the parent, guardian or custodian is an adherent or member. The provisions of this section are not applicable to any health care provider who fails or refuses, or allows another person to fail or refuse, to supply a child with necessary medical care when the medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the parent, guardian or custodian of the child is an adherent or member, or where such failure or refusal is pursuant to a properly executed do not resuscitate form.

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

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

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

(c) A parent, guardian, 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 the child, as serious bodily injury is defined in §61-8B-1 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than 10 years.

(d)(1) If a parent, guardian, custodian, or person in a position of trust in relation to a child abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1 of this code, to the child, then the parent, guardian, custodian, or person in position of trust is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in jail not more than six months, or both.

(2) If a parent, guardian, custodian, or person in a position of trust to a child violates this subsection and has previously been convicted of violating this subsection, §61-8D-4(d) of this code, or a law of another state or the federal government with the same essential elements, then the parent, guardian, custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years.

(e) Any person convicted of a second or subsequent felony offense under this section, who was previously convicted of a felony offense under this section, §61-8D-4, or a law of another state or the federal government with the same essential elements of a felony offense contained within either section, may be imprisoned for a term up to twice the term otherwise authorized.

(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

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determined by Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

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

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

(g) This section does not preclude a parent, guardian, or custodian from providing reasonable discipline to a child.

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

(a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of 18, or any parent, guardian or custodian, or person in a position of trust in relation to a child, of a female under the age of 18 who allows the circumcision, excision or infibulation, in whole or in part, of the female's labia majora, labia minora, or clitoris, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and fined not less than $1,000 nor more than $5,000.

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

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

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

(c) A person's belief that the conduct described in subsection (a) of this section: (1) Is required as a matter of custom, ritual or standard practice; or (2) was consented to by the female on which the circumcision, excision, or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section.

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

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

(b) If a parent, guardian, 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, custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five years nor more than 15 years.

(c) If a parent, guardian, custodian, or person in a position of trust in relation to a child neglects a child and by that neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, of the child then the parent, guardian, custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than 10 years.

(d)(1) If a parent, guardian, custodian, or person in a position of trust in relation to a child neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in §61-8B-1 of this code, to the child, then the parent, guardian, custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than $100 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.

(2) If a parent, guardian, custodian, or person in a position of trust to a child violates this subsection and has previously been convicted of violating this subsection, §61-8D-3(d) of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian, custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years..

(e) Any person convicted of a felony offense under this section, who was previously convicted of a felony offense under this section, §61-8D-3, or a law of another state or the federal government with the same essential elements of a felony offense contained within either section, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both fined and imprisoned.

(f) The provisions of this section may not apply if the neglect by the parent, guardian,

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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 parent, guardian, custodian, or person in a position of trust in relation to the child.

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

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

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

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall neglect a child under his or her care, custody or control and by such neglect cause the death of said child, then such parent, guardian or custodian, or person in a position of trust in relation to a child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,000 nor more than $10,000 or committed to the custody of the Division of Corrections and Rehabilitation for not less than 10 nor more than 40 years, or both fined and imprisoned.

(b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall, for that reason alone, be considered to have been neglected within the provisions of this section. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with the treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States Internal Revenue Service: *Provided*, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.

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

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§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, engages in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in the conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than 20 nor more than 40 years, or fined not less than $1,000 nor more than $10,000 and imprisoned in a correctional facility not less than 20 years nor more than 40 years.

(b) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces or attempts to procure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than 16 years of age or any age if the child is a disabled child, as identified in §61-8F-2 of this code, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than 10 years nor more than 30 years, or fined not less than $2,000 nor more than $20,000 and imprisoned in a correctional facility not less than 10 years nor more than 30 years.

(c) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces or attempts to precure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is 16 years of age or older, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than two years nor more than 10 years.

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§61-8D-5a. Verbal abuse of noncommunicative child; penalties.

[Repealed.]

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§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, or person in a position of trust, depicting a child engaged in sexually explicit conduct; penalty.

Any parent, guardian or custodian, or person in a position of trust who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than four years, and fined not less than $800 nor more than $8,000.

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§61-8D-7. Presentation of false information regarding child's injuries; penalty.

Any person who presents false information concerning acts or conduct which would constitute an offense under the provisions of this article to attending medical personnel shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, and shall be confined in the county jail not more than one year.

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§61-8D-8. Testimony of husband and wife.

Husband and wife are competent witnesses in any proceeding under this article and cannot refuse to testify on the grounds of their marital relationship or the privileged nature of their communications.

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§61-8D-9. Convictions for offenses against children.

In any case where a person is convicted of a felony offense against a child as set forth in this article and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of §49-4-601 through §49-4-610 of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take such further action in accord with the provisions of those sections.

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§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.

(a) Any person eighteen years of age or older who knowingly contributes to or encourages the delinquency of a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined for a period not exceeding one year or both.

(b) As used in this section, "delinquency" means the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian or custodian.

(c) In addition to any penalty provided under this section and any restitution which may be ordered by the court pursuant to section five, article eleven-a of this chapter the court may order any person convicted of a violation of subsection (a) of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment provided the child resulting from the acts for which the person is convicted.

(d) This section does not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order of which parent, guardian or custodian is an adherent or member.

(e) It is not an essential element of the offense created by this section that the minor actually be delinquent.

(f) Upon conviction, the court may suspend the sentence of a person found guilty under this section. A suspended sentence may be subjected to the following terms and conditions:

(1) That offender pay for any and all treatment, support, and maintenance while the child is in the custody of the state or person that the court determines reasonable and necessary for the welfare of the child;

(2) That the offender post a sufficient bond to secure the payment for all sums ordered to be paid under this section, as long as the bond does not exceed $5,000; and

(3) That the offender participate in any program or training that will assist the child in correcting the delinquent behavior or, in the case of neglect, that will assist the offender in correcting his or her behavior that led to violation of this section.

(g)(1) The penalty of a bond given upon suspension of a sentence which becomes forfeited is recoverable without a separate suit. The court may cause a citation or a summons to issue to the principal and surety, requiring that they appear at a time named by the court, not less

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than ten days, from the issuance of the summons, and show cause why a judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and the surety.

(2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which the bond was given. The money shall be applied first to the payment of all court costs and then to the treatment, care, or maintenance of the child who was at issue when the offender was convicted of this section.

(h) If the guilty person had custody of the child prior to conviction, the court or judge may, on suspending sentence, permit the child to remain in the custody of the person, and make it a condition of suspending sentence that the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency.

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