WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994

- - -

ENROLLED

HOUSE BILL No. 5002

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

- - -

Passed ........................................ March 15 ..................... 1994

In Effect ........................................ 90 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 maliciously and intentionally inflict 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
such child, then such parent, guardian or custodian shall
be guilty of a felony.

(b) If any parent, guardian or custodian shall know-
ingsedly allow any other person to maliciously and inten-
tionally inflict upon a child under the care, custody or
control of such parent, guardian or custodian 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 shall each be
guilty of a felony.

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

d) The provisions of this section shall not apply to any
parent, guardian or custodian or other person 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 such 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
such parent, guardian or custodian is an adherent or
member. The provisions of this section shall not apply
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 such 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Donald L. Yopp
Clerk of the House of Delegates

President of the Senate

Chuck Bailey
Speaker of the House of Delegates

The within is approved this the 5th day of April, 1994.

Gaston Caperton
Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/94
Time 9:34 a.m.