

HB 4005

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4005

(By Delegates L. Phillips, Rowan,
Fleischauer, Border, Lawrence, Guthrie,
P. Smith, Marshall and Poore)



Passed March 8, 2014

In effect ninety days from passage.

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FOR

H. B. 4005

(BY DELEGATES L. PHILLIPS, ROWAN,
FLEISCHAUER, BORDER, LAWRENCE, GUTHRIE,
P. SMITH, MARSHALL AND POORE)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §61-8D-1, §61-8D-3, §61-8D-4 and §61-8D-9 of the Code of West Virginia, 1931, as amended, relating to offenses of child abuse and neglect by a parent, guardian or custodian; defining terms and creating exceptions to terms; creating a criminal offense for child abuse by a parent, guardian or custodian which creates a substantial risk of bodily injury; establishing misdemeanor penalties for a first and second offense; providing that those convicted of a first or second offense may be required to undergo certain counseling; making a conviction of a third or subsequent offense a felony and establishing criminal penalties; stating that reasonable discipline of a child is not precluded by the child abuse crimes; making it a felony for a parent, guardian or custodian to grossly neglect a child which

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creates substantial risk of serious bodily injury or death; creating a criminal offense of child neglect by a parent, guardian or custodian which creates a substantial risk of bodily injury with misdemeanor penalties for first and second offenses and felony penalties for third and subsequent offenses; providing that a parent, guardian or custodian convicted of a misdemeanor is not required to register as a person convicted of child abuse or neglect or suffer other potential collateral consequences; permitting a person convicted of a misdemeanor to also be required to complete certain counseling; providing that a parent, guardian or custodian convicted of a misdemeanor is not required to register as a person convicted of child abuse or neglect and may not, solely because of the conviction, have their custody, visitation or parental rights automatically restricted; and requiring the court to declare a person an abusing parent under article six, chapter forty-nine of this code if they are convicted of a felony offense under this article.

Be it enacted by the Legislature of West Virginia:

That §61-8D-1, §61-8D-3, §61-8D-4 and §61-8D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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
- 3 injury by other than accidental means.
- 4 (2) "Child" means any person under eighteen years of age
- 5 not otherwise emancipated by law.
- 6 (3) "Controlled substance" means controlled substance as
- 7 that term is defined in subsection (d), section one hundred one,
- 8 article one, chapter sixty-a of this code.

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

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

23 (6) "Gross neglect" means reckless or intentional conduct,
24 behavior or inaction by a parent, guardian or custodian that
25 evidences a clear disregard for a minor child's health, safety or
26 welfare.

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

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

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

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

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

43 (9) "Sexual contact" means sexual contact as that term is
44 defined in section one, article eight-b, chapter sixty-one of this
45 code.

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

47 (A) A parent, custodian, guardian or other person in a
48 position of trust to a child, whether for financial gain or not,
49 persuades, induces, entices or coerces the child to engage in
50 sexually explicit conduct as that term is defined in section one,
51 article eight-c, chapter sixty-one of this code; or

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

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

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

67 (13) A "person in a position of trust in relation to a child"
68 refers to any person who is acting in the place of a parent and
69 charged with any of a parent's rights, duties or responsibilities
70 concerning a child or someone responsible for the general
71 supervision of a child's welfare, or any person who by virtue of

72 their occupation or position is charged with any duty or
73 responsibility for the health, education, welfare, or supervision
74 of the child.

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

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

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

18 (c) Any parent, guardian or custodian who abuses a child and
19 by the abuse creates a substantial risk of death or serious bodily
20 injury, as serious bodily injury is defined in section one, article
21 eight-b of this chapter, to the child is guilty of a felony and, upon
22 conviction thereof, shall be fined not more than \$3,000 or
23 imprisoned in a state correctional facility for not less than one
24 nor more than five years, or both.

25 (d)(1) If a parent, guardian or custodian who has not
26 previously been convicted under this section, section four of this
27 article or a law of another state or the federal government with

28 the same essential elements abuses a child and by the abuse
29 creates a substantial risk of bodily injury, as bodily injury is
30 defined in section one, article eight-b of this chapter, to the child
31 is guilty of a misdemeanor and, upon conviction thereof, shall be
32 fined not less than \$100 nor more than \$1,000 or confined in jail
33 not more than six months, or both.

34 (2) For a second offense under this subsection or for a person
35 with one prior conviction under this section, section four of this
36 article or a law of another state or the federal government with
37 the same essential elements, the parent, guardian or custodian is
38 guilty of a misdemeanor and, upon conviction thereof, shall be
39 fined not more than \$1,500 and confined in jail not less than
40 thirty days nor more than one year, or both.

41 (3) For a third or subsequent offense under this subsection or
42 for a person with two or more prior convictions under this
43 section, section four of this article or a law of another state or the
44 federal government with the same essential elements, the parent,
45 guardian or custodian is guilty of a felony and, upon conviction
46 thereof, shall be fined not more than \$3,000 and imprisoned in
47 a state correctional facility not less than one year nor more than
48 three years, or both.

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

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

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

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

62 (f) Nothing in this section shall preclude a parent, guardian
63 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.**

1 (a) If a parent, guardian or custodian neglects a child and by
2 such neglect causes the child bodily injury, as bodily injury is
3 defined in section one, article eight-b of this chapter, then the
4 parent, guardian or custodian is guilty of a felony and, upon
5 conviction thereof, shall be fined not less than \$100 nor more
6 than \$1,000 dollars or imprisoned in a state correctional facility
7 for not less than one nor more than three years, or in the
8 discretion of the court, be confined in jail for not more than one
9 year, or both.

10 (b) If a parent, guardian or custodian neglects a child and by
11 such neglect cause the child serious bodily injury, as serious
12 bodily injury is defined in section one, article eight-b of this
13 chapter, then the parent, guardian or custodian is guilty of a
14 felony and, upon conviction thereof, shall be fined not less than
15 \$300 nor more than \$3,000 dollars or imprisoned in a state
16 correctional facility for not less than one nor more than ten
17 years, or both.

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

26 (d)(1) If a parent, guardian or custodian who has not been
27 previously convicted under this section, section three of this
28 article or a law of another state or the federal government with
29 the same essential elements neglects a child and by that neglect
30 creates a substantial risk of bodily injury, as defined in section
31 one, article eight-b of this chapter, to the child, then the parent,
32 guardian or custodian, is guilty of a misdemeanor and, upon
33 conviction thereof, for a first offense, shall be fined not less than
34 \$100 nor more than \$1,000 or confined in jail not more than six
35 months, or both fined and confined.

36 (2) For a second offense under this subsection or for a person
37 with one prior conviction under this section, section three of this
38 article or a law of another state or the federal government with
39 the same essential elements, the parent, guardian or custodian is
40 guilty of a misdemeanor and, upon conviction thereof, shall be
41 fined not more than \$1,000 and confined in jail not less than
42 thirty days nor more than one year, or both.

43 (3) For a third or subsequent offense under this subsection or
44 for a person with two or more prior convictions under this
45 section, section three of this article or a law of another state or
46 the federal government with the same essential elements, the
47 parent, guardian or custodian is guilty of a felony and, upon
48 conviction thereof, shall be fined not more than \$2,000 and
49 imprisoned in a state correctional facility not less than one year
50 nor more than three years, or both fined and imprisoned.

51 (e) The provisions of this section shall not apply if the
52 neglect by the parent, guardian or custodian is due primarily to
53 a lack of financial means on the part of such parent, guardian or
54 custodian.

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

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

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

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

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

1 In any case where a person is convicted of a felony offense
2 against a child as set forth in this article and the person has
3 custodial, visitation or other parental rights to the child who is
4 the victim of the offense or any child who resides in the same
5 household as the victim, the court shall, at the time of
6 sentencing, find that the person is an abusing parent within the
7 meaning of article six, chapter forty-nine of this code as to the
8 child victim, and may find that the person is an abusing parent
9 as to any child who resides in the same household as the victim,
10 and shall take such further action in accord with the provisions
11 of said article.

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

Sammy Wells

Chairman, House Committee

Rocky Fitzsimmons
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregory A. Sear

Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

Frank D. Owsen

Speaker of the House of Delegates

Jeffrey K. Cook
President of the Senate

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SECRETARY OF STATE

The within is approved this the 21st
day of March, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2014

Time 11:05 am