

**WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 5662**

BY DELEGATES KELLY, HOTT, AND STEELE

[Passed March 7, 2024; in effect ninety days from  
passage.]

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2024 MAR 26 P 2:36

FILED

HB 5662



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1 AN ACT to amend and reenact §61-8D-1, §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-  
2 4, and §61-8D-4a of the Code of West Virginia, 1931, as amended, all relating to defining  
3 terms; providing that a person in position of trust in relation to a child may be held criminally  
4 liable for murder of a child by refusal or failure to supply necessities, or by allowing another  
5 person to fail or refuse to supply necessities, or the delivery, administration or ingestion of  
6 a controlled substance, death of a child by child abuse, child abuse resulting in injury, child  
7 abuse creating risk of injury, female genital mutilation, child neglect resulting in injury, child  
8 neglect creating risk of injury, child neglect resulting in death; and limiting application of  
9 exceptions to criminal penalties in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

**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 injury by other than accidental  
3 means.

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

6 (3) "Controlled substance" means controlled substance as that term is defined in §60A-1-  
7 101(d) of this code.

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

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

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

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

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

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

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

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

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

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

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

37 (B) A parent, guardian, custodian or other person in a position of trust in relation to a child  
38 persuades, induces, entices, or coerces the child to display his or her sex organs for the sexual  
39 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or  
40 to display his or her sex organs under circumstances in which the parent, guardian, custodian or

41 other person in a position of trust knows the display is likely to be observed by others who would  
42 be affronted or alarmed.

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

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

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

**§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.**

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

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

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

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

**§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.**

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

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



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

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

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

1 (a) If any parent, guardian or custodian, or person in a position of trust in relation to a child  
2 shall abuse a child and by the abuse cause the child bodily injury as the term is defined in §61-  
3 8B-1 of this code, then such parent, guardian or custodian, or person in a position of trust in  
4 relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than  
5 \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than one nor  
6 more than five years, or in the discretion of the court, be confined in jail for not more than one  
7 year.

8 (b) If any parent, guardian or custodian, or person in a position of trust in relation to a child  
9 shall abuse a child and by the abuse cause the child serious bodily injury as that term is defined

10 in §61-8B-1 of this code, then such parent, guardian or custodian shall be guilty of a felony and,  
11 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed  
12 to the custody of the Division of Corrections not less than two nor more than 10 years.

13 (c) Any parent, guardian or custodian, or person in a position of trust in relation to a child  
14 who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury,  
15 as serious bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a felony and,  
16 upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional  
17 facility for not less than one nor more than five years, or both.

18 (d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child  
19 who has not previously been convicted under this section, §61-8D-4 of this code, or a law of  
20 another state or the federal government with the same essential elements abuses a child and by  
21 the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1, to the  
22 child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100  
23 nor more than \$1,000 or confined in jail not more than six months, or both.

24 (2) For a second offense under this subsection or for a person with one prior conviction  
25 under this section, §61-8D-4 of this code, or a law of another state or the federal government with  
26 the same essential elements, the parent, guardian or custodian, or person in a position of trust in  
27 relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more  
28 than \$1,500 and confined in jail not less than 30 days nor more than one year, or both.

29 (3) For a third or subsequent offense under this subsection or for a person with two or  
30 more prior convictions under this section, §61-8D-4 of this code, or a law of another state or the  
31 federal government with the same essential elements, the parent, guardian or custodian, or  
32 person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof,  
33 shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than  
34 one year nor more than three years, or both.

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

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

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

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

43 (f) Nothing in this section shall preclude a parent, guardian or custodian from providing  
44 reasonable discipline to a child.

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

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

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

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

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

14 (c) A person's belief that the conduct described in subsection (a) of this section: (1) Is  
15 required as a matter of custom, ritual or standard practice; or (2) was consented to by the female

16 on which the circumcision, excision, or infibulation was performed shall not constitute a defense  
17 to criminal prosecution under subsection (a) of this section.

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

1 (a) If a parent, guardian or custodian, or person in a position of trust in relation to a child  
2 neglects a child and by the neglect causes the child bodily injury, as bodily injury is defined in  
3 §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position of trust in  
4 relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than  
5 \$100 nor more than \$1,000 or imprisoned in a state correctional facility for not less than one nor  
6 more than three years, or in the discretion of the court, be confined in jail for not more than one  
7 year, or both.

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

14 (c) If a parent, guardian or custodian, or person in a position of trust in relation to a child  
15 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 years,  
20 or both.

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

29 (2) For a second offense under this subsection or for a person with one prior conviction  
30 under §61-8D-3 of this code or a law of another state or the federal government with the same  
31 essential elements, the parent, guardian or custodian, or person in a position of trust in relation  
32 to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than  
33 \$1,000 and confined in jail not less than 30 days nor more than one year, or both.

34 (3) For a third or subsequent offense under this subsection or for a person with two or  
35 more prior convictions under this section, §61-8D-3 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  
39 one year nor more than three years, or both fined and imprisoned.

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

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

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

49           (2) Shall not be required to register pursuant to the requirements of §15-13-1 of this code;  
50 and

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

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

1           (a) If any parent, guardian or custodian, or person in a position of trust in relation to a child  
2 shall neglect a child under his or her care, custody or control and by such neglect cause the death  
3 of said child, then such parent, guardian or custodian, or person in a position of trust in relation to  
4 a child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000  
5 nor more than \$5,000 or committed to the custody of the Division of Corrections for not less than  
6 three nor more than 15 years, or both fined and imprisoned.

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

*Steve Harris*  
.....  
Clerk of the House of Delegates

*Julia Linn*  
.....  
Clerk of the Senate

FILED  
2024 MAR 26 P 2:31  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Originated in the House of Delegates.

In effect ninety days from passage.

*Ray Haskew*  
.....  
Speaker of the House of Delegates

*Chapman*  
.....  
President of the Senate

The within is *Approved* this the *26<sup>th</sup>*  
Day of *March* 2024.

*James Justice*  
.....  
Governor





PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am