

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 624**

(By Senators Palumbo, Cookman, Stollings, Barnes,  
Kessler (Mr. President) and Fitzsimmons)

---

[Originating in the Committee on the Judiciary;  
reported March 28, 2013.]

---

A BILL to amend and reenact §61-5-29 of the Code of West Virginia, 1931, as amended, relating to adjusting penalties for willful failure to pay child support; requiring probation and home confinement instead of confinement in a correctional facility for first violations; creating the misdemeanor offense of a second conviction of willfully failing to pay child support; creating a felony offense of a third or subsequent conviction of willfully failing to pay child support; and requiring certain persons convicted of willfully failing to pay child support to promptly obtain employment or register with Workforce West Virginia and complete certain programs.

Com. Sub. for S. B. No. 624]

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

That §61-5-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-29. Failure to meet an obligation to pay support to a minor; penalties.**

1       (†) (a) A person who: (a) (1) Repeatedly and willfully  
2 fails to pay his or her court-ordered support which he or she  
3 can reasonably provide and which he or she knows he or she  
4 has a duty to provide to a minor; and (b) (2) is subject to  
5 court order to pay any amount for the support of a minor  
6 child and is delinquent in meeting the full obligation  
7 established by the order and has been delinquent for a period  
8 of at least six months' duration is guilty of a misdemeanor  
9 and, upon conviction thereof, shall for the first offense be  
10 fined not less than \$100 nor more than \$1,000 or, ~~confined in~~  
11 ~~jaill~~ sentenced to a term of probation for not more than one  
12 year with home incarceration, pursuant to article eleven-b,  
13 chapter sixty-two of this code, as a mandatory condition of  
14 probation, or both fined and ~~confined~~ sentenced to probation.

15       ~~(2) A person who repeatedly and willfully fails to pay his~~  
16 ~~or her court-ordered support which he or she can reasonably~~  
17 ~~provide and which he or she knows he or she has a duty to~~  
18 ~~provide to a minor by virtue of a court or administrative order~~  
19 ~~and the failure results in twelve months without payment of~~  
20 ~~support that remains unpaid is guilty of a felony and, upon~~  
21 ~~conviction thereof, shall be fined not less than \$100 nor more~~  
22 ~~than \$1,000, or imprisoned for not less than one year nor~~  
23 ~~more than three years, or both fined and imprisoned.~~

24       (b) For a second offense in violation of this section, the  
25 person is guilty of a misdemeanor and, upon conviction  
26 thereof, shall be fined not less than \$100 nor more than  
27 \$1,000, or confined in jail for not more than one year, or both  
28 fined and confined.

29       (c) For a third or subsequent offense in violation of this  
30 section, the person is guilty of a felony and, upon conviction  
31 thereof, shall be fined not less than \$100 nor more than  
32 \$1,000, or imprisoned in a state correctional facility for not  
33 less than one year nor more than three years, or both fined  
34 and imprisoned.

Com. Sub. for S. B. No. 624]

35        (d) Any person convicted under this section whose  
36 sentence includes a condition of home incarceration and who  
37 is not gainfully employed at the time of conviction shall, as  
38 a condition of home incarceration, (1) promptly obtain  
39 employment or (2) register with Workforce West Virginia  
40 and complete any job training recommended by Workforce  
41 West Virginia.

---

(NOTE: The purpose of this bill is to ensure persons who are willfully not paying child support be sentenced to home confinement, while either working, looking for work or getting job training from Workforce West Virginia, instead of being confined in jail for a first offense. It creates graduated sanctions for second, third and subsequent offenses.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)