1   **H. B. 4554**

2

3   (By Delegates Poore, Sponaugle, Andes,
4   Fleischauer, Sobonya, Moore, McCuskey, Marshall,
5   Barrett, Skaff and Guthrie)
6

7   [Introduced February 14, 2014; referred to the

8   Committee on the Judiciary.]

9

10 A BILL to amend and reenact §61-5-29 of the Code of West Virginia,

11   1931, as amended, relating to adjusting penalties for willful

12   failure to pay child support; requiring probation and home

13   confinement instead of confinement in a correctional facility

14   for first violations; creating the misdemeanor offense of a

15   second conviction of willfully failing to pay child support;

16   creating a felony offense of a third or subsequent conviction

17   of willfully failing to pay child support; and requiring

18   certain persons convicted of willfully failing to pay child

19   support to promptly obtain employment or register with

20   Workforce West Virginia and complete certain programs.

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

22   That §61-5-29 of the Code of West Virginia, 1931, as amended,

23 be amended and reenacted to read as follows:

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

25 **§61-5-29.   Failure to meet an obligation to pay support to a minor;**

1   **penalties.**

2   ~~(1)~~ (a) A person who: ~~(a)~~ (1) Repeatedly and willfully fails

3 to pay his or her court-ordered support which he or she can

4 reasonably provide and which he or she knows he or she has a duty

5 to provide to a minor; and ~~(b)~~ (2) is subject to court order to pay

6 any amount for the support of a minor child and is delinquent in

7 meeting the full obligation established by the order and has been

8 delinquent for a period of at least six months' duration is guilty

9 of a misdemeanor and, upon conviction thereof, shall <u>for the first</u>

10 <u>offense</u> be fined not less than $100 nor more than $1,000, or

11 ~~confined in jail~~ <u>sentenced to a term of probation</u> for not more than

12 one year <u>with home incarceration, pursuant to article eleven-b,</u>

13 <u>chapter sixty-two of this code, as a mandatory condition of</u>

14 <u>probation</u>, or both fined and ~~confined~~ <u>sentenced to probation.</u>

15   ~~(2) A person who repeatedly and willfully fails to pay his or~~

16 ~~her court-ordered support which he or she can reasonably provide~~

17 ~~and which he or she knows he or she has a duty to provide to a~~

18 ~~minor by virtue of a court or administrative order and the failure~~

19 ~~results in twelve months without payment of support that remains~~

20 ~~unpaid is guilty of a felony and, upon conviction thereof, shall be~~

21 ~~fined not less than $100 nor more than $1,000, or imprisoned for~~

22 ~~not less than one year nor more than three years, or both fined and~~

23 ~~imprisoned.~~

24   <u>(b) For a second offense in violation of this section, the</u>

1 person is guilty of a misdemeanor and, upon conviction thereof,

2 shall be fined not less than $100 nor more than $1,000, or confined

3 in jail for not more than one year, or both fined and confined.

4 (c) For a third or subsequent offense in violation of this

5 section, the person is guilty of a felony and, upon conviction

6 thereof, shall be fined not less than $100 nor more than $1,000, or

7 imprisoned in a state correctional facility for not less than one

8 year nor more than three years, or both fined and imprisoned.

9 (d) Any person convicted under this section whose sentence

10 includes a condition of home incarceration and who is not gainfully

11 employed at the time of conviction shall, as a condition of home

12 incarceration:

13 (1) Promptly obtain employment; or

14 (2) Register with Workforce West Virginia and complete any job

15 training recommended by Workforce 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.