

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 326**

BY SENATORS TRUMP, KESSLER, WOELFEL, PALUMBO,

ROMANO AND PLYMALE

[Originating in the Committee on the Judiciary;

reported on February 3, 2016.]



1 A BILL to repeal §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended; and  
2 to amend said code by adding thereto a new section, designated §61-8D-10, all relating  
3 to repealing the criminal offense of contributing to the delinquency or neglect of a child;  
4 creating the criminal offense of contributing to the delinquency of a minor; establishing  
5 elements of offense; setting penalties; allowing for additional terms and conditions to be  
6 imposed upon conviction; and authorizing restitution.

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

1 That §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended, be  
2 repealed; and that said code be amended by adding thereto a new section, designated §61-8D-  
3 10, all to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-10. Contributing to delinquency of a minor; penalties; payment of medical costs;  
proof; court discretion; other payments; suspended sentence; maintenance  
and care; temporary custody.**

1 (a) Any person eighteen years of age or older who knowingly contributes to or encourages  
2 the delinquency of a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined  
3 not less than \$50 nor more than \$500 or confined for a period not exceeding one year or both.

4 (b) As used in this section, "delinquency" means the violation or attempted violation of any  
5 federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual  
6 refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian  
7 or custodian.

8 (c) In addition to any penalty provided under this section and any restitution which may be  
9 ordered by the court pursuant to section five, article eleven-a of this chapter the court may order  
10 any person convicted of a violation of subsection (a) of this section to pay all or any portion of the  
11 cost of medical, psychological or psychiatric treatment provided the minor resulting from the acts  
12 for which the person is convicted.

13 (d) It is not an essential element of the offense created by this section that the minor  
14 actually be delinquent.

15 (e) Upon conviction, the court may suspend the sentence of a person found guilty under  
16 this section. In addition to any other conditions authorized by this code, any suspended sentence  
17 may include the following terms and conditions:

18 (1) That the defendant post a sufficient bond to secure the payment for all sums ordered  
19 to be paid under this section, as long as the bond does not exceed \$5,000; and

20 (2) That the defendant participate in any program or training that will assist the minor in  
21 correcting the delinquent behavior or that will assist the offender in correcting his or her behavior  
22 that led to the conviction.

23 (f)(1) Any bond given upon suspension of a sentence which becomes forfeited is  
24 recoverable without a separate suit. The court may cause a citation or a summons to issue to the  
25 principal and surety requiring that they appear at a time named by the court, not less than ten  
26 days from the issuance of the summons, and show cause why a judgment should not be entered  
27 for the penalty of the bond and execution issued against the property of the principal and the  
28 surety.

29 (2) Any money collected or paid upon an execution or upon the bond shall be deposited  
30 with the clerk of the court in which the bond was given. The money shall be applied first to the  
31 payment of all court costs and any remaining funds may be expended pursuant to subsection (c)  
32 of this section. Any money not expended for payment of court costs or pursuant to subsection (c)  
33 of this section shall be returned to the surety if the surety is not the defendant. Where the surety  
34 is the defendant, money not expended pursuant to this subsection shall be deposited in the crime  
35 victim's fund established by the provisions of section four, article two-a, chapter fourteen of this  
36 code.