

1 **Senate Bill No. 49**

2 (By Senator Beach)

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4 [Introduced January 11, 2012; referred to the Committee on the
5 Judiciary.]
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10 A BILL to amend and reenact §61-2-14d of the Code of West Virginia,
11 1931, as amended, relating to failing to provide or return a
12 minor child for visitation; and providing penalties.

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

14 That §61-2-14d of the Code of West Virginia, 1931, as amended,
15 be amended and reenacted to read as follows:

16 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

17 **§61-2-14d. Failure to provide or return minor child for**
18 **visitation; false or fictitious information or**
19 **assisting in concealing a minor child; concealment**
20 **or removal of minor child from custodian or from**
21 **person entitled to visitation; penalties;**
22 **defenses.**

1 (a) Any person who fails to make a reasonable, good faith
2 effort to provide or return a minor child in a timely manner at the
3 commencement or expiration of any lawful custodial time or
4 visitation period, or any person who provides false or fictitious
5 information or who withholds information from any law-enforcement
6 agency, or conceals, attempts to conceal, or assists another person
7 in concealing or attempting to conceal, a minor child at the
8 commencement or expiration of any lawful custodial time or
9 visitation period is, for first offense, guilty of a misdemeanor
10 and, upon conviction thereof, shall be confined in jail for not
11 more than ten days or fined not more than \$100 and may be ordered
12 to pay any resulting court costs, or both fined and confined; for
13 the second offense, the person is guilty of a misdemeanor and, upon
14 conviction thereof, shall be confined in jail not more than thirty
15 days or fined not less than \$100 nor more than \$500 and may be
16 ordered to pay any resulting court costs, or both fined and
17 confined; for the third or any subsequent offense, the person is
18 guilty of a felony and, upon conviction thereof, shall be
19 imprisoned in a state correctional facility not less than one nor
20 more than five years, or in the discretion of the court, shall be
21 confined in jail not more than one year or fined not more than
22 \$1,000 and may be ordered to pay any resulting court costs, or both
23 fined and imprisoned: *Provided*, That if the minor child is

1 retained more than twenty-four hours after the expiration of any
2 lawful custodial time or visitation period or is removed from the
3 state during such period the felony offense provision under
4 subsections (b) and/or (c) of this section applies.

5 (b) Any person who conceals, takes or removes a minor child in
6 violation of any court order and with the intent to deprive another
7 person of lawful custodial time or visitation right is guilty of a
8 felony and, upon conviction thereof, shall be imprisoned in a state
9 correctional facility not less than one nor more than five years,
10 or in the discretion of the court, shall be confined in jail not
11 more than one year or fined not more than \$1,000 and may be ordered
12 to pay any resulting court costs, or both fined and confined.

13 (c) Any person who violates this section and in so doing
14 removes the minor child from this state or conceals the minor child
15 in another state is guilty of a felony and, upon conviction
16 thereof, shall be imprisoned in a state correctional facility not
17 less than one nor more than five years, or fined not more than
18 \$1,000 and may be ordered to pay any resulting court costs, or both
19 fined and imprisoned.

20 (d) It is a defense under this section that the accused
21 reasonably believed such action was necessary to preserve the
22 safety and welfare of the minor child. The mere failure to return
23 a minor child at the expiration of any lawful custodial time or

1 visitation period does not constitute an offense under this section
2 if there is a reasonable, good faith attempt to return a minor
3 child in a timely manner. It is the intent of this section to
4 enforce the court order and not subject the minor child to the
5 custody dispute, therefore the age or desires of the minor child
6 may not be used to constitute a defense under this section.

7 (e) When any law-enforcement officer observes credible
8 evidence that the accused has committed a violation of this article
9 in knowing and willful violation of the terms of any court order he
10 or she shall immediately enforce the court order and initiate a
11 criminal investigation. It is the intent of this section to
12 preserve the minor child's right to access any person granted
13 lawful custodial time or visitation.

NOTE: The purpose of this bill is to provide a misdemeanor
and, felony penalty if a person fails to make a reasonable, good
faith attempt to return a minor child in a timely manner at the
expiration of a lawful custodial time or visitation period.

This section has been completely rewritten; therefore, strike-
throughs and underscoring have been omitted.