

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 326

BY SENATORS TRUMP, KESSLER, WOELFEL, PALUMBO,

ROMANO AND PLYMALE, *original sponsors*

[Passed March 10, 2016; in effect 90 days from passage]

1 AN ACT to repeal §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended;
2 and to amend said code by adding thereto a new section, designated §61-8D-10, all
3 relating to repealing the criminal offense of contributing to the delinquency or neglect of a
4 child; relating to repealing providing the court or the judge discretion to suspend the
5 sentence and allow a child to remain in the custody of the convicted person with certain
6 conditions; creating the criminal offense of contributing to the delinquency of a child;
7 defining delinquency; providing for penalties; authorizing restitution; allowing for additional
8 terms and conditions to be imposed upon conviction; providing that delinquency of a child
9 does not apply to a parent, guardian or custodian who fails or refuses, or allows another
10 person to fail or refuse, to supply a child under the care, custody, or control of the parent,
11 guardian, or custodian with necessary medical care, when medical care conflicts with the
12 tenets and practices of a recognized religious denomination or order which parent,
13 guardian or custodian is an adherent or member; establishing that it is not an essential
14 element of the offense that the minor actually be delinquent; providing for certain
15 conditions of bond upon conviction and suspension of the sentence by the court; providing
16 that a bond given upon suspension of a sentence which becomes forfeited is recoverable
17 without separate suit; providing procedure for recovery of bond by principal or surety;
18 providing that any money collected or paid upon execution, or upon the bond, shall be
19 deposited with the clerk and applied to court costs then to treatment, care, or maintenance
20 of the child; and permitting the child to remain in the custody of the convicted person with
21 certain conditions.

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2 repealed; and that said code be amended by adding thereto a new section, designated §61-8D-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 child; 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 child 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
9 be ordered by the court pursuant to section five, article eleven-a of this chapter the court may
10 order any person convicted of a violation of subsection (a) of this section to pay all or any portion
11 of the cost of medical, psychological or psychiatric treatment provided the child resulting from the
12 acts for which the person is convicted.

13 (d) This section does not apply to any parent, guardian or custodian who fails or refuses,
14 or allows another person to fail or refuse, to supply a child under the care, custody, or control of
15 the parent, guardian, or custodian with necessary medical care, when medical care conflicts with
16 the tenets and practices of a recognized religious denomination or order of which parent, guardian
17 or custodian is an adherent or member.

18 (e) It is not an essential element of the offense created by this section that the minor
19 actually be delinquent.

20 (f) Upon conviction, the court may suspend the sentence of a person found guilty under
21 this section. A suspended sentence may be subjected to the following terms and conditions:

22 (1) That offender pay for any and all treatment, support, and maintenance while the child
23 is in the custody of the state or person that the court determines reasonable and necessary for
24 the welfare of the child;

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

27 (3) That the offender participate in any program or training that will assist the child in
28 correcting the delinquent behavior or, in the case of neglect, that will assist the offender in
29 correcting his or her behavior that led to violation of this section.

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

36 (2) Any money collected or paid upon an execution, or upon the bond, shall be deposited
37 with the clerk of the court in which the bond was given. The money shall be applied first to the
38 payment of all court costs and then to the treatment, care, or maintenance of the child who was
39 at issue when the offender was convicted of this section.

40 (h) If the guilty person had custody of the child prior to conviction, the court or judge may,
41 on suspending sentence, permit the child to remain in the custody of the person, and make it a
42 condition of suspending sentence that the person provides whatever treatment and care may be
43 required for the welfare of the child, and shall do whatever may be calculated to secure obedience
44 to the law or to remove the cause of the delinquency.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor