

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 192

(By Senator Hunter, et al)

PASSED April 14, 2001

In Effect 90 days from Passage

FILED

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Senate Bill No. 192

(BY SENATORS HUNTER, FANNING, MINARD, MITCHELL,
OLIVERIO, REDD, FACEMYER, MCKENZIE, KESSLER, UNGER,
ROWE, SNYDER, EDGELL AND SPROUSE)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stalking and harassment generally; penalties; and enhanced penalties for violations of protective order.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; harassment; penalties; definitions.

- 1 (a) Any person who willfully and repeatedly follows and
- 2 harasses a person with whom he or she has or in the past
- 3 has had or with whom he or she seeks to establish a

4 personal or social relationship, whether or not the inten-
5 tion is reciprocated, a member of that person's immediate
6 family, his or her current social companion, his or her
7 professional counselor or attorney is guilty of a misde-
8 meanor and, upon conviction thereof, shall be incarcerated
9 in the county or regional jail for not more than six months
10 or fined not more than one thousand dollars, or both.

11 (b) Any person who willfully and repeatedly follows and
12 makes a credible threat against a person with whom he or
13 she has or in the past has had or with whom he or she
14 seeks to establish a personal or social relationship,
15 whether or not the intention is reciprocated, or against a
16 member of that person's immediate family, his or her
17 current social companion, his or her professional counselor
18 or attorney with the intent to place or placing him or her
19 in reasonable apprehension that he or she or a member of
20 his or her immediate family will suffer death, sexual
21 assault, kidnaping, bodily injury or battery is guilty of a
22 misdemeanor and, upon conviction thereof, shall be
23 incarcerated in the county or regional jail for not more
24 than six months or fined not more than one thousand
25 dollars, or both.

26 (c) Any person who repeatedly harasses or repeatedly
27 makes credible threats against a person with whom he or
28 she has, or in the past has had or with whom he or she
29 seeks to establish a personal or social relationship,
30 whether or not the intention is reciprocated, or against a
31 member of that person's immediate family, his or her
32 current social companion, his or her professional counselor
33 or attorney is guilty of a misdemeanor and, upon convic-
34 tion thereof, shall be incarcerated in the county or regional
35 jail for not more than six months or fined not more than
36 one thousand dollars, or both.

37 (d) Notwithstanding any provision of this code to the
38 contrary, any person who violates the provisions of
39 subsection (a), (b) or (c) of this section in violation of an
40 order entered by a circuit court, magistrate court or family

41 law master, in effect and entered pursuant to part 48-5-
42 501, *et seq.*, part 48-5-601, *et seq.* or 48-27-403 of this code
43 is guilty of a misdemeanor and, upon conviction thereof,
44 shall be incarcerated in the county jail for not less than
45 ninety days nor more than one year or fined not less than
46 two thousand dollars nor more than five thousand dollars,
47 or both.

48 (e) A second or subsequent conviction for a violation of
49 this section occurring within five years of a prior conviction
50 is a felony punishable by incarceration in a state
51 correctional facility for not less than one year nor more
52 than five years or fined not less than three thousand
53 dollars nor more than ten thousand dollars, or both.

54 (f) Notwithstanding any provision of this code to the
55 contrary, any person against whom a protective order is in
56 effect pursuant to the provisions of 48-27-403 of this code
57 who has been served with a copy of said order or 48-27-
58 501 of this code who is convicted of a violation of the
59 provisions of this section shall be guilty of a felony and
60 punishable by incarceration in a state correctional facility
61 for not less than one year nor more than five years or fined
62 not less than three thousand dollars nor more than ten
63 thousand dollars, or both.

64 (g) For the purposes of this section:

65 (1) "Harasses" means willful conduct directed at a
66 specific person or persons which would cause a reasonable
67 person mental injury or emotional distress;

68 (2) "Credible threat" means a threat of bodily injury
69 made with the apparent ability to carry out the threat and
70 with the result that a reasonable person would believe that
71 the threat could be carried out;

72 (3) "Bodily injury" means substantial physical pain,
73 illness or any impairment of physical condition; and

74 (4) "Immediate family" means a spouse, parent, steppar-
75 ent, mother-in-law, father-in-law, child, stepchild, sibling,
76 or any person who regularly resides in the household or
77 within the prior six months regularly resided in the
78 household.

79 (h) Nothing in this section shall be construed to prevent
80 lawful assembly and petition for the redress of grievances,
81 including, but not limited to: Any labor dispute; demon-
82 stration at the seat of federal, state, county or municipal
83 government; activities protected by the West Virginia
84 constitution or the United States Constitution or any
85 statute of this state or the United States.

86 (i) Any person convicted under the provisions of this
87 section who is granted probation or for whom execution or
88 imposition of a sentence or incarceration is suspended is to
89 have as a condition of probation or suspension of sentence
90 that he or she participate in counseling or medical treat-
91 ment as directed by the court.

92 (j) Upon conviction, the court may issue an order
93 restraining the defendant from any contact with the victim
94 for a period not to exceed ten years. The length of any
95 restraining order shall be based upon the seriousness of the
96 violation before the court, the probability of future
97 violations, and the safety of the victim or his or her
98 immediate family. The duration of the restraining order
99 may be longer than five years only in cases when a longer
100 duration is necessary to protect the safety of the victim or
101 his or her immediate family.

102 (k) It is a condition of bond for any person accused of
103 the offense described in this section that the person is to
104 have no contact, direct or indirect, verbal or physical, with
105 the alleged victim.

106 (l) Nothing in this section may be construed to preclude
107 a sentencing court from exercising its power to impose

108 home confinement with electronic monitoring as an
109 alternative sentence.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *30th*
Day of *April*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/01

Time 2:35 pm