

COMMITTEE SUBSTITUTE

FOR

H. B. 2864

(BY DELEGATES MILEY, LAWRENCE, FERRO, SKAFF,
PERDUE, BROWN, PAXTON AND STOWERS)

(Originating in the Committee on the Judiciary)
[February 3, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-14g; and to amend and reenact §61-2-28 of said code, all relating to the creation of a misdemeanor crime of unlawful restraint in the first and second degree; recidivist penalty; affirmative defenses; exemption for law-enforcement; and the addition of unlawful restraint as a domestic violence offense in section twenty-eight, article two, chapter sixty-one of the code.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-14g; and to amend and reenact §61-2-28 of said code, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14g. Unlawful restraint in the first degree; unlawful restraint in the second degree; penalties; definitions.

1 (a) Unlawful restraint in the first degree -- Any person
2 who, without proper legal authority, intentionally restrains
3 another by use, attempted use, or threatened use of force is
4 guilty of a misdemeanor and, upon conviction, shall be
5 confined in jail for not more than one year, or fined not more
6 than \$500, or both.

7 (b) Unlawful restraint in the second degree -- Any person
8 who, without proper legal authority, intentionally restrains
9 another by intimidation, is guilty of unlawful restraint in the
10 second degree and, upon conviction, shall be confined in jail
11 for not more six months, or fined not more than \$100, or
12 both.

13 (c) Any person convicted of a violation of subsection (a)
14 of this section who, in the ten years prior to said conviction,
15 has been convicted of a violation of either:

16 (1) subsection (a) of this section or subsection (b) or (c),
17 section nine of this article where the victim was:

18 (A) a current or former spouse,

19 (B) current or former sexual or intimate partner,

20 (C) a person with whom the defendant has a child in
21 common,

22 (D) a person with whom the defendant cohabits or has
23 cohabitated,

24 (E) a parent or guardian,

25 (F) the defendant's child or ward, or

26 (G) a member of the defendant's household at the time of
27 the offense, or

28 (2) convicted of a violation of section twenty-eight of this
29 article or

30 (3) has served a period of pretrial diversion for an alleged
31 violation of either subsection (a) of this section or subsection
32 (b) or (c), section nine of this article or (C) section
33 twenty-eight of this article when the victim was:

34 (A) a current or former spouse,

35 (B) current or former sexual or intimate partner,

36 (C) a person with whom the defendant has a child in
37 common,

38 (D) a person with whom the defendant cohabits or has
39 cohabitated,

40 (E) a parent or guardian,

41 (F) the defendant's child or ward, or

42 (G) a member of the defendant's household at the time of
43 the offense or such present or past relationship, shall upon
44 conviction be subject to the penalties set forth in section
45 twenty-eight of this article for a second, third or subsequent
46 criminal act of domestic violence offense, as appropriate.

47 (d) For purposes of this section:

48 (1) "Intimidation" means intentional behavior that would
49 cause a reasonable person fear of injury or harm; and

50 (2) "Restrain" means to restrict a person's movements by
51 holding, confining, moving or detaining the person, without
52 the person's consent, so as to interfere substantially with his
53 or her personal liberty.

54 (e) In any prosecution under this section, it is an
55 affirmative defense that:

56 (1) The defendant acted reasonably and in good faith to
57 protect the person from imminent physical danger; or

58 (2) The person restrained was a child less than eighteen
59 years old and that the actor was a parent or legal guardian, or
60 a person acting under authority granted by a parent or legal
61 guardian of such child, or by a teacher or other school
62 personnel acting under authority granted by section one,
63 article five, chapter eighteen-a of this code.

64 (f) This section does not apply to acts done in
65 performance of duty by any law-enforcement officer.

§61-2-28. Domestic violence -- Criminal acts.

1 (a) *Domestic battery.* -- Any person who unlawfully and
2 intentionally makes physical contact of an insulting or
3 provoking nature with his or her family or household
4 member or unlawfully and intentionally causes physical harm
5 to his or her family or household member, is guilty of a
6 misdemeanor and, upon conviction thereof, shall be confined
7 in a county or regional jail for not more than twelve months,
8 or fined not more than \$500, or both.

9 (b) *Domestic assault.* -- Any person who unlawfully
10 attempts to commit a violent injury against his or her family
11 or household member or unlawfully commits an act which
12 places his or her family or household member in reasonable
13 apprehension of immediately receiving a violent injury, is

14 guilty of a misdemeanor and, upon conviction thereof, shall
15 be confined in jail for not more than six months, or fined not
16 more than \$100, or both.

17 (c) *Second offense.* -- Domestic assault or domestic
18 battery.

19 A person convicted of a violation of subsection (a) of this
20 section after having been previously convicted of a violation
21 of subsection (a) or (b) of this section, after having been
22 convicted of a violation of subsection (b) or (c), section nine
23 of this article or subsection (a), section fourteen-g of this
24 article, where the victim was his or her current or former
25 spouse, current or former sexual or intimate partner, person
26 with whom the defendant has a child in common, person with
27 whom the defendant cohabits or has cohabited, a parent or
28 guardian, the defendant's child or ward or a member of the
29 defendant's household at the time of the offense or who has
30 previously been granted a period of pretrial diversion
31 pursuant to section twenty-two, article eleven of this chapter
32 for a violation of subsection (a) or (b) of this section, or a
33 violation of subsection (b) or (c), section nine of this article
34 or subsection (a), section fourteen-g of this article, where the
35 victim was a current or former spouse, current or former

36 sexual or intimate partner, person with whom the defendant
37 has a child in common, person with whom the defendant
38 cohabits or has cohabited, a parent or guardian, the
39 defendant's child or ward or a member of the defendant's
40 household at the time of the offense is guilty of a
41 misdemeanor and, upon conviction thereof, shall be confined
42 in jail for not less than sixty days nor more than one year, or
43 fined not more than \$1000, or both.

44 A person convicted of a violation of subsection (b) of this
45 section after having been previously convicted of a violation
46 of subsection (a) or (b) of this section, after having been
47 convicted of a violation of subsection (b) or (c), section nine
48 of this article or subsection (a), section fourteen-g of this
49 article, where the victim was a current or former spouse,
50 current or former sexual or intimate partner, person with
51 whom the defendant has a child in common, person with
52 whom the defendant cohabits or has cohabited, a parent or
53 guardian, the defendant's child or ward or a member of the
54 defendant's household at the time of the offense or having
55 previously been granted a period of pretrial diversion
56 pursuant to section twenty-two, article eleven of this chapter
57 for a violation of subsection (a) or (b) of this section or

58 subsection (b) or (c), section nine of this article or subsection
59 (a), section fourteen-g of this article, where the victim was a
60 current or former spouse, current or former sexual or intimate
61 partner, person with whom the defendant has a child in
62 common, person with whom the defendant cohabits or has
63 cohabited, a parent or guardian, the defendant's child or ward
64 or a member of the defendant's household at the time of the
65 offense shall be confined in jail for not less than thirty days
66 nor more than six months, or fined not more than \$500, or
67 both.

68 (d) Any person who has been convicted of a third or
69 subsequent violation of the provisions of subsection (a) or (b)
70 of this section, a third or subsequent violation of the
71 provisions of section nine of this article or subsection (a),
72 section fourteen-g of this article, where the victim was a
73 current or former spouse, current or former sexual or intimate
74 partner, person with whom the defendant has a child in
75 common, person with whom the defendant cohabits or has
76 cohabited, a parent or guardian, the defendant's child or ward
77 or a member of the defendant's household at the time of the
78 offense or who has previously been granted a period of
79 pretrial diversion pursuant to section twenty-two, article

80 eleven of this chapter for a violation of subsection (a) or (b)
81 of this section or a violation of the provisions of section nine
82 of this article or subsection (a), section fourteen-g of this
83 article, in which the victim was a current or former spouse,
84 current or former sexual or intimate partner, person with
85 whom the defendant has a child in common, person with
86 whom the defendant cohabits or has cohabited, a parent or
87 guardian, the defendant's child or ward or a member of the
88 defendant's household at the time of the offense, or any
89 combination of convictions or diversions for these offenses,
90 is guilty of a felony, if the offense occurs within ten years of
91 a prior conviction of any of these offenses and, upon
92 conviction thereof, shall be confined in a state correctional
93 facility not less than one nor more than five years or fined
94 not more than \$2,500, or both.

95 (e) As used in this section, "family or household
96 member" means "family or household member" as defined
97 in section two hundred four, article twenty-seven chapter
98 forty-eight of this code.

99 (f) A person charged with a violation of this section may
100 not also be charged with a violation of subsection (b) or (c),
101 section nine of this article for the same act.

102 (g) No law-enforcement officer may be subject to any
103 civil or criminal action for false arrest or unlawful detention
104 for effecting an arrest pursuant to this section or pursuant to
105 section one thousand two, article twenty-seven, chapter forty-
106 eight of this code.