

H. B. 2804

(By Delegates P. Smith, Hunt, Barill, Walker,
Eldridge, Skaff, Marcum, White and Campbell)

[Introduced March 4, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §61-2-16b, relating
to creating criminal penalties for assault or battery on a
pregnant woman against the will and without the consent of the
woman where the perpetrator knows or has reason to know that
the victim is pregnant; creating both misdemeanors and
felonies; and providing for incremental penalties for multiple
batteries.

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 §61-2-16b, to read as
follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-16b. Malicious assault; unlawful assault; battery and
recidivism of battery; assault on a pregnant woman.**

1 (a) Malicious assault. -- Any person who maliciously shoots,
2 stabs, cuts or wounds or by any means causes bodily injury with
3 intent to maim, disfigure, disable or kill a pregnant woman against
4 the will and without the consent of the woman and the person
5 committing the malicious assault knows or has reason to know that
6 the victim is pregnant is guilty of a felony and, upon conviction
7 thereof, shall be confined in a correctional facility for not less
8 than three nor more than fifteen years.

9 (b) Unlawful assault. -- Any person who unlawfully but not
10 maliciously shoots, stabs, cuts or wounds or by any means causes a
11 pregnant woman bodily injury with intent to maim, disfigure,
12 disable or kill her against the will and without the consent of the
13 woman and the person committing the unlawful assault knows or has
14 reason to know that the victim is pregnant is guilty of a felony
15 and, upon conviction thereof, shall be confined in a correctional
16 facility for not less than two nor more than five years.

17 (c) Battery. -- Any person who unlawfully, knowingly and
18 intentionally makes physical contact of an insulting or provoking
19 nature with a pregnant woman or unlawfully and intentionally causes
20 physical harm to her against the will and without the consent of
21 the woman and the person committing the battery knows or has reason
22 to know that the victim is pregnant is guilty of a misdemeanor and,
23 upon conviction thereof, shall be confined in a regional jail for
24 not less than one month nor more than twelve months, fined the sum

1 of \$500, or both fined and confined. If any person commits a
2 second such offense, he or she is guilty of a felony and, upon
3 conviction thereof, shall be confined in a correctional facility
4 for not less than one year nor more than three years or fined the
5 sum of \$1,000, or both fined and confined. Any person who commits
6 a third violation of this subsection is guilty of a felony and,
7 upon conviction thereof, shall be confined in a correctional
8 facility not less than two years nor more than five years or fined
9 not more than \$2,000, or both fined and confined.

10 (d) Assault. -- Any person who unlawfully attempts to commit
11 a violent injury to a pregnant woman or unlawfully commits an act
12 which places a pregnant woman in reasonable apprehension of
13 immediately receiving a violent injury against the will and without
14 the consent of the woman and the person committing the assault
15 knows or has reason to know that the victim is pregnant is guilty
16 of a misdemeanor and, upon conviction thereof, shall be confined in
17 a regional jail for not less than twenty-four hours nor more than
18 six months, fined not more than \$200, or both fined and confined.

NOTE: The purpose of this bill is to create enhanced criminal penalties for assaults or batteries against pregnant women against the will and without the consent of the women where the perpetrator knows or has reason to know that the victim is pregnant. The bill creates both misdemeanors and felonies. The bill also provides for incremental penalties for multiple batteries.

This section is new; therefore, it has been completely underscored.