

**H. B. 2939**

(By Delegates Barrett, Lawrence, Skinner,  
Miley and Sponaugle)

[Introduced March 14, 2013; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §61-2-9 and §61-2-28 of the Code of  
West Virginia, 1931, as amended, all relating generally to  
crimes against the person; and modifying the definition of  
"battery" and "domestic battery" to conform with federal laws.

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

That §61-2-9 and §61-2-28 of the Code of West Virginia, 1931,  
as amended, be amended and reenacted, all to read as follows:

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

**§61-2-9. Malicious or unlawful assault; assault; battery;  
penalties.**

(a) If any person maliciously ~~shoot~~ shoots, ~~stab~~ stabs, ~~cut~~  
cuts or ~~wound~~ wounds any person, or by any means ~~cause~~ causes him  
or her bodily injury with intent to maim, disfigure, disable or  
kill, he or she, ~~shall~~, except where it is otherwise provided, ~~be~~  
is guilty of a felony and, upon conviction, shall be ~~punished by~~

1 ~~confinement in the penitentiary~~ imprisoned in a state correctional  
2 facility not less than two nor more than ten years. If ~~such the~~  
3 act ~~be~~ is done unlawfully, but not maliciously, with the intent  
4 aforesaid, the offender ~~shall be~~ is guilty of a felony and, upon  
5 conviction, shall, ~~in the discretion of the court,~~ either be  
6 ~~confined in the penitentiary~~ imprisoned in a state correctional  
7 facility not less than one nor more than five years, or be confined  
8 in jail, not exceeding twelve months and fined not exceeding \$500.

9 (b) *Assault*. -- If any person unlawfully attempts to commit a  
10 violent injury to the person of another or unlawfully commits an  
11 act which places another in reasonable apprehension of immediately  
12 receiving a violent injury, he or she ~~shall be~~ is guilty of a  
13 misdemeanor and, upon conviction, shall be confined in jail, not  
14 more than six months, or fined not more than \$100, or both ~~such~~  
15 ~~fine and imprisonment~~ fined and confined.

16 (c) *Battery*. -- If any person unlawfully and intentionally  
17 makes physical contact ~~of an insulting or provoking nature~~ with the  
18 person of another or unlawfully and intentionally causes physical  
19 harm to another person, he or she ~~shall be~~ is guilty of a  
20 misdemeanor and, upon conviction, shall be confined in jail for not  
21 more than twelve months, or fined not more than \$500, or both ~~such~~  
22 ~~fine and imprisonment~~ fined and confined.

23 (d) Any person,  convicted of a violation of subsection (b) or  
24 (c) of this section who has, in the ten years prior to ~~said the~~ the

1 conviction, been convicted of a violation of either subsection (b)  
2 or (c) of this section where the victim was a current or former  
3 spouse, current or former sexual or intimate partner, a person with  
4 whom the defendant has a child in common, a person with whom the  
5 defendant cohabits or has cohabited, a parent or guardian, the  
6 defendant's child or ward or a member of the defendant's household  
7 at the time of the offense or convicted of a violation of section  
8 twenty-eight of this article or has served a period of pretrial  
9 diversion for an alleged violation of subsection (b) or (c) of this  
10 section or section twenty-eight of this article when the victim has  
11 ~~such~~ a present or past relationship, shall upon conviction be  
12 subject to the penalties set forth in section twenty-eight of this  
13 article for a second, third or subsequent criminal act of domestic  
14 violence offense, as appropriate.

15 **§61-2-28. Domestic violence -- Criminal acts.**

16 (a) *Domestic battery.* -- Any person who unlawfully and  
17 intentionally makes physical contact ~~of an insulting or provoking~~  
18 ~~nature~~ with his or her family or household member or unlawfully and  
19 intentionally causes physical harm to his or her family or  
20 household member, is guilty of a misdemeanor and, upon conviction  
21 thereof, shall be confined in ~~a county or regional~~ jail for not  
22 more than twelve months, or fined not more than \$500, or both fined  
23 and confined.

24 (b) *Domestic assault.* -- Any person who unlawfully attempts to

1 commit a violent injury against his or her family or household  
2 member or unlawfully commits an act which places his or her family  
3 or household member in reasonable apprehension of immediately  
4 receiving a violent injury, is guilty of a misdemeanor and, upon  
5 conviction thereof, shall be confined in ~~a county or regional~~ jail  
6 for not more than six months, or fined not more than \$100, or both  
7 fined and confined.

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

9 A person, convicted of a violation of subsection (a) of this  
10 section after having been previously convicted of a violation of  
11 subsection (a) or (b) of this section, after having been convicted  
12 of a violation of subsection (b) or (c), section nine of this  
13 article or subsection (a), section fourteen-g of this article where  
14 the victim was his or her current or former spouse, current or  
15 former sexual or intimate partner, person with whom the defendant  
16 has a child in common, person with whom the defendant cohabits or  
17 has cohabited, a parent or guardian, the defendant's child or ward  
18 or a member of the defendant's household at the time of the offense  
19 or who has previously been granted a period of pretrial diversion  
20 pursuant to section twenty-two, article eleven of this chapter for  
21 a violation of subsection (a) or (b) of this section, or a  
22 violation of subsection (b) or (c), section nine of this article or  
23 subsection (a), section fourteen-g of this article where the victim  
24 was a current or former spouse, current or former sexual or

1 intimate partner, person with whom the defendant has a child in  
2 common, person with whom the defendant cohabits or has cohabited,  
3 a parent or guardian, the defendant's child or ward or a member of  
4 the defendant's household at the time of the offense, is guilty of  
5 a misdemeanor and, upon conviction thereof, shall be confined in ~~a~~  
6 ~~county or regional~~ jail for not less than sixty days nor more than  
7 one year, or fined not more than \$1,000, or both fined and  
8 confined.

9       A person convicted of a violation of subsection (b) of this  
10 section, after having been previously convicted of a violation of  
11 subsection (a) or (b) of this section, after having been convicted  
12 of a violation of subsection (b) or (c), section nine of this  
13 article or subsection (a), section fourteen-g of this article where  
14 the victim was a current or former spouse, current or former sexual  
15 or intimate partner, person with whom the defendant has a child in  
16 common, person with whom the defendant cohabits or has cohabited,  
17 a parent or guardian, the defendant's child or ward or a member of  
18 the defendant's household at the time of the offense or having  
19 previously been granted a period of pretrial diversion pursuant to  
20 section twenty-two, article eleven of this chapter for a violation  
21 of subsection (a) or (b) of this section or subsection (b) or (c),  
22 section nine of this article or subsection (a), section fourteen-g  
23 of this article where the victim was a current or former spouse,  
24 current or former sexual or intimate partner, person with whom the

1 defendant has a child in common, person with whom the defendant  
2 cohabits or has cohabited, a parent or guardian, the defendant's  
3 child or ward or a member of the defendant's household at the time  
4 of the offense, shall be confined in ~~a county or regional~~ jail for  
5 not less than thirty days nor more than six months, or fined not  
6 more than \$500, or both fined or confined.

7 (d) Any person who has been convicted of a third or subsequent  
8 violation of the provisions of subsection (a) or (b) of this  
9 section, a third or subsequent violation of the provisions of  
10 section nine of this article or subsection (a), section fourteen-g  
11 of this article where the victim was a current or former spouse,  
12 current or former sexual or intimate partner, person with whom the  
13 defendant has a child in common, person with whom the defendant  
14 cohabits or has cohabited, a parent or guardian, the defendant's  
15 child or ward or a member of the defendant's household at the time  
16 of the offense or who has previously been granted a period of  
17 pretrial diversion pursuant to section twenty-two, article eleven  
18 of this chapter for a violation of subsection (a) or (b) of this  
19 section or a violation of the provisions of section nine of this  
20 article or subsection (a), section fourteen-g of this article in  
21 which the victim was a current or former spouse, current or former  
22 sexual or intimate partner, person with whom the defendant has a  
23 child in common, person with whom the defendant cohabits or has  
24 cohabited, a parent or guardian, the defendant's child or ward or

1 a member of the defendant's household at the time of the offense,  
2 or any combination of convictions or diversions for these offenses,  
3 is guilty of a felony if the offense occurs within ten years of a  
4 prior conviction of any of these offenses and, upon conviction  
5 thereof, shall be ~~confined~~ imprisoned in a state correctional  
6 facility not less than one nor more than five years or fined not  
7 more than \$2,500, or both fined and imprisoned.

8 (e) As used in this section, "family or household member"  
9 means "family or household member" as defined in §48-27-204 of this  
10 code.

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

14 (g) No law-enforcement officer may be subject to any civil or  
15 criminal action for false arrest or unlawful detention for  
16 effecting an arrest pursuant to this section or pursuant to §48-27-  
17 1002.

NOTE: The purpose of this bill is to change the common law definition of battery and bring West Virginia into compliance with federal laws. This change is requested as result of *U.S. vs. White*, 606 F.3d 144. 1002 of this code.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.