

1 **ENROLLED**

2 **H. B. 4445**

3
4 (By Delegates Eldridge, Hartman, Barrett,
5 Fleischauer, Campbell, Hamilton, Lynch
6 and Sponaugle)
7

8 [Passed March 4, 2014; in effect ninety days from passage.]
9

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

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

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

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

18 **§61-2-9. Malicious or unlawful assault; assault; battery;**
19 **penalties.**

20 (a) If any person maliciously shoot, stab, cut or wound any
21 person, or by any means cause him or her bodily injury with intent
22 to maim, disfigure, disable or kill, he or she shall, except where
23 it is otherwise provided, be guilty of a felony and, upon
24 conviction, shall be punished by confinement in a state
25 correctional facility not less than two nor more than ten years.

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

6 (b) *Assault*. -- Any person who unlawfully attempts to use
7 physical force capable of causing physical pain or injury to the
8 person of another or unlawfully commits an act that places another
9 in reasonable apprehension of immediately suffering physical pain
10 or injury, he or she is guilty of a misdemeanor and, upon
11 conviction, shall be confined in jail for not more than six months,
12 or fined not more than \$100, or both fined and confined.

13 (c) *Battery*. -- Any person who unlawfully and intentionally
14 makes physical contact with force capable of causing physical pain
15 or injury to the person of another or unlawfully and intentionally
16 causes physical pain or injury to another person, he or she is
17 guilty of a misdemeanor and, upon conviction, shall be confined in
18 jail for not more than twelve months, or fined not more than \$500,
19 or both fined and confined.

20 (d) Any person convicted of a violation of subsection (b) or
21 (c) of this section who has, in the ten years prior to said
22 conviction, been convicted of a violation of either subsection (b)
23 or (c) of this section where the victim was a current or former
24 spouse, current or former sexual or intimate partner, a person with

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

12 **§61-2-28. Domestic violence -- Criminal acts.**

13 (a) *Domestic battery.* -- Any person who unlawfully and
14 intentionally makes physical contact force capable of causing
15 physical pain or injury to his or her family or household member or
16 unlawfully and intentionally causes physical harm to his or her
17 family or household member, is guilty of a misdemeanor and, upon
18 conviction thereof, shall be confined in jail for not more than
19 twelve months, or fined not more than \$500, or both fined and
20 confined.

21 (b) *Domestic assault.* -- Any person who unlawfully attempts to
22 use force capable of causing physical pain or injury against his or
23 her family or household member or unlawfully commits an act that
24 places his or her family or household member in reasonable

1 apprehension of immediately suffering physical pain or injury, is
2 guilty of a misdemeanor and, upon conviction thereof, shall be
3 confined in jail for not more than six months, or fined not more
4 than \$100, or both fined and confined.

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

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

1 the defendant's household at the time of the offense is guilty of
2 a misdemeanor and, upon conviction thereof, shall be confined in
3 jail for not less than sixty days nor more than one year, or fined
4 not more than \$1,000, or both fined and confined.

5 A person convicted of a violation of subsection (b) of this
6 section after having been previously convicted of a violation of
7 subsection (a) or (b) of this section, after having been convicted
8 of a violation of subsection (b) or (c), section nine of this
9 article or subsection (a), section fourteen-g of this article where
10 the victim was a current or former spouse, current or former sexual
11 or intimate partner, person with whom the defendant has a child in
12 common, person with whom the defendant cohabits or has cohabited,
13 a parent or guardian, the defendant's child or ward or a member of
14 the defendant's household at the time of the offense or having
15 previously been granted a period of pretrial diversion pursuant to
16 section twenty-two, article eleven of this chapter for a violation
17 of subsection (a) or (b) of this section or subsection (b) or (c),
18 section nine of this article or subsection (a), section fourteen-g
19 of this article where the victim was a current or former spouse,
20 current or former sexual or intimate partner, person with whom the
21 defendant has a child in common, person with whom the defendant
22 cohabits or has cohabited, a parent or guardian, the defendant's
23 child or ward or a member of the defendant's household at the time
24 of the offense shall be confined in jail for not less than thirty

1 days nor more than six months, or fined not more than \$500, or both
2 fined and confined.

3 (d) Any person who has been convicted of a third or subsequent
4 violation of the provisions of subsection (a) or (b) of this
5 section, a third or subsequent violation of the provisions of
6 section nine of this article or subsection (a), section fourteen-g
7 of this article where the victim was a current or former spouse,
8 current or former sexual or intimate partner, person with whom the
9 defendant has a child in common, person with whom the defendant
10 cohabits or has cohabited, a parent or guardian, the defendant's
11 child or ward or a member of the defendant's household at the time
12 of the offense or who has previously been granted a period of
13 pretrial diversion pursuant to section twenty-two, article eleven
14 of this chapter for a violation of subsection (a) or (b) of this
15 section or a violation of the provisions of section nine of this
16 article or subsection (a), section fourteen-g of this article in
17 which the victim was a current or former spouse, current or former
18 sexual or intimate partner, person with whom the defendant has a
19 child in common, person with whom the defendant cohabits or has
20 cohabited, a parent or guardian, the defendant's child or ward or
21 a member of the defendant's household at the time of the offense,
22 or any combination of convictions or diversions for these offenses,
23 is guilty of a felony if the offense occurs within ten years of a
24 prior conviction of any of these offenses and, upon conviction

1 thereof, shall be confined in a state correctional facility not
2 less than one nor more than five years or fined not more than
3 \$2,500, or both fined and confined.

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

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

10 (g) No law-enforcement officer may be subject to any civil or
11 criminal action for false arrest or unlawful detention for
12 effecting an arrest pursuant to this section or pursuant to §48-27-
1002 of this code.