

**H. B. 2963**

(By Delegates Weld, B. White, Sobonya, Folk, Campbell and Byrd)

[Introduced February 24, 2015; referred to the

Committee on the Judiciary.]

**FISCAL  
NOTE**

A BILL to amend and reenact §61-2-14a of the Code of West Virginia, 1931, as amended, relating to expanding the definition of kidnaping to include taking or gaining custody of, confining or concealing another person by force or threat of force, or by duress, fraud, deceit, misrepresentation or enticement; and including existing criminal penalty.

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

That §61-2-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§61-2-14a. Kidnaping; penalty.**

(a) Any person who unlawfully restrains another person with the intent:

(1) To hold another person for ransom, reward, or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the

victim or another person; or

1           (3) To take or gain custody of, confine or conceal another person by force or threat of force;

2           (4) To take or gain custody of, confine or conceal another person by acts which include, but

3 are not limited to: Duress, fraud, deceit, misrepresentation or enticement; or

4           ~~(3)~~ (5) To use another person as a shield or hostage, shall be is guilty of a felony and, upon

5 conviction, shall be punished by confinement by the division of corrections for life, and,

6 notwithstanding the provisions of article twelve, chapter sixty-two of this code, ~~shall~~ is not be

7 eligible for parole.

8           (b) The following exceptions ~~shall~~ apply to the penalty contained in subsection (a):

9           (1) A jury may, in their discretion, recommend mercy, and if ~~such~~ the recommendation is

10 added to their verdict, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the

11 provisions of said article twelve;

12           (2) If ~~such~~ the person pleads guilty, the court may, in its discretion, provide that ~~such~~ the

13 person ~~shall be~~ is eligible for parole in accordance with the provisions of said article twelve, and, if

14 the court so provides, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the provisions

15 of said article twelve in the same manner and with like effect as if ~~such~~ the person had been found

16 guilty by the verdict of a jury and the jury had recommended mercy;

17           (3) In all cases where the person against whom the offense is committed is returned, or is

18 permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom,

19 money or other thing, or any concession or advantage of any sort has been paid or yielded, the

20 punishment shall be confinement by the Division of Corrections for a definite term of years not less

21 than twenty nor more than fifty; or

22           (4) In all cases where the person against whom the offense is committed is returned, or is

1 permitted to return, alive, without bodily harm having been inflicted upon him or her, but without  
2 ransom, money or other thing, or any concession or advantage of any sort having been paid or  
3 yielded, the punishment shall be confinement by the Division of Corrections for a definite term of  
4 years not less than ten nor more than thirty.

5 (c) For purposes of this section: "To use another as a hostage" means to seize or detain and  
6 threaten to kill or injure another in order to compel, a third person or a governmental organization  
7 to do or abstain from doing any legal act as an explicit or implicit condition for the release of the  
8 person detained.

9 (d) Notwithstanding any other provision of this section, if a violation of this section is  
10 committed by a family member of a minor abducted or held hostage and he or she is not motivated  
11 by monetary purposes, but rather intends to conceal, take, remove the child or refuse to return the  
12 child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do  
13 so, he or she ~~shall be~~ is guilty of a felony and, upon conviction thereof, be confined in a correctional  
14 facility for not less than one or more than five years or fined not more than \$1,000, or both.

15 (e) Notwithstanding any provision of this code to the contrary, where a law-enforcement  
16 agency of this state or a political subdivision thereof receives a complaint that a violation of the  
17 provisions of this section has occurred, the receiving law-enforcement agency shall notify any other  
18 law-enforcement agency with jurisdiction over the offense, including, but not limited to, the state  
19 police and each agency so notified, shall cooperate in the investigation forthwith.

20 (f) It ~~shall be~~ is a defense to a violation of subsection (d) of this section, that the accused's  
21 action was necessary to preserve the welfare of the minor child and the accused promptly reported  
22 his or her actions to a person with lawful custody of the minor, to law-enforcement or to Child

1 Protective Services Division of the Department of Health and Human Resources.

NOTE: The purpose of this bill is to expand the definition of kidnaping to include taking or gaining custody of, confining or concealing another person by force or threat of force; or by duress, fraud, deceit, misrepresentation or enticement.

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