

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2963

FISCAL
NOTE

2015 Carryover

(BY DELEGATES WELD, B. WHITE, SOBONYA, FOLK,
CAMPBELL AND BYRD)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnaping; penalty.

1 (a) Any person who unlawfully restrains another person with the intent:
 2 (1) To hold another person for ransom, reward, or concession;
 3 (2) To transport another person with the intent to inflict bodily injury or to terrorize the
 4 victim or another person; ~~or~~
 5 (3) To take or gain custody of, confine or conceal another person by force or threat of
 6 force;
 7 (4) To take or gain custody of, confine or conceal another person by acts which include,
 8 but are not limited to: Duress, fraud, deceit, misrepresentation or enticement; or
 9 ~~(3)~~ (5) To use another person as a shield or hostage, shall be is guilty of a felony and,
 10 upon conviction, shall be punished by confinement by the division of corrections for life, and,
 11 notwithstanding the provisions of article twelve, chapter sixty-two of this code, ~~shall~~ is not be
 12 eligible for parole.
 13 (b) The following exceptions ~~shall~~ apply to the penalty contained in subsection (a):
 14 (1) A jury may, in their discretion, recommend mercy, and if ~~such~~ the recommendation is
 15 added to their verdict, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the

16 provisions of said article twelve;

17 (2) If ~~such~~ the person pleads guilty, the court may, in its discretion, provide that ~~such~~ the
18 person ~~shall be~~ is eligible for parole in accordance with the provisions of said article twelve, and,
19 if the court so provides, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the
20 provisions of said article twelve in the same manner and with like effect as if ~~such~~ the person
21 had been found guilty by the verdict of a jury and the jury had recommended mercy;

22 (3) In all cases where the person against whom the offense is committed is returned, or
23 is permitted to return, alive, without bodily harm having been inflicted upon him, but after
24 ransom, money or other thing, or any concession or advantage of any sort has been paid or
25 yielded, the punishment shall be confinement by the Division of Corrections for a definite term of
26 years not less than twenty nor more than fifty; or

27 (4) In all cases where the person against whom the offense is committed is returned, or
28 is permitted to return, alive, without bodily harm having been inflicted upon him or her, but
29 without ransom, money or other thing, or any concession or advantage of any sort having been
30 paid or yielded, the punishment shall be confinement by the Division of Corrections for a definite
31 term of years not less than ten nor more than thirty.

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

36 (d) Notwithstanding any other provision of this section, if a violation of this section is
37 committed by a family member of a minor abducted or held hostage and he or she is not
38 motivated by monetary purposes, but rather intends to conceal, take, remove the child or refuse
39 to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the

40 child's interest to do so, he or she ~~shall be~~ is guilty of a felony and, upon conviction thereof, be
41 confined in a correctional facility for not less than one or more than five years or fined not more
42 than \$1,000, or both.

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

48 (f) It ~~shall be~~ is a defense to a violation of subsection (d) of this section, that the
49 accused's action was necessary to preserve the welfare of the minor child and the accused
50 promptly reported his or her actions to a person with lawful custody of the minor, to
51 law-enforcement or to Child Protective Services Division of the Department of Health and
52 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.