

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 442

BY SENATORS WELD AND CLINE

[Originating in the Committee on the Judiciary;

reported on March 2, 2017]

1 A BILL to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as
2 amended, all relating generally to crimes against the person; modifying definitions of
3 “assault”, “battery”, “domestic assault” and “domestic battery”; and establishing penalties
4 therefore.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

1 (a) If any person maliciously ~~shoot, stab, cut or wound~~ shoots, stabs, cuts or wounds any
2 person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or
3 kill, he or she, ~~shall~~ except where it is otherwise provided, ~~be~~ is guilty of a felony and, upon
4 conviction thereof, shall be punished by confinement in a state correctional facility not less than
5 two nor more than ten years. If ~~such~~ the act ~~be~~ is done unlawfully, but not maliciously, with the
6 intent aforesaid, the offender is guilty of a felony and, upon conviction thereof, shall either be
7 imprisoned in a state correctional 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.* — Any person who unlawfully attempts to ~~use physical force capable of~~
10 ~~causing physical pain or injury to~~ commit a violent injury to the person of another or unlawfully
11 commits an act that places another in reasonable apprehension of immediately ~~suffering physical~~
12 ~~pain or receiving a violent~~ injury ~~he or she~~ is guilty of a misdemeanor and, upon conviction thereof,
13 shall be confined in jail for not more than six months or fined not more than \$100, or both fined
14 and confined.

15 (c) *Battery.* — Any person who unlawfully and intentionally makes physical contact ~~with~~
16 ~~force capable of causing physical pain or injury to~~ of an insulting or provoking nature to the person
17 of another or unlawfully and intentionally causes physical ~~pain or injury~~ harm to another person

18 ~~he or she~~ is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
19 more than twelve months or fined not more than \$500, or both fined and confined.

20 (d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in
21 the ten years prior to ~~said~~ the conviction, been convicted of a violation of either subsection (b) or
22 (c) of this section where the victim was a current or former spouse, current or former sexual or
23 intimate partner, a person with whom the defendant has a child in common, a person with whom
24 the defendant cohabits or has cohabited, a parent or guardian, or the defendant's child or ward
25 ~~or a member of the defendant's household~~ at the time of the offense or convicted of a violation of
26 section twenty-eight of this article or has served a period of pretrial diversion for an alleged
27 violation of subsection (b) or (c) of this section or section twenty-eight of this article when the
28 victim has ~~such a~~ present or past relationship, ~~shall~~ upon conviction, ~~be~~ is subject to the penalties
29 set forth in section twenty-eight of this article for a second, third or subsequent criminal act of
30 domestic violence offense, as appropriate.

§61-2-28. Domestic violence — criminal acts.

1 (a) *Domestic battery.* — Any person who unlawfully and intentionally makes physical
2 contact ~~force capable of causing physical pain or injury to~~ of an insulting or provoking nature with
3 his or her family or household member, or unlawfully and intentionally causes physical harm to
4 his or her family or household member, is guilty of a misdemeanor and, upon conviction thereof,
5 shall be confined in jail for not more than twelve months or fined not more than \$500, or both fined
6 and confined.

7 (b) *Domestic assault.* — Any person who unlawfully attempts to ~~use force capable of~~
8 ~~causing physical pain or injury against~~ commit a violent injury against his or her family or
9 household member, or unlawfully commits an act that places his or her family or household
10 member in reasonable apprehension of immediately ~~suffering physical pain or injury~~ receiving a
11 violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for
12 not more than six months or fined not more than \$100, or both fined and confined.

13 (c) *Second offense.* — Domestic assault or domestic battery.

14 A person convicted of a violation of subsection (a) of this section after having been
15 previously convicted of a violation of subsection (a) or (b) of this section, after having been
16 convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section
17 fourteen-g of this article, where the victim was his or her current or former spouse, current or
18 former sexual or intimate partner, person with whom the defendant has a child in common, person
19 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child
20 or ward or a member of the defendant's household at the time of the offense or who has previously
21 been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this
22 chapter for a violation of subsection (a) or (b) of this section, or a violation of subsection (b) or (c),
23 section nine of this article or subsection (a), section fourteen-g of this article where the victim was
24 a current or former spouse, current or former sexual or intimate partner, person with whom the
25 defendant has a child in common, person with whom the defendant cohabits or has cohabited, a
26 parent or guardian, the defendant's child or ward or a member of the defendant's household at
27 the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined
28 in jail for not less than sixty days nor more than one year or fined not more than \$1,000, or both
29 fined and confined.

30 A person convicted of a violation of subsection (b) of this section after having been
31 previously convicted of a violation of subsection (a) or (b) of this section, after having been
32 convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section
33 fourteen-g of this article, where the victim was a current or former spouse, current or former sexual
34 or intimate partner, person with whom the defendant has a child in common, person with whom
35 the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a
36 member of the defendant's household at the time of the offense or having previously been granted
37 a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a
38 violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article

39 or subsection (a), section fourteen-g of this article where the victim was a current or former
40 spouse, current or former sexual or intimate partner, person with whom the defendant has a child
41 in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the
42 defendant's child or ward or a member of the defendant's household at the time of the offense
43 shall be confined in jail for not less than thirty days nor more than six months or fined not more
44 than \$500, or both fined and confined.

45 (d) Any person who has been convicted of a third or subsequent violation of the provisions
46 of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section
47 nine of this article or subsection (a), section fourteen-g of this article, where the victim was a
48 current or former spouse, current or former sexual or intimate partner, person with whom the
49 defendant has a child in common, person with whom the defendant cohabits or has cohabited, a
50 parent or guardian, the defendant's child or ward or a member of the defendant's household at
51 the time of the offense or who has previously been granted a period of pretrial diversion pursuant
52 to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this
53 section or a violation of the provisions of section nine of this article or subsection (a), section
54 fourteen-g of this article in which the victim was a current or former spouse, current or former
55 sexual or intimate partner, person with whom the defendant has a child in common, person with
56 whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or
57 ward or a member of the defendant's household at the time of the offense, or any combination of
58 convictions or diversions for these offenses, is guilty of a felony if the offense occurs within ten
59 years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined
60 in a state correctional facility not less than one nor more than five years or fined not more than
61 \$2,500, or both fined and confined.

62 (e) As used in this section, "family or household member" means "family or household
63 member" as defined in section two hundred four, article twenty-seven, chapter forty-eight of this
64 code.

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

67 (g) No law-enforcement officer may be subject to any civil or criminal action for false arrest
68 or unlawful detention for effecting an arrest pursuant to this section or pursuant to section one
69 thousand two, article twenty-seven, chapter forty-eight of this code.