

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 442**

BY SENATORS WELD AND CLINE

[Introduced February 27, 2017; Referred  
to the Committee on the Judiciary]

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” to conform with federal laws  
 4 relating to firearms possession criminal offenses.

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

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

14 (c) *Battery.* -- Any person who unlawfully and intentionally makes physical contact ~~with~~  
 15 ~~force capable of causing physical pain or injury to~~ of an insulting or provoking nature with the  
 16 person of another or unlawfully and intentionally causes physical ~~pain or injury~~ harm to another  
 17 person, ~~he or she~~ is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not

18 more than twelve months, or fined not more than \$500, or both fined and confined.

19 (d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in  
 20 the ten years prior to ~~said the~~ conviction, been convicted of a violation of either subsection (b) or  
 21 (c) of this section where the victim was a current or former spouse, current or former sexual or  
 22 intimate partner, a person with whom the defendant has a child in common, a person with whom  
 23 the defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward ~~or~~  
 24 ~~a member of the defendant's household~~ at the time of the offense or convicted of a violation of  
 25 section twenty-eight of this article or has served a period of pretrial diversion for an alleged  
 26 violation of subsection (b) or (c) of this section or section twenty-eight of this article when the  
 27 victim has ~~such a~~ present or past relationship ~~shall~~ upon conviction ~~be~~ is subject to the penalties  
 28 set forth in section twenty-eight of this article for a second, third or subsequent criminal act of  
 29 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 his  
 4 or her family or household member, is guilty of a misdemeanor and, upon conviction thereof, shall  
 5 be confined in jail for not more than twelve months, or fined not more than \$500, or both fined and  
 6 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.

NOTE: The purpose of this bill is to modify definitions of "assault" and "battery", and "domestic assault" and "domestic battery" to conform with federal laws relating to firearms possession criminal offenses.

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