

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

## **Senate Bill 533**

BY SENATORS TRUMP AND CLINE

[Introduced February 13, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating  
 2 to equalizing the criminal penalties for intimidating and retaliating against public officers  
 3 and employees, jurors, and witnesses; increasing penalty for intimidation of such persons  
 4 to a felony; and establishing criminal penalties.

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

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.**

1 (a) *Definitions.* -- As used in this section:

2 (1) "Fraudulent" means not legally issued or sanctioned under the laws of this state or of  
 3 the United States, including forged, false and materially misstated;

4 (2) "Legal process" means an action, appeal, document instrument or other writing issued,  
 5 filed or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a  
 6 judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person,  
 7 incarcerate a person or direct a person to appear, perform or refrain from performing a specified  
 8 act. "Legal process" includes, but is not limited to, a complaint, decree, demand, indictment,  
 9 injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena,  
 10 summons, warrant or writ;

11 (3) "Official proceeding" means a proceeding involving a legal process or other process of  
 12 a tribunal of this state or of the United States;

13 (4) "Person" means an individual, group, association, corporation or any other entity;

14 (5) "Public official or employee" means an elected or appointed official or employee, of a  
 15 state or federal court, commission, department, agency, political subdivision or any governmental  
 16 instrumentality;

17 (6) "Recorder" means a clerk or other employee in charge of recording instruments in a

18 court, commission or other tribunal of this state or of the United States; and

19 (7) "Tribunal" means a court or other judicial or quasi-judicial entity, or an administrative,  
20 legislative or executive body, or that of a political subdivision, created or authorized under the  
21 constitution or laws of this state or of the United States.

22 (b) *Intimidation; harassment.* -- It is unlawful for a person to use intimidation, physical  
23 force, harassment or a fraudulent legal process or official proceeding, or to threaten to do so  
24 where such threat is directed at inciting or producing imminent lawless action of a violent nature  
25 that could cause bodily harm and is likely to incite or produce such action or to attempt to do so,  
26 with the intent to:

27 (1) Impede or obstruct a public official or employee from performing his or her official  
28 duties;

29 (2) Impede or obstruct a juror or witness from performing his or her official duties in an  
30 official proceeding;

31 (3) Influence, delay or prevent the testimony of any person in an official proceeding; or

32 (4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document  
33 or other object from an official proceeding; (B) alter, destroy, mutilate or conceal a record,  
34 document or other object impairing its integrity or availability for use in an official proceeding; (C)  
35 evade an official proceeding summoning a person to appear as a witness or produce a record,  
36 document or other object for an official proceeding; or (D) be absent from an official proceeding  
37 to which such person has been summoned.

38 (c) *Retaliation.* -- It is unlawful for a person to cause injury or loss to person or property,  
39 or to threaten to do so where such threat is directed at inciting or producing imminent lawless  
40 action of a violent nature that could cause bodily harm and is likely to incite or produce such action  
41 or to attempt to do so, with the intent to:

42 (1) Retaliate against a public official or employee for the performance or nonperformance  
43 of an official duty;

44 (2) Retaliate against a juror or witness for performing his or her official duties in an official  
45 proceeding; or

46 (3) Retaliate against any other person for attending, testifying or participating in an official  
47 proceeding, or for the production of any record, document or other object produced by a person  
48 in an official proceeding.

49 ~~(d) Subsection (b) offense. -- A person who is convicted of an offense under subsection~~  
50 ~~(b) is guilty of a misdemeanor and shall be confined in jail for not more than one year or fined not~~  
51 ~~more than \$1,000, or both.~~

52 ~~(e) Subsection (c) or subsequent offense~~

53 (d) Penalty. -- A person convicted of an offense under subsection (c) or ~~a second offense~~  
54 ~~under subsection (b)~~ is guilty of a felony and, shall be confined in a correctional facility not less  
55 than one nor more than 10 years or fined not more than \$2,000, or both.

56 ~~(f)~~ (e) Civil cause of action. -- A person who violates this section is liable in a civil action  
57 to any person harmed by the violation for injury or loss to person or property incurred as a result  
58 of the commission of the offense and for reasonable attorney's fees, court costs and other  
59 expenses incurred as a result of prosecuting a civil action commenced under this subsection,  
60 which is not the exclusive remedy of a person who suffers injury or loss to person or property as  
61 a result of a violation of this section.

62 ~~(g)~~ (f) Civil sanctions. -- In addition to the criminal and civil penalties set forth in this  
63 section, any fraudulent official proceeding or legal process brought in a tribunal of this state in  
64 violation of this section shall be dismissed by the tribunal and the person may be ordered to  
65 reimburse the aggravated person for reasonable attorney's fees, court costs and other expenses  
66 incurred in defending or dismissing such action.

67 (1) Refusal to record. -- A recorder may refuse to record a clearly fraudulent lien or other  
68 legal process against a public official or employee or his or her property. The recorder does not  
69 have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the

70 recorder liable for refusing to record a lien or other legal process that the recorder believes is in  
71 violation of this section.

72 (2) If a fraudulent lien or other legal process against a public official or employee or his or  
73 her property is recorded then:

74 (A) *Request to release lien.* -- The public official or employee may send a written request  
75 by certified mail to the person who filed the fraudulent lien or legal process, requesting the person  
76 to release or dismiss the lien or legal process. If such lien or legal process is not properly released  
77 or dismissed within 21 days, then it shall be inferred that the person intended to harass the public  
78 official or employee in violation of subsection (b) of this section and shall be subject to the criminal  
79 penalties in subsection (d) of this section and any other remedies provided in this section; or

80 (B) *Notice of fraudulent lien.* -- A government attorney on behalf of the public official or  
81 employee may record a notice of fraudulent lien or legal process with the recorder who accepted  
82 the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process  
83 and cause it to be removed from the records. No filing fee shall be charged for the filing of the  
84 notice.

85 ~~(H)~~ (g) A person's lack of belief in the jurisdiction or authority of this state or of the United  
86 States is no defense to prosecution of a civil or criminal action under this section.

87 (i)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public  
88 officials or employees.

89 (2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
90 right to freely assemble, express opinions or designate group affiliation.

91 (3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
92 access to a tribunal of this state or prevents a person from instituting or responding to a lawful  
93 action.

NOTE: The purpose of this bill is to equalize the criminal penalties for intimidating and

retaliating against public officers and employees, jurors and witnesses; increasing penalty for intimidation of such persons to a felony; establishing criminal penalties.

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