

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 138

BY SENATOR OJEDA

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-6-21 of the Code of West Virginia, 1931, as amended, relating
 2 to prohibiting civil rights violations based on gender identity or sexual orientation; criminal
 3 penalties; when evidence of constitutionally protected speech or associations is not
 4 admissible in criminal prosecutions; exceptions; providing for sentencing alternatives for
 5 persons convicted of violations; and designating amendments to this section as the Justice
 6 Through Grace in Communities Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-21. Prohibiting violations of an individual's civil rights; penalties; when evidence not admissible; sentencing alternatives; Justice Through Grace in Communities Act.

1 (a) All persons within the boundaries of the State of West Virginia have the right to be free
 2 from any violence, or intimidation by threat of violence, committed against their persons or
 3 property because of their race, color, religion, ancestry, national origin, political affiliation, sex,
 4 gender identity, or sexual orientation.

5 (b) If any person does by force or threat of force, willfully injure, intimidate or interfere with,
 6 or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the
 7 free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or
 8 laws of the State of West Virginia or by the Constitution or laws of the United States, ~~because of~~
 9 ~~such other person's~~ and the other person was intentionally selected due to their actual or
 10 perceived race, color, religion, ancestry, national origin, political affiliation, or sex, gender identity
 11 or sexual orientation, he or she ~~shall be~~ is guilty of a felony and, upon conviction, shall be fined
 12 not more than \$5,000 or imprisoned in a state correctional facility not more than 10 years, or both
 13 fined and imprisoned: *Provided,* That an adjudication under subsection (h) of this section is an
 14 appropriate alternative sentencing.

15 (c) If any person conspires with another person or persons to, by force or threat of force,
 16 willfully injure, oppress, threaten, or intimidate or interfere with any citizen ~~because of such other~~

17 intentionally selected due to that other person's race, color, religion, ancestry, national origin,
18 political affiliation, or sex, gender identity, or sexual orientation in the free exercise or enjoyment
19 of any right or privilege secured to him or her by the Constitution or laws of the State of West
20 Virginia or by the Constitution or laws of the United States, and in willful furtherance thereof to
21 assemble with one or more persons for the purpose of teaching any technique or means capable
22 of causing property damage, bodily injury or death when such person or persons intend to employ
23 such techniques or means to violate this section, each such person ~~shall be~~ is guilty of a felony
24 and, upon conviction, shall be fined not more than \$5,000 or imprisoned in a state correctional
25 facility not more than 10 years, or both fined and imprisoned: *Provided, That an adjudication under*
26 subsection (h) of this section is an appropriate alternative sentencing.

27 (d) The fact that a person committed a felony or misdemeanor, or attempted to commit a
28 felony, ~~because of the~~ and intentionally selected the victim due to victim's actual or perceived
29 race, color, religion, ancestry, national origin, political affiliation, or sex, gender identity, or sexual
30 orientation shall be considered a circumstance in aggravation of any crime in imposing sentence.

31 (e) Nothing contained in this section makes unlawful the teaching of any technique in self-
32 defense.

33 (f) Nothing in this section ~~shall~~ may be construed so as to make it unlawful nor to prohibit
34 nor, in any manner, to impede or to interfere with any person in conducting labor union or labor
35 union organizing activities.

36 (g) In any prosecution under this section, evidence of constitutionally protected speech or
37 associations is not admissible in the prosecution of the charge, unless the speech or associations
38 are:

39 (1) Specifically related to the crime charged; and

40 (2) Probative of intent to target a specific victim or to commit a specific crime, as defined
41 in subsections (a), (b), (c), and (d) of this section.

42 (h) A person convicted under this section shall be considered for deferred adjudication

43 under §61-11-22a of this code, and alternative sentencing including, but not limited to, community
44 corrections programming under §62-11C-1 et seq. of this code.

45 (i) The judge or magistrate shall determine if alternative sentencing is appropriate by
46 considering the following factors:

47 (1) Whether appropriate community corrections programs exist in the county or
48 municipality with jurisdiction; and

49 (2) Whether a community corrections program provides an opportunity for the harm to be
50 remediated, or for the victim or convicted to be reintegrated into the community.

51 (j) The amendments to this section shall be known as the “Justice Through Grace in
52 Communities Act”.

NOTE: The purpose of this bill is to prohibit civil rights violations based on gender identity, or sexual orientation. The bill provides that evidence of constitutionally protected speech or associations is not admissible in criminal prosecutions except in certain situations. The bill provides for sentencing alternatives for persons convicted of violations. And, the amendments to this section are to be known as the “Justice Through Grace in Communities Act”.

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