

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **Senate Bill 697**

BY SENATORS TRUMP, WOELFEL, AND PHILLIPS

[Introduced February 21, 2022; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-2-14a and §61-2-14g of the Code of West Virginia, 1931, as  
2 amended, all relating to the offenses of kidnapping and unlawful restraints generally;  
3 clarifying the distinctive elements of the offenses; removing redundant language; and  
4 making grammatical corrections.

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

## **ARTICLE 2. CRIMES AGAINST THE PERSON.**

### **§61-2-14a. Kidnapping; penalty.**

1 (a) Any person who unlawfully takes custody of, conceals, confines, transports, or  
2 restrains another person against his or her will by means of force, threat of force, duress, fraud,  
3 deceit, inveiglement, misrepresentation, or enticement with the intent to:

4 (1) Hold another person for ransom, reward, or concession;

5 (2) Inflict bodily injury; or

6 (3) ~~Terrorize the victim or another person; or~~

7 (4) Use another person as a shield or hostage, is guilty of a felony and, upon conviction  
8 thereof, shall be punished by imprisonment by the Division of Corrections and Rehabilitation for  
9 life, and, notwithstanding the provisions of §62-12-1 *et seq.* of this code, is not eligible for parole.

10 (b) The following exceptions apply to the penalty contained in subsection (a) of this  
11 section:

12 (1) A jury may, in their discretion, recommend mercy, and if the recommendation is added  
13 to their verdict, the person is eligible for parole in accordance with the provisions of §62-12-1 *et*  
14 *seq.* of this code;

15 (2) If the person pleads guilty, the court may, in its discretion, provide that the person is  
16 eligible for parole in accordance with the provisions of §62-12-1 *et seq.* of this code and, if the  
17 court so provides, the person is eligible for parole in accordance with the provisions of said article,  
18 in the same manner and with like effect as if the person had been found guilty by the verdict of a  
19 jury and the jury had recommended mercy;

20 (3) In all cases where the person against whom the offense is committed is returned, or is  
21 permitted to return, alive, without bodily harm having been inflicted upon him or her, but after  
22 ransom, money, or other thing, or any concession or advantage of any sort has been paid or  
23 yielded, the punishment shall be imprisonment by the Division of Corrections and Rehabilitation  
24 for a definite term of years not less than 20 nor more than 50; or

25 (4) In all cases where the person against whom the offense is committed is returned, or is  
26 permitted to return, alive, without bodily harm having been inflicted upon him or her, but without  
27 ransom, money, or other thing, or any concession or advantage of any sort having been paid or  
28 yielded, the punishment shall be imprisoned by the Division of Corrections and Rehabilitation for  
29 a definite term of years not less than 10 nor more than 30.

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

34 (d) Notwithstanding any other provision of this section, if a violation of this section is  
35 committed by a family member of a minor abducted or held hostage and he or she is not motivated  
36 by monetary purposes, but rather intends to conceal, take, remove the child, or refuse to return  
37 the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest  
38 to do so, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a  
39 correctional facility for not less than one nor more than five years or fined not more than \$1,000,  
40 or both imprisoned and fined.

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

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

**§61-2-14g. Unlawful restraint; penalties.**

1 (a) Any person who, without legal authority intentionally restrains another with the intent  
2 that the other person not be allowed to leave the place of restraint and who does so by physical  
3 force or by overt or implied threat of violence or by actual physical restraint but without the intent  
4 to obtain any ~~other concession or~~ thing or economic advantage ~~as those terms are used in section~~  
5 ~~fourteen-a of this article~~ is guilty of a misdemeanor and, upon conviction shall be confined in jail  
6 for not more than one year, fined not more than \$1,000, or both.

7 (b) In any prosecution under this section, it is an affirmative defense that:

8 (1) The defendant acted reasonably and in good faith to protect the person from imminent  
9 physical danger; or

10 (2) The person restrained was a child less than eighteen years old and that the actor was  
11 a parent or legal guardian, or a person acting under authority granted by a parent or legal guardian  
12 of such child, or by a teacher or other school ~~personnel~~ employee acting under authority granted  
13 by §18A-5-1 of this code, and that his or her sole purpose was to assume control of such child.

14 (c) As used in this section to "restrain" means to restrict a person's movement without his  
15 or her consent.

16 (d) This section shall not apply to acts done by a law-enforcement officer in the lawful  
17 exercise of his or her duties.

NOTE: The purpose of this bill is to modify and clarify the elements of the crimes of kidnapping and unlawful restraint.

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