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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

Com. Sub. for

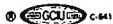
HOUSE BILL No. 2023

(By Delegate Mr. Speaker, Mr. Chambers)
and Delegate Riggs



Passed March 24 1993

In Effect from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2023

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE RIGGS)

[Passed March 24, 1993; in effect from passage.]

AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to creating the misdemeanor offense of stalking and establishing the penalty therefor; defining the misdemeanor offense of stalking in violation of certain types of restraining orders and establishing the penalty therefor; creating the misdemeanor offense for the second subsequent offenses and establishing the penalty thereof; creating the felony offense for certain subsequent offenses and establishing the penalty therefor; providing for the conviction of subsequent offenses and establishing the penalty therefor; definitions; restraining orders; durations; exceptions; alternative sentencing; and counseling requirement.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; penalties; definitions.

1 (a) Any person who knowingly, willfully and repeat-

2 edly follows and harasses another person and who makes
3 a credible threat with the intent to place that person in
4 reasonable fear of death or serious bodily injury shall
5 be guilty of a misdemeanor and, upon conviction thereof,
6 shall be incarcerated in the county jail for not more than
7 six months or fined not more than one thousand dollars,
8 or both.

9 (b) Notwithstanding the provisions of section ten,
10 article two-a, chapter forty-eight of this code, any person
11 who violates the provisions of subsection (a) of this
12 section in violation of an order entered by a circuit
13 court, magistrate court or family law master, in effect
14 and entered pursuant to sections thirteen or fifteen,
15 article two, chapter forty-eight of this code or sections
16 five or six, article two-a of chapter forty-eight shall be
17 guilty of a misdemeanor and, upon conviction thereof,
18 shall be incarcerated in the county jail for not less than
19 ninety days nor more than one year or fined not less than
20 two thousand dollars nor more than five thousand
21 dollars, or both.

22 (c) A second conviction for a violation of this section
23 occurring within five years of a prior conviction is
24 punishable by incarceration in the county jail for not
25 less than ninety days nor more than one year or fined
26 not less than two thousand dollars nor more than five
27 thousand dollars, or both.

28 (d) A third or subsequent conviction for a violation of
29 this section occurring within five years of a prior
30 conviction is a felony punishable by incarceration in the
31 penitentiary for not less than one year nor more than
32 five years or fined not less than three thousand dollars
33 nor more than ten thousand dollars, or both.

34 (e) Notwithstanding any provision of this code, any
35 person against whom a permanent restraining order
36 issued pursuant to subsection (i) of this section who is
37 convicted of a second or subsequent violation of the
38 provisions of this section shall be incarcerated in the
39 county jail for not less than six months nor more than
40 one year, or fined not less than two thousand dollars nor
41 more than five thousand dollars, or both.

42 (f) For the purposes of this section:

43 (1) "Harasses" means knowing and willful conduct
44 directed at a specific person which is done with the
45 intent to cause mental injury or emotional distress.

46 (2) "Credible threat" means a threat made with the
47 apparent ability to carry out the threat so as to cause
48 the person who is the subject of the threat to be placed
49 in reasonable apprehension of serious bodily injury. The
50 credible threat must be against the life of, or a threat
51 to cause serious bodily injury to the subject of the threat.

52 (g) Nothing in this section shall be construed to
53 prevent lawful assembly and petition for the redress of
54 grievances, including, but not limited to, any labor
55 dispute, demonstration at the seat of federal, state,
56 county or municipal government, activities protected by
57 the West Virginia Constitution or the United States
58 Constitution or any statute of this state or the United
59 States.

60 (h) Any person convicted under the provisions of this
61 section who is granted probation or for whom execution
62 or imposition of a sentence or incarceration is sus-
63 pended, shall have as a condition of probation or
64 suspension of sentence that he or she participate in
65 counseling or medical treatment as directed by the
66 court.

67 (i) Upon conviction, the court may issue an order
68 restraining the defendant from any contact with the
69 victim, for a period not to exceed ten years. The length
70 of any restraining order shall be based upon the
71 seriousness of the violation before the court, the
72 probability of future violations, and the safety of the
73 victim or his or her immediate family. The duration of
74 the restraining order may be longer than five years only
75 in such cases when a longer duration is necessary to
76 protect the safety of the victim or his or her immediate
77 family.

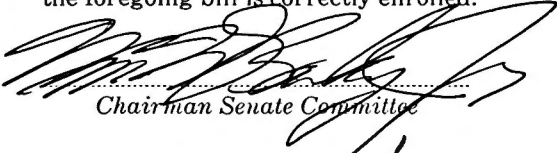
78 (j) It shall be a condition of bond for any person
79 accused of the offense described in this section that the
80 person shall have no contact, direct or indirect, verbal

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81 or physical with the alleged victim.

82 (k) Nothing in this section shall be construed to
83 preclude a sentencing court from exercising its power
84 to impose home confinement with electronic monitoring
85 as an alternative sentence.

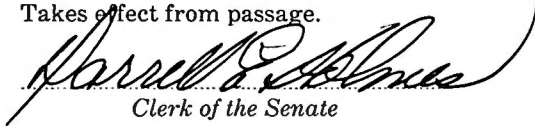
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

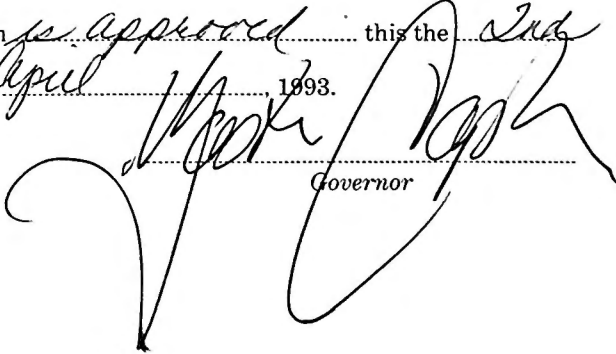

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *April* 1893.


.....
Governor

PRESENTED TO THE

GOVERNOR,

Date 3/31/93

Time 7:58 pm