

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2864**

5
6 (By Delegates Miley, Lawrence, Ferro, Skaff,
7 Perdue, Brown, Paxton and Stowers)

8 [Passed March 11, 2011; in effect ninety days from passage.]

9
10

11 AN ACT to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section designated §61-2-14g; and to
13 amend and reenact §61-2-28 of said code, all relating to the
14 creation of the misdemeanor offense of unlawful restraint;
15 distinguishing the offense from that of kidnapping; defining
16 restrain; providing for affirmative defenses; and penalties

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new section, designated §61-2-14g; and to amend
20 and reenact §61-2-28 of said code, all to read as follows:

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

22 **§61-2-14g. Unlawful restraint; penalties.**

23 (a) Any person who, without legal authority intentionally
24 restrains another with the intent that the other person not be
25 allowed to leave the place of restraint and who does so by physical
26 force or by overt or implied threat of violence or by actual
27 physical restraint but without the intent to obtain any other
28 concession or advantage as those terms are used in section

1 fourteen-a of this article is guilty of a misdemeanor and upon
2 conviction shall be confined in jail for not more than one year,
3 fined not more than \$1,000, or both.

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

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

8 (2) The person restrained was a child less than eighteen years
9 old and that the actor was a parent or legal guardian, or a person
10 acting under authority granted by a parent or legal guardian of
11 such child, or by a teacher or other school personnel acting under
12 authority granted by section one, article five, chapter eighteen-a
13 of this code, and that his or her sole purpose was to assume
14 control of such child.

15 (c) As used in this section to "restrain" means to restrict a
16 persons movement without his or her consent.

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

19 **§61-2-28. Domestic violence -- Criminal acts.**

20 (a) *Domestic battery.* -- Any person who unlawfully and
21 intentionally makes physical contact of an insulting or provoking
22 nature with his or her family or household member or unlawfully and
23 intentionally causes physical harm to his or her family or
24 household member, is guilty of a misdemeanor and, upon conviction
25 thereof, shall be confined in a county or regional jail for not
26 more than twelve months, or fined not more than five hundred
27 dollars, or both.

28 (b) *Domestic assault.* -- Any person who unlawfully attempts to

1 commit a violent injury against his or her family or household
2 member or unlawfully commits an act which places his or her family
3 or household member in reasonable apprehension of immediately
4 receiving a violent injury, is guilty of a misdemeanor and, upon
5 conviction thereof, shall be confined in a county or regional jail
6 for not more than six months, or fined not more than one hundred
7 dollars, or both.

8 (c) *Second offense.* -- Domestic assault or domestic battery.

9 A person convicted of a violation of subsection (a) of this
10 section after having been previously convicted of a violation of
11 subsection (a) or (b) of this section, after having been convicted
12 of a violation of subsection (b) or (c), section nine of this
13 article or subsection (a), section fourteen-g of this article where
14 the victim was his or her current or former spouse, current or
15 former sexual or intimate partner, person with whom the defendant
16 has a child in common, person with whom the defendant cohabits or
17 has cohabited, a parent or guardian, the defendant's child or ward
18 or a member of the defendant's household at the time of the offense
19 or who has previously been granted a period of pretrial diversion
20 pursuant to section twenty-two, article eleven of this chapter for
21 a violation of subsection (a) or (b) of this section, or a
22 violation of subsection (b) or (c), section nine of this article or
23 subsection (a), section fourteen-g of this article where the victim
24 was a current or former spouse, current or former sexual or
25 intimate partner, person with whom the defendant has a child in
26 common, person with whom the defendant cohabits or has cohabited,
27 a parent or guardian, the defendant's child or ward or a member of
28 the defendant's household at the time of the offense is guilty of

1 a misdemeanor and, upon conviction thereof, shall be confined in a
2 county or regional jail for not less than sixty days nor more than
3 one year, or fined not more than one thousand dollars, or both.

4 A person convicted of a violation of subsection (b) of this
5 section after having been previously convicted of a violation of
6 subsection (a) or (b) of this section, after having been convicted
7 of a violation of subsection (b) or (c), section nine of this
8 article or subsection (a), section fourteen-g of this article where
9 the victim was a current or former spouse, current or former sexual
10 or intimate partner, person with whom the defendant has a child in
11 common, person with whom the defendant cohabits or has cohabited,
12 a parent or guardian, the defendant's child or ward or a member of
13 the defendant's household at the time of the offense or having
14 previously been granted a period of pretrial diversion pursuant to
15 section twenty-two, article eleven of this chapter for a violation
16 of subsection (a) or (b) of this section or subsection (b) or (c),
17 section nine of this article or subsection (a), section fourteen-g
18 of this article where the victim was a current or former spouse,
19 current or former sexual or intimate partner, person with whom the
20 defendant has a child in common, person with whom the defendant
21 cohabits or has cohabited, a parent or guardian, the defendant's
22 child or ward or a member of the defendant's household at the time
23 of the offense shall be confined in a county or regional jail for
24 not less than thirty days nor more than six months, or fined not
25 more than five hundred dollars, or both.

26 (d) Any person who has been convicted of a third or subsequent
27 violation of the provisions of subsection (a) or (b) of this
28 section, a third or subsequent violation of the provisions of

1 section nine of this article or subsection (a), section fourteen-g
2 of this article where the victim was a current or former spouse,
3 current or former sexual or intimate partner, person with whom the
4 defendant has a child in common, person with whom the defendant
5 cohabits or has cohabited, a parent or guardian, the defendant's
6 child or ward or a member of the defendant's household at the time
7 of the offense or who has previously been granted a period of
8 pretrial diversion pursuant to section twenty-two, article eleven
9 of this chapter for a violation of subsection (a) or (b) of this
10 section or a violation of the provisions of section nine of this
11 article or subsection (a), section fourteen-g of this article in
12 which the victim was a current or former spouse, current or former
13 sexual or intimate partner, person with whom the defendant has a
14 child in common, person with whom the defendant cohabits or has
15 cohabited, a parent or guardian, the defendant's child or ward or
16 a member of the defendant's household at the time of the offense,
17 or any combination of convictions or diversions for these offenses,
18 is guilty of a felony if the offense occurs within ten years of a
19 prior conviction of any of these offenses and, upon conviction
20 thereof, shall be confined in a state correctional facility not
21 less than one nor more than five years or fined not more than two
22 thousand five hundred dollars, or both.

23 (e) As used in this section, "family or household member"
24 means "family or household member" as defined in §48-27-204 of this
25 code.

26 (f) A person charged with a violation of this section may not
27 also be charged with a violation of subsection (b) or (c), section
28 nine of this article for the same act.

1 (g) No law-enforcement officer may be subject to any civil or
2 criminal action for false arrest or unlawful detention for
3 effecting an arrest pursuant to this section or pursuant to §48-27-
4 1002 of this code.