

Senate Bill No. 278

(By Senators Kessler (Acting President), Laird, Fanning, Unger,
Foster, Stollings, Miller, Nohe, Klempa, Beach and Williams)

[Introduced January 26, 2011; referred to the Committee on the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §61-2-14g; and to
amend and reenact §61-2-28 of said code, all relating to the
creation of a misdemeanor crime of unlawful restraint called
Celena's Law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-14g. Unlawful restraint in the first degree; unlawful
restraint in the second degree; penalties;
definitions.**

This section is known as "Celena's Law."

(a) *Unlawful restraint in the first degree* -- Any person who,
without proper legal authority, intentionally restrains another by

1 use, attempted use, or threatened use of force is guilty of a
2 misdemeanor and, upon conviction, is confined in jail for not more
3 than one year, or fined not more than \$500, or both.

4 (b) *Unlawful restraint in the second degree* -- Any person who,
5 without proper legal authority, intentionally restrains another by
6 use of deception or threat other than threat of force, is guilty of
7 unlawful restraint in the second degree and, upon conviction, shall
8 be confined in jail for not more six months, or fined not more than
9 \$100, or both.

10 (c) Any person convicted of a violation of subsection (a) of
11 this section who, in the ten years prior to said conviction, has
12 been convicted of a violation of either subsection (a) of this
13 section or subsection (b) or (c), section nine of this article
14 where the victim was a current or former spouse, current or former
15 sexual or intimate partner, a person with whom the defendant has a
16 child in common, a person with whom the defendant cohabits or has
17 cohabitated, a parent or guardian, the defendant's child or ward or
18 a member of the defendant's household at the time of the offense or
19 convicted of a violation of section twenty-eight of this article or
20 has served a period of pretrial diversion for an alleged violation
21 of either subsection (a) of this section or subsection (b) or (c),
22 section nine of this article or section twenty-eight of this
23 article when the victim has such present or past relationship shall
24 upon conviction be subject to the penalties set forth in section
25 twenty-eight of this article for a second, third or subsequent
26 criminal act of domestic violence offense, as appropriate.

27 (d) For purposes of this section, the term "restrain" means to

1 restrict a person's movements by holding, confining, moving or
2 detaining the person, without the person's consent, so as to
3 interfere substantially with his or her personal liberty.

4 (e) 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 control
14 of such child.

15 (f) This section does not apply to acts done in performance of
16 duty by any law-enforcement officer.

17 **§61-2-28. Domestic violence -- Criminal acts.**

18 (a) *Domestic battery.* -- Any person who unlawfully and
19 intentionally makes physical contact of an insulting or provoking
20 nature with his or her family or household member or unlawfully and
21 intentionally causes physical harm to his or her family or
22 household member, is guilty of a misdemeanor and, upon conviction
23 thereof, shall be confined in a county or regional jail for not
24 more than twelve months, or fined not more than \$500, or both.

25 (b) *Domestic assault.* -- Any person who unlawfully attempts to
26 commit a violent injury against his or her family or household
27 member or unlawfully commits an act which places his or her family

1 or household member in reasonable apprehension of immediately
2 receiving a violent injury, is guilty of a misdemeanor and, upon
3 conviction thereof, shall be confined in jail for not more than six
4 months, or fined not more than \$100, or both.

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

6 A person convicted of a violation of subsection (a) of this
7 section after having been previously convicted of a violation of
8 subsection (a) or (b) of this section, after having been convicted
9 of a violation of subsection (b) or (c), section nine of this
10 article or subsection (a), section fourteen-g of this article,
11 where the victim was his or her current or former spouse, current
12 or former sexual or intimate partner, person with whom the
13 defendant has a child in common, person with whom the defendant
14 cohabits or has cohabited, a parent or guardian, the defendant's
15 child or ward or a member of the defendant's household at the time
16 of the offense or who has previously been granted a period of
17 pretrial diversion pursuant to section twenty-two, article eleven
18 of this chapter for a violation of subsection (a) or (b) of this
19 section, or a violation of subsection (b) or (c), section nine of
20 this article or subsection (a), section fourteen-g of this article,
21 where the victim was a current or former spouse, current or former
22 sexual or intimate partner, person with whom the defendant has a
23 child in common, person with whom the defendant cohabits or has
24 cohabited, a parent or guardian, the defendant's child or ward or
25 a member of the defendant's household at the time of the offense is
26 guilty of a misdemeanor and, upon conviction thereof, shall be
27 confined in jail for not less than sixty days nor more than one

1 year, or fined not more than \$1000, or both.

2 A person convicted of a violation of subsection (b) of this
3 section after having been previously convicted of a violation of
4 subsection (a) or (b) of this section, after having been convicted
5 of a violation of subsection (b) or (c), section nine of this
6 article or subsection (a), section fourteen-g of this article,
7 where the victim was a current or former spouse, current or former
8 sexual or intimate partner, person with whom the defendant has a
9 child in common, person with whom the defendant cohabits or has
10 cohabited, a parent or guardian, the defendant's child or ward or
11 a member of the defendant's household at the time of the offense or
12 having previously been granted a period of pretrial diversion
13 pursuant to section twenty-two, article eleven of this chapter for
14 a violation of subsection (a) or (b) of this section or subsection
15 (b) or (c), section nine of this article or subsection (a), section
16 fourteen-g of this article, where the victim was a current or
17 former spouse, current or former sexual or intimate partner, person
18 with whom the defendant has a child in common, person with whom the
19 defendant cohabits or has cohabited, a parent or guardian, the
20 defendant's child or ward or a member of the defendant's household
21 at the time of the offense shall be confined in jail for not less
22 than thirty days nor more than six months, or fined not more than
23 \$500, or both.

24 (d) Any person who has been convicted of a third or subsequent
25 violation of the provisions of subsection (a) or (b) of this
26 section, a third or subsequent violation of the provisions of
27 section nine of this article or subsection (a), section fourteen-g

1 of this article, where the victim was a current or former spouse,
2 current or former sexual or intimate partner, person with whom the
3 defendant has a child in common, person with whom the defendant
4 cohabits or has cohabited, a parent or guardian, the defendant's
5 child or ward or a member of the defendant's household at the time
6 of the offense or who has previously been granted a period of
7 pretrial diversion pursuant to section twenty-two, article eleven
8 of this chapter for a violation of subsection (a) or (b) of this
9 section or a violation of the provisions of section nine of this
10 article or subsection (a), section fourteen-g of this article, in
11 which the victim was a current or former spouse, current or former
12 sexual or intimate partner, person with whom the defendant has a
13 child in common, person with whom the defendant cohabits or has
14 cohabited, a parent or guardian, the defendant's child or ward or
15 a member of the defendant's household at the time of the offense,
16 or any combination of convictions or diversions for these offenses,
17 is guilty of a felony, if the offense occurs within ten years of a
18 prior conviction of any of these offenses and, upon conviction
19 thereof, shall be confined in a state correctional facility not
20 less than one nor more than five years or fined not more than
21 \$2,500, or both.

22 (e) As used in this section, "family or household member"
23 means "family or household member" as defined in section two
24 hundred four, article twenty-seven chapter forty-eight 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

1 nine of this article for the same act.

2 (g) No law-enforcement officer may be subject to any civil or
3 criminal action for false arrest or unlawful detention for
4 effecting an arrest pursuant to this section or pursuant to
5 section one thousand two, article twenty-seven, chapter forty-eight
6 of this code.

NOTE: The purpose of this bill is to create a misdemeanor crime of unlawful restraint and when the offender has a present or past domestic relationship with the victim, upon conviction is subject to the penalties set for the second, third or subsequent criminal act of a domestic violence offense, as appropriate.

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

§61-2-28 is new; therefore, strike-throughs and underscoring have been omitted