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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2864

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



Passed March 11, 2011

In Effect Ninety Days From Passage

HB 2864

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FOR

H. B. 2864

(BY DELEGATES MILEY, LAWRENCE, FERRO, SKAFF,
PERDUE, BROWN, PAXTON AND STOWERS)

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

AN ACT 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 the misdemeanor offense of unlawful restraint; distinguishing the offense from that of kidnapping; defining restrain; providing for affirmative defenses; and penalties.

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 to amend and reenact §61-2-28 of said code, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

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

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

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

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

21 (c) As used in this section to “restrain” means to restrict
22 a persons movement without his or her consent.

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

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

1 (a) *Domestic battery.* -- Any person who unlawfully and
2 intentionally makes physical contact of an insulting or
3 provoking nature with his or her family or household member
4 or unlawfully and intentionally causes physical harm to his or
5 her family or household member, is guilty of a misdemeanor

6 and, upon conviction thereof, shall be confined in a county or
7 regional jail for not more than twelve months, or fined not
8 more than five hundred dollars, or both.

9 (b) *Domestic assault.* -- Any person who unlawfully
10 attempts to commit a violent injury against his or her family
11 or household member or unlawfully commits an act which
12 places his or her family or household member in reasonable
13 apprehension of immediately receiving a violent injury, is
14 guilty of a misdemeanor and, upon conviction thereof, shall
15 be confined in a county or regional jail for not more than six
16 months, or fined not more than one hundred dollars, or both.

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

19 A person convicted of a violation of subsection (a) of this
20 section after having been previously convicted of a violation
21 of subsection (a) or (b) of this section, after having been
22 convicted of a violation of subsection (b) or (c), section nine
23 of this article or subsection (a), section fourteen-g of this
24 article where the victim was his or her current or former
25 spouse, current or former sexual or intimate partner, person
26 with whom the defendant has a child in common, person with
27 whom the defendant cohabits or has cohabited, a parent or
28 guardian, the defendant's child or ward or a member of the
29 defendant's household at the time of the offense or who has
30 previously been granted a period of pretrial diversion
31 pursuant to section twenty-two, article eleven of this chapter
32 for a violation of subsection (a) or (b) of this section, or a
33 violation of subsection (b) or (c), section nine of this article
34 or subsection (a), section fourteen-g of this article where the
35 victim was a current or former spouse, current or former
36 sexual or intimate partner, person with whom the defendant
37 has a child in common, person with whom the defendant
38 cohabits or has cohabited, a parent or guardian, the
39 defendant's child or ward or a member of the defendant's

40 household at the time of the offense is guilty of a
41 misdemeanor and, upon conviction thereof, shall be confined
42 in a county or regional jail for not less than sixty days nor
43 more than one year, or fined not more than one thousand
44 dollars, or both.

45 A person convicted of a violation of subsection (b) of this
46 section after having been previously convicted of a violation
47 of subsection (a) or (b) of this section, after having been
48 convicted of a violation of subsection (b) or (c), section nine
49 of this article or subsection (a), section fourteen-g of this
50 article where the victim was a current or former spouse,
51 current or former sexual or intimate partner, person with
52 whom the defendant has a child in common, person with
53 whom the defendant cohabits or has cohabited, a parent or
54 guardian, the defendant's child or ward or a member of the
55 defendant's household at the time of the offense or having
56 previously been granted a period of pretrial diversion
57 pursuant to section twenty-two, article eleven of this chapter
58 for a violation of subsection (a) or (b) of this section or
59 subsection (b) or (c), section nine of this article or subsection
60 (a), section fourteen-g of this article where the victim was a
61 current or former spouse, current or former sexual or intimate
62 partner, person with whom the defendant has a child in
63 common, person with whom the defendant cohabits or has
64 cohabited, a parent or guardian, the defendant's child or ward
65 or a member of the defendant's household at the time of the
66 offense shall be confined in a county or regional jail for not
67 less than thirty days nor more than six months, or fined not
68 more than five hundred dollars, or both.

69 (d) Any person who has been convicted of a third or
70 subsequent violation of the provisions of subsection (a) or (b)
71 of this section, a third or subsequent violation of the
72 provisions of section nine of this article or subsection (a),
73 section fourteen-g of this article where the victim was a
74 current or former spouse, current or former sexual or intimate

75 partner, person with whom the defendant has a child in
76 common, person with whom the defendant cohabits or has
77 cohabited, a parent or guardian, the defendant's child or ward
78 or a member of the defendant's household at the time of the
79 offense or who has previously been granted a period of
80 pretrial diversion pursuant to section twenty-two, article
81 eleven of this chapter for a violation of subsection (a) or (b)
82 of this section or a violation of the provisions of section nine
83 of this article or subsection (a), section fourteen-g of this
84 article in which the victim was a current or former spouse,
85 current or former sexual or intimate partner, person with
86 whom the defendant has a child in common, person with
87 whom the defendant cohabits or has cohabited, a parent or
88 guardian, the defendant's child or ward or a member of the
89 defendant's household at the time of the offense, or any
90 combination of convictions or diversions for these offenses,
91 is guilty of a felony if the offense occurs within ten years of
92 a prior conviction of any of these offenses and, upon
93 conviction thereof, shall be confined in a state correctional
94 facility not less than one nor more than five years or fined not
95 more than two thousand five hundred dollars, or both.

96 (e) As used in this section, "family or household
97 member" means "family or household member" as defined in
98 §48-27-204 of this code.

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

102 (g) No law-enforcement officer may be subject to any
103 civil or criminal action for false arrest or unlawful detention
104 for effecting an arrest pursuant to this section or pursuant to
105 §48-27-1002 of this code.

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

Michael T. Fero
Chairman, House Committee

Ronald J. Mark
Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Gregg M. Soy
Clerk of the House of Delegates

Darrell Stephens
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
Acting President of the Senate

The within is approved this the 24th
day of March, 2011.

Carl Ray Imbler
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 1:10 AM