

FILED

2014 MAR 31 P 8:10

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014

HB 4445

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**SECOND  
ENROLLMENT**

**House Bill No. 4445**

(By Delegates Eldridge, Hartman, Barrett, Fleischauer,  
Campbell, Hamilton, Lynch and Sponaugle)

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Amended and again passed March 14, 2014,  
as a result of the objections of the Governor

In effect ninety days from passage.

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(BY DELEGATES ELDRIDGE, HARTMAN, BARRETT,  
FLEISCHAUER, CAMPBELL, HAMILTON, LYNCH  
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AN ACT to amend and reenact §61-2-9 and §61-2-28 of the Code of  
West Virginia, 1931, as amended, all relating amending the  
elements of assault and battery; and modifying the elements of  
“assault”, “battery”, “domestic assault” and “domestic battery” to  
include the use or attempted use of physical force.

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

That §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as  
amended, be amended and reenacted, all to read as follows:

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

**§61-2-9. Malicious or unlawful assault; assault; battery; penalties.**

- 1 (a) If any person maliciously shoot, stab, cut or wound any
- 2 person, or by any means cause him or her bodily injury with
- 3 intent to maim, disfigure, disable or kill, he or she shall, except

4 where it is otherwise provided, be guilty of a felony and, upon  
5 conviction, shall be punished by confinement in a state  
6 correctional facility not less than two nor more than ten years. If  
7 such act be done unlawfully, but not maliciously, with the intent  
8 aforesaid, the offender is guilty of a felony and, upon conviction,  
9 shall either be confined in a state correctional facility not less  
10 than one nor more than five years, or be confined in jail not  
11 exceeding twelve months and fined not exceeding \$500.

12 (b) *Assault*. — Any person who unlawfully attempts to use  
13 physical force capable of causing physical pain or injury to the  
14 person of another or unlawfully commits an act that places  
15 another in reasonable apprehension of immediately suffering  
16 physical pain or injury, he or she is guilty of a misdemeanor and,  
17 upon conviction, shall be confined in jail for not more than six  
18 months, or fined not more than \$100, or both fined and confined.

19 (c) *Battery*. — Any person who unlawfully and intentionally  
20 makes physical contact with force capable of causing physical  
21 pain or injury to the person of another or unlawfully and  
22 intentionally causes physical pain or injury to another person, he  
23 or she is guilty of a misdemeanor and, upon conviction, shall be  
24 confined in jail for not more than twelve months, or fined not  
25 more than \$500, or both fined and confined.

26 (d) Any person convicted of a violation of subsection (b) or  
27 (c) of this section who has, in the ten years prior to said  
28 conviction, been convicted of a violation of either subsection (b)  
29 or (c) of this section where the victim was a current or former  
30 spouse, current or former sexual or intimate partner, a person  
31 with whom the defendant has a child in common, a person with  
32 whom the defendant cohabits or has cohabited, a parent or  
33 guardian, the defendant's child or ward or a member of the  
34 defendant's household at the time of the offense or convicted of  
35 a violation of section twenty-eight of this article or has served a  
36 period of pretrial diversion for an alleged violation of subsection  
37 (b) or (c) of this section or section twenty-eight of this article

38 when the victim has such present or past relationship shall upon  
39 conviction be subject to the penalties set forth in section twenty-  
40 eight of this article for a second, third or subsequent criminal act  
41 of domestic violence offense, as appropriate.

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

1 (a) *Domestic battery.* — Any person who unlawfully and  
2 intentionally makes physical contact with force capable of  
3 causing physical pain or injury to his or her family or household  
4 member or unlawfully and intentionally causes physical harm to  
5 his or her family or household member, is guilty of a  
6 misdemeanor and, upon conviction thereof, shall be confined in  
7 jail for not more than twelve months, or fined not more than  
8 \$500, or both fined and confined.

9 (b) *Domestic assault.* — Any person who unlawfully  
10 attempts to use force capable of causing physical pain or injury  
11 against his or her family or household member or unlawfully  
12 commits an act that places his or her family or household  
13 member in reasonable apprehension of immediately suffering  
14 physical pain or injury, is guilty of a misdemeanor and, upon  
15 conviction thereof, shall be confined in jail for not more than six  
16 months, or fined not more than \$100, or both fined and confined.

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

18 A person convicted of a violation of subsection (a) of this  
19 section after having been previously convicted of a violation of  
20 subsection (a) or (b) of this section, after having been convicted  
21 of a violation of subsection (b) or (c), section nine of this article  
22 or subsection (a), section fourteen-g of this article where the  
23 victim was his or her current or former spouse, current or former  
24 sexual or intimate partner, person with whom the defendant has  
25 a child in common, person with whom the defendant cohabits or  
26 has cohabited, a parent or guardian, the defendant's child or  
27 ward or a member of the defendant's household at the time of

28 the offense or who has previously been granted a period of  
29 pretrial diversion pursuant to section twenty-two, article eleven  
30 of this chapter for a violation of subsection (a) or (b) of this  
31 section, or a violation of subsection (b) or (c), section nine of  
32 this article or subsection (a), section fourteen-g of this article  
33 where the victim was a current or former spouse, current or  
34 former sexual or intimate partner, person with whom the  
35 defendant has a child in common, person with whom the  
36 defendant cohabits or has cohabited, a parent or guardian, the  
37 defendant's child or ward or a member of the defendant's  
38 household at the time of the offense is guilty of a misdemeanor  
39 and, upon conviction thereof, shall be confined in jail for not less  
40 than sixty days nor more than one year, or fined not more than  
41 \$1,000, or both fined and confined.

42 A person convicted of a violation of subsection (b) of this  
43 section after having been previously convicted of a violation of  
44 subsection (a) or (b) of this section, after having been convicted  
45 of a violation of subsection (b) or (c), section nine of this article  
46 or subsection (a), section fourteen-g of this article where the  
47 victim was a current or former spouse, current or former sexual  
48 or intimate partner, person with whom the defendant has a child  
49 in common, person with whom the defendant cohabits or has  
50 cohabited, a parent or guardian, the defendant's child or ward or  
51 a member of the defendant's household at the time of the offense  
52 or having previously been granted a period of pretrial diversion  
53 pursuant to section twenty-two, article eleven of this chapter for  
54 a violation of subsection (a) or (b) of this section or subsection  
55 (b) or (c), section nine of this article or subsection (a), section  
56 fourteen-g of this article where the victim was a current or  
57 former spouse, current or former sexual or intimate partner,  
58 person with whom the defendant has a child in common, person  
59 with whom the defendant cohabits or has cohabited, a parent or  
60 guardian, the defendant's child or ward or a member of the  
61 defendant's household at the time of the offense shall be  
62 confined in jail for not less than thirty days nor more than six  
63 months, or fined not more than \$500, or both fined and confined.

64 (d) Any person who has been convicted of a third or  
65 subsequent violation of the provisions of subsection (a) or (b) of  
66 this section, a third or subsequent violation of the provisions of  
67 section nine of this article or subsection (a), section fourteen-g  
68 of this article where the victim was a current or former spouse,  
69 current or former sexual or intimate partner, person with whom  
70 the defendant has a child in common, person with whom the  
71 defendant cohabits or has cohabited, a parent or guardian, the  
72 defendant's child or ward or a member of the defendant's  
73 household at the time of the offense or who has previously been  
74 granted a period of pretrial diversion pursuant to section twenty-  
75 two, article eleven of this chapter for a violation of subsection  
76 (a) or (b) of this section or a violation of the provisions of  
77 section nine of this article or subsection (a), section fourteen-g  
78 of this article in which the victim was a current or former spouse,  
79 current or former sexual or intimate partner, person with whom  
80 the defendant has a child in common, person with whom the  
81 defendant cohabits or has cohabited, a parent or guardian, the  
82 defendant's child or ward or a member of the defendant's  
83 household at the time of the offense, or any combination of  
84 convictions or diversions for these offenses, is guilty of a felony  
85 if the offense occurs within ten years of a prior conviction of any  
86 of these offenses and, upon conviction thereof, shall be confined  
87 in a state correctional facility not less than one nor more than  
88 five years or fined not more than \$2,500, or both fined and  
89 confined.

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

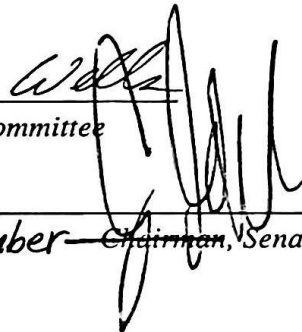
93 (f) A person charged with a violation of this section may not  
94 also be charged with a violation of subsection (b) or (c), section  
95 nine of this article for the same act.

96 (g) No law-enforcement officer may be subject to any civil  
97 or criminal action for false arrest or unlawful detention for

98 effecting an arrest pursuant to this section or pursuant to §48-27-  
99 1002 of this code.

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

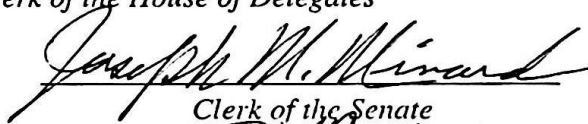
  
Chairman, House Committee

  
Member ~~Chairman~~, Senate Committee

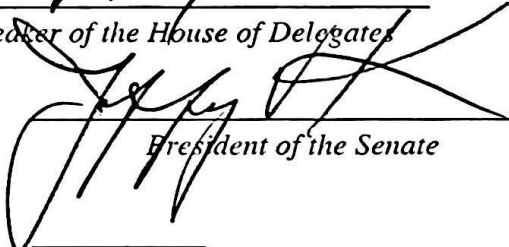
Originating in the House.

In effect ninety days from passage.


  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

The within is approved this the 31st  
day of March, 2014.

  
Governor



PRESENTED TO THE GOVERNOR

MAR 28 2014

Time 10:45 am