

FILED

2014 MAR 13 P 3:46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

House Bill No. 4445

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



Passed March 4, 2014

In effect ninety days from passage.

HB 4445 (veto)

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H. B. 4445

(BY DELEGATES ELDRIDGE, HARTMAN, BARRETT,
FLEISCHAUER, CAMPBELL, HAMILTON, LYNCH
AND SPONAUGLE)

[Passed March 4, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended, all relating generally to crimes against the person; and modifying the definition of “battery” and “domestic battery” to conform with federal laws.

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.

Danny Wells

Chairman, House Committee

Robert Taylor

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregory D. Smith

Clerk of the House of Delegates

Joseph M. Minard

Clerk of the Senate

Robert W. Taylor

Speaker of the House of Delegates

Jeffrey H. ...

President of the Senate

The within is displayed this the 13th
day of March, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 13 2014

Time 3:40 pm