

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 361

BY SENATORS GAUNCH, BOSO, MULLINS, PALUMBO,

WALTERS, WILLIAMS AND PREZIOSO

[Originating in the Committee on the Judiciary;

reported on February 3, 2016.]

1 A BILL to amend and reenact §61-2-10a of the Code of West Virginia, 1931, as amended, relating
2 to limiting applicability of sentence suspension with a condition of public service to
3 misdemeanor assault and battery offenses against the elderly; eliminating language
4 affording the possibility of public service for malicious wounding, unlawful wounding and
5 violence to an elderly person during commission of a felony; prohibiting persons convicted
6 of misdemeanor assault or battery where the victim is elderly from performing public
7 service involving the elderly; and removing provision relating to the section's applicability
8 to persons convicted of certain felonies.

Be it enacted by the Legislature of West Virginia:

1 That §61-2-10a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or
probation.**

1 If any person be convicted and sentenced for an offense defined under the provisions of
2 subsection (b) or (c), section nine ~~or ten~~ of this article, and if the person shall have committed
3 such offense against a person who is sixty-five years of age or older, then the sentence shall be
4 mandatory and shall not be subject to suspension or probation: *Provided,* That the court may, in
5 its discretion, suspend the sentence and order probation to any person so convicted upon
6 condition that such person perform public service for a period of time deemed appropriate by the
7 court: ~~which service shall~~ *Provided, however, That the public service may not* be rendered in or
8 about facilities or programs providing care or services for the elderly: ~~*Provided however further,*~~
9 That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a
10 person committed to a term of one year or less.

11 ~~(b) The existence of any fact which would make any person ineligible for probation under~~
12 ~~subsection (a) of this section because of the commission or attempted commission of a felony~~

- 13 ~~against a victim sixty-five years of age or older shall not be applicable unless such fact is: (i)~~
14 ~~Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter~~
15 ~~is tried before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.~~