

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2439

FISCAL  
NOTE

2015 Carryover

(BY DELEGATES P. SMITH, RODIGHIERO, TRECOST,  
ELDRIDGE, CAMPBELL, LYNCH, LONGSTRETH AND FRICH)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §61-2-16b, relating to creating criminal penalties for assault or battery on a  
 3 pregnant woman against the will and without the consent of the woman where the  
 4 perpetrator knows or has reason to know that the victim is pregnant; creating both  
 5 misdemeanors and felonies; and providing for incremental penalties for multiple batteries.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §61-2-16b, to read as follows:

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

**§61-2-16b. Malicious assault; unlawful assault; battery and recidivism of battery;  
 assault on a pregnant woman.**

1 (a) Malicious assault. -- Any person who maliciously shoots, stabs, cuts or wounds or by  
 2 any means causes bodily injury with intent to maim, disfigure, disable or kill a pregnant woman  
 3 against the will and without the consent of the woman and the person committing the malicious  
 4 assault knows or has reason to know that the victim is pregnant is guilty of a felony and, upon  
 5 conviction thereof, shall be confined in a correctional facility for not less than three nor more than  
 6 fifteen years.

7 (b) Unlawful assault. -- Any person who unlawfully but not maliciously shoots, stabs, cuts  
 8 or wounds or by any means causes a pregnant woman bodily injury with intent to maim, disfigure,  
 9 disable or kill her against the will and without the consent of the woman and the person committing  
 10 the unlawful assault knows or has reason to know that the victim is pregnant is guilty of a felony  
 11 and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor  
 12 more than five years.

13 (c) Battery. -- Any person who unlawfully, knowingly and intentionally makes physical

14 contact of an insulting or provoking nature with a pregnant woman or unlawfully and intentionally  
15 causes physical harm to her against the will and without the consent of the woman and the person  
16 committing the battery knows or has reason to know that the victim is pregnant is guilty of a  
17 misdemeanor and, upon conviction thereof, shall be confined in a regional jail for not less than  
18 one month nor more than twelve months, fined the sum of \$500, or both fined and confined. If  
19 any person commits a second such offense, he or she is guilty of a felony and, upon conviction  
20 thereof, shall be imprisoned in a correctional facility for not less than one year nor more than three  
21 years or fined the sum of \$1,000, or both fined and imprisoned. Any person who commits a third  
22 violation of this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned  
23 in a correctional facility not less than two years nor more than five years or fined not more than  
24 \$2,000, or both fined and imprisoned.

25 (d) Assault. -- Any person who unlawfully attempts to commit a violent injury to a pregnant  
26 woman or unlawfully commits an act which places a pregnant woman in reasonable apprehension  
27 of immediately receiving a violent injury against the will and without the consent of the woman  
28 and the person committing the assault knows or has reason to know that the victim is pregnant is  
29 guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail for not  
30 less than twenty-four hours nor more than six months, fined not more than \$200, or both fined  
31 and confined.

NOTE: The purpose of this bill is to create enhanced criminal penalties for assaults or batteries against pregnant women against the will and without the consent of the women where the perpetrator knows or has reason to know that the victim is pregnant. The bill creates both misdemeanors and felonies. The bill also provides for incremental penalties for multiple batteries.

This section is new; therefore, it has been completely underscored.