

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 206

BY SENATOR WELD

[Introduced February 9, 2017; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-2-14a of the Code of West Virginia, 1931, as amended, relating
 2 to the criminal offense of kidnapping; making unlawful the taking or gaining custody of,
 3 confining or concealing another person by force or threat of force, or by duress, fraud,
 4 deceit, misrepresentation or enticement; and providing penalties.

Be it enacted by the Legislature of West Virginia:

1 That §61-2-14a of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnaping; penalty.

1 (a) Any person who unlawfully restrains another person with the intent:

2 (1) To hold another person for ransom, reward, or concession;

3 (2) To transport another person with the intent to inflict bodily injury or to terrorize the
 4 victim or another person; ~~or~~

5 (3) To take or gain custody of, confine or conceal another person by duress, fraud, deceit,
 6 misrepresentation or enticement; or

7 ~~(3)~~ (4) To use another person as a shield or hostage, ~~shall be~~ is guilty of a felony and,
 8 upon conviction, shall be punished by confinement by the Division of Corrections for life, and,
 9 notwithstanding the provisions of article twelve, chapter sixty-two of this code, ~~shall~~ is not ~~be~~
 10 eligible for parole.

11 (b) The following exceptions ~~shall~~ apply to the penalty contained in subsection (a):

12 (1) A jury may, in their discretion, recommend mercy, and if ~~such~~ the recommendation is
 13 added to their verdict, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the
 14 provisions of said article twelve;

15 (2) If ~~such~~ the person pleads guilty, the court may, in its discretion, provide that
 16 ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the provisions of said article
 17 twelve, and, if the court so provides, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance

18 with the provisions of said article twelve in the same manner and with like effect as
19 if ~~such~~ the person had been found guilty by the verdict of a jury and the jury had recommended
20 mercy;

21 (3) In all cases where the person against whom the offense is committed is returned, or is
22 permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom,
23 money or other thing, or any concession or advantage of any sort has been paid or yielded, the
24 punishment shall be confinement by the Division of Corrections for a definite term of years not
25 less than twenty nor more than fifty; or

26 (4) In all cases where the person against whom the offense is committed is returned, or is
27 permitted to return, alive, without bodily harm having been inflicted upon him or her, but without
28 ransom, money or other thing, or any concession or advantage of any sort having been paid or
29 yielded, the punishment shall be confinement by the Division of Corrections for a definite term of
30 years not less than ten nor more than thirty.

31 (c) For purposes of this section: "To use another as a hostage" means to seize or detain
32 and threaten to kill or injure another in order to compel, a third person or a governmental
33 organization to do or abstain from doing any legal act as an explicit or implicit condition for the
34 release of the person detained.

35 (d) Notwithstanding any other provision of this section, if a violation of this section is
36 committed by a family member of a minor abducted or held hostage and he or she is not motivated
37 by monetary purposes, but rather intends to conceal, take, remove the child or refuse to return
38 the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest
39 to do so, he or she ~~shall be~~ is guilty of a felony and, upon conviction thereof, be confined in a
40 correctional facility for not less than one or more than five years or fined not more than \$1,000, or
41 both.

42 (e) Notwithstanding any provision of this code to the contrary, where a law-enforcement
43 agency of this state or a political subdivision thereof receives a complaint that a violation of the

44 provisions of this section has occurred, the receiving law-enforcement agency shall notify any
45 other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the
46 State Police and each agency so notified, shall cooperate in the investigation forthwith.

47 (f) It ~~shall be~~ is a defense to a violation of subsection (d) of this section, that the accused's
48 action was necessary to preserve the welfare of the minor child and the accused promptly
49 reported his or her actions to a person with lawful custody of the minor, to law-enforcement or to
50 Child Protective Services Division of the Department of Health and Human Resources.

NOTE: The purpose of this bill is to expand the definition of kidnapping to including taking or gaining custody of, confining or concealing another person by force or threat of force; or by duress, fraud, deceit misrepresentation or enticement.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.