

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 292

BY SENATORS WELD, IHLENFELD, AND HAMILTON

[Introduced January 10, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating
 2 generally to the criminal offenses of stalking and harassment; clarifying essential elements
 3 of harassment; defining terms; and continuing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; harassment; penalties; definitions.

1 ~~(a) Any person who repeatedly follows another knowing or having reason to know that the~~
 2 ~~conduct causes the person followed to reasonably engages in a course of conduct directed at a~~
 3 ~~specific person that would cause a reasonable person to fear for his or her safety or suffer~~
 4 ~~significant emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be~~
 5 ~~incarcerated in the county or regional jail for not more than six months or fined not more than~~
 6 ~~\$1,000, or both~~

7 (a) Any person who on more than one occasion engages in a course of conduct directed
 8 at another person with the intent to place – or when he or she knows or should reasonably know,
 9 that the course of conduct places – that person in reasonable fear of bodily injury, the commission
 10 of a sex offense, the kidnapping or unlawful imprisonment of, death, or causes substantial
 11 emotional distress to them or a member of their immediate family, is guilty of a misdemeanor and,
 12 upon conviction thereof, shall be confined in jail for not more than six months or fined not more
 13 than \$1,000, or both.

14 (b) Any person who repeatedly harasses or repeatedly makes credible threats against
 15 another is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the
 16 ~~county~~ or regional jail for not more than six months or fined not more than \$1,000, or both.

17 (c) Any person who directs the actions of a third party to violate the provisions of
 18 subsection (a) or (b) of this section, is guilty of violating this section as if the same had been
 19 personally done by the defendant, without regard to the mental state of the third party acting at
 20 the direction of the defendant.

21 ~~(e)~~ (d) Notwithstanding any provision of this code to the contrary, any person who violates
22 the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit
23 court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501 , §48-
24 5-601, or §48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof, shall
25 be incarcerated in ~~the county~~ jail for not less than 90 days nor more than one year or fined not
26 less than \$2,000 nor more than \$5,000, or both.

27 ~~(d)~~ (e) A second or subsequent conviction for a violation of this section occurring within
28 five years of a prior conviction is a felony punishable by incarceration in a state correctional facility
29 for not less than one year nor more than five years or fined not less than \$3,000 nor more than
30 \$10,000, or both.

31 ~~(e)~~ (f) Notwithstanding any provision of this code to the contrary, any person against whom
32 a protective order for injunctive relief is in effect pursuant to the provisions of §48-27-501 of this
33 code who has been served with a copy of said order or §48-5-608 of this code who is convicted
34 of a violation of the provisions of this section shall be guilty of a felony and punishable by
35 incarceration in a state correctional facility for not less than one year nor more than five years or
36 fined not less than \$3,000 nor more than \$10,000, or both.

37 ~~(f)~~ (g) Notwithstanding any provision of this code to the contrary, any person against whom
38 a protective order for injunctive relief is in effect pursuant to the provisions of §53-8-7 of this code
39 who has been served with a copy of said order who is convicted of a violation of the provisions of
40 this section shall be guilty of a felony and punishable by incarceration in a state correctional facility
41 for not less than one year nor more than five years or fined not less than \$3,000 nor more than
42 \$10,000, or both.

43 ~~(g)~~ (h) For the purposes of this section:

44 (1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical
45 condition;

46 (2) “Course of conduct” means a pattern of conduct composed of two or more acts in which
47 a defendant directly, indirectly, or through a third party by any action, method, device, or means:

48 (i) Follows, monitors, observes, surveils, threatens; or

49 (ii) Engages in other non-consensual contact and or communications; or

50 (iii) Interferes with or damages a person’s property or pet.

51 A course of conduct may include contact via electronic communication.

52 ~~(2)~~ (3) “Credible threat” means a threat of bodily injury made with the apparent ability to
53 carry out the threat and with the result that a reasonable person would believe that the threat
54 could be carried out;

55 ~~(3)~~ (4) “Harasses” means a willful course of conduct directed at a specific person or
56 persons which seriously alarms, annoys, or would cause a reasonable person mental injury or
57 emotional distress, and which serves no legitimate or lawful purpose;

58 ~~(4)~~ (5) “Immediate family” means a spouse, parent, stepparent, mother-in-law, father-in-
59 law, child, stepchild, sibling, or any person who regularly resides in the household or within the
60 prior six months regularly resided in the household; and

61 ~~(5)~~ (6) “Repeatedly” means on two or more occasions.

62 ~~(h)~~ (i) Any person convicted under the provisions of this section who is granted probation
63 or for whom execution or imposition of a sentence or incarceration is suspended is to have as a
64 condition of probation or suspension of sentence that he or she participate in counseling or
65 medical treatment as directed by the court.

66 ~~(i)~~ (j) Upon conviction, the court may issue ~~(i)~~ an order restraining the defendant from any
67 contact with the victim for a period not to exceed 10 years. The length of any restraining order
68 shall be based upon the seriousness of the violation before the court, the probability of future
69 violations, and the safety of the victim or his or her immediate family. The duration of the
70 restraining order may be longer than five years only in cases when a longer duration is necessary
71 to protect the safety of the victim or his or her immediate family.

72 ~~(j)~~ (k) It is a condition of bond for any person accused of the offense described in this
73 section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged
74 victim.

75 ~~(k)~~ (l) Nothing in this section may be construed to preclude a sentencing court from
76 exercising its power to impose home confinement with electronic monitoring as an alternative
77 sentence.

78 (m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation
79 with representatives of labor, licensed domestic violence programs, and rape crisis centers which
80 meet the standards of the West Virginia Foundation for Rape Information and Services is
81 authorized to propose legislative rules for legislative approval and emergency rules pursuant to
82 §29A-3-1 et seq. of this code, establishing appropriate standards for the enforcement of this
83 section by state, county, and municipal law-enforcement officers and agencies.

NOTE: The purpose of this bill is to define the term stalking and include stalking within existing penalties.

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