

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4600

FISCAL
NOTE

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[Introduced February 09, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-2-9 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §61-8D-5a and §61-8D-11 of said code, all relating to penalties for
3 assault, battery, and verbal abuse of a child; creating the offense of assault of a child by
4 a person in a position of trust and specifying penalties; creating the offense of assault of
5 a child by a person in a position of trust and specifying penalties; creating the offense of
6 battery assault of a child by a person in a position of trust and specifying penalties; and
7 creating the offense of failure of a mandatory reporter to report and specifying penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9. Malicious or unlawful assault; assault; assault of a child by a person in a position of trust; battery; battery of a child by a person in a position of trust; penalties.

1 (a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means
2 cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where
3 it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by
4 confinement in a state correctional facility not less than two nor more than ten years. If the act is
5 done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony
6 and, upon conviction thereof, shall either be imprisoned in a state correctional facility not less than
7 one nor more than five years, or be confined in jail not exceeding twelve months and fined not
8 exceeding \$500.

9 (b) *Assault.* —

10 (1) Any person who unlawfully attempts to commit a violent injury to the person of another
11 or unlawfully commits an act that places another in reasonable apprehension of immediately
12 receiving a violent injury is guilty of a misdemeanor and, upon conviction thereof, shall be confined
13 in jail for not more than six months or fined not more than \$100, or both fined and confined.

14 (2) Any “person in a position of trust in relation to a child”, as defined by §61-8D-1 of this
15 code, who unlawfully attempts to commit a violent injury to a child or unlawfully commits an act

16 that places a child in reasonable apprehension of immediately receiving a violent injury is guilty
17 of a felony and, upon conviction thereof, shall either be imprisoned in a state correctional facility
18 not less than one nor more than five years and fined not exceeding \$500, or both fined and
19 imprisoned.

20 (c) *Battery*. — Any person who unlawfully and intentionally makes physical contact of an
21 insulting or provoking nature to the person of another or unlawfully and intentionally causes
22 physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be
23 confined in jail for not more than 12 months or fined not more than \$500, or both fined and
24 confined.

25 (2) Any “person in a position of trust in relation to a child”, as defined by §61-8D-1 of this
26 code, who unlawfully and intentionally makes physical contact of an insulting or provoking nature
27 to a child or unlawfully and intentionally causes physical harm to a child is guilty of a felony and,
28 upon conviction thereof, shall either be imprisoned in a state correctional facility not less than one
29 nor more than five years.

30 (d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in
31 the ten years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of
32 this section where the victim was a current or former spouse, current or former sexual or intimate
33 partner, a person with whom the defendant has a child in common, a person with whom the
34 defendant cohabits or has cohabited, a parent or guardian or the defendant’s child or ward at the
35 time of the offense or convicted of a violation of §61-2-28 of this code or has served a period of
36 pretrial diversion for an alleged violation of subsection (b) or (c) of this section or §61-2-28 of this
37 code when the victim has a present or past relationship, upon conviction, is subject to the
38 penalties set forth in §61-2-28 of this code for a second, third or subsequent criminal act of
39 domestic violence offense, as appropriate.

ARTICLE 6. CHILD ABUSE.

§61-8D-5a. Verbal abuse of ~~noncommunicative~~ child; penalties.

1 (a) Any person, 18 years of age or older, who has supervisory responsibility over a
2 ~~noncommunicative~~ minor child, who repeatedly engages in verbal conduct toward the child in an
3 insulting, demeaning or threatening manner, is guilty of a ~~misdemeanor~~ felony and, upon
4 conviction thereof, shall be fined not less ~~that~~ than \$500 nor more ~~that~~ than \$2,500 or ~~confined in~~
5 ~~jail not more than six months~~ imprisoned in a state correctional facility not less than one nor more
6 than five years, or both fined and ~~confined~~ imprisoned.

7 (b) As used in section (a) of this section:

8 (1) ~~“Noncommunicative child” means a child who, due to physical or developmental~~
9 ~~disabilities is unable to communicate verbally, in writing, or through a recognized sign language~~
10 “Child” means any person under 18 years of age not otherwise emancipated by law.

11 (2) “Repeatedly” means on two or more occasions;

12 (3) “Supervisory responsibility” means any situation where an adult has direct supervisory
13 decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities
14 regarding the child. Supervisory responsibility can occur in a residence, in or out of a school
15 setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

§61-8D-11. Failure to report; penalties.

1 Any person subject to the mandatory reporting provisions of this article who knowingly
2 fails to make any report required herein or any person who knowingly prevents another person
3 from making such a report is guilty of a felony and shall be imprisoned in a state correctional
4 facility not less than one nor more than five years and fined not exceeding \$500, or both fined and
5 imprisoned.

NOTE: The purpose of this bill is to create greater penalties for adults in a position of trust who assault, batter, or verbally abuse a child or fail to report abuse as a mandatory reporter.

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