

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 123

By Senators Hamilton, Deeds, Stuart, Oliverio, and
Hunt

[Introduced January 11, 2023; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

FISCAL
NOTE

1 A BILL to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to
 2 creating enhanced second and third offense penalties for fleeing from an officer on foot or
 3 in a vehicle.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

**§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer;
 interfering with emergency communications; penalties; definitions.**

1 (a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or
 2 obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole
 3 officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy
 4 or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon
 5 conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more
 6 than one year, or both fined and confined.

7 (b) A person who intentionally disarms or attempts to disarm a law-enforcement officer,
 8 correctional officer, probation officer, parole officer, courthouse security officer, the State Fire
 9 Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty
 10 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less
 11 than one nor more than five years.

12 (c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire
 13 Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a
 14 misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty
 15 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than
 16 \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do
 17 not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling,
 18 child, stepchild or grandchild, whether related by blood or marriage, of the person under
 19 investigation. Statements made by the person under investigation may not be used as the basis

20 for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer"
21 does not include a watchman, a member of the West Virginia State Police or college security
22 personnel who is not a certified law-enforcement officer. A criminal charge under this subsection
23 relating to the investigation of a misdemeanor offense may not be used to seek or support a
24 secured bond or pre-trial incarceration.

25 (d) A person who intentionally flees or attempts to flee by any means other than the use of
26 a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security
27 officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal
28 acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain
29 the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully
30 detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
31 than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.
32 A person who is convicted of a second offense of violation of this section is guilty of a
33 misdemeanor and shall be fined not less than \$250 nor more than \$1,000 or shall be imprisoned in
34 a state correctional facility for not less than one year nor more than three years, or both fined and
35 imprisoned. A person who is convicted of a third and subsequent offense of violation of this section
36 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
37 \$2,000 and shall be imprisoned in a state correctional facility not less than three nor more than five
38 years.

39 (e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
40 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
41 given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and,
42 upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be
43 confined in jail not more than one year. A person who is convicted of a second offense of violation
44 of this section is guilty of a misdemeanor and shall be fined not less than \$1000 nor more than
45 \$2,000 or shall be imprisoned in a state correctional facility for not less than one year nor more

46 than three years, or both fined and imprisoned. A person who is convicted of a third and
47 subsequent offense of violation of this section is guilty of a felony and, upon conviction thereof,
48 shall be fined not less than \$2,000 nor more than \$5,000 and shall be imprisoned in a state
49 correctional facility not less than one nor more than five years.

50 (f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
51 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
52 given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a
53 manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon
54 conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be
55 imprisoned in a state correctional facility not less than one nor more than five years. A person who
56 is convicted of a second offense of violation of this section is guilty of a felony and shall be fined not
57 less than \$1,000 nor more than \$2,000 or shall be imprisoned in a state correctional facility for not
58 less than one year nor more than 10 years, or both fined and imprisoned. A person who is
59 convicted of a third and subsequent offense of violation of this section is guilty of a felony and,
60 upon conviction thereof, shall be fined not less than \$2,000 nor more than \$5,000 and shall be
61 imprisoned in a state correctional facility not less than one nor more than 15 years.

62 (g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
63 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
64 given a clear visual or audible signal directing the person to stop, and who causes damage to the
65 real or personal property of a person during or resulting from his or her flight, is guilty of a
66 misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
67 \$3,000 and shall be confined in jail for not less than six months nor more than one year. A person
68 who is convicted of a second offense of violation of this section is guilty of a felony and shall be
69 fined not less than \$3,000 nor more than \$5,000 or shall be imprisoned in a state correctional
70 facility for not less than one year nor more than three years, or both fined and imprisoned. A
71 person who is convicted of a third and subsequent offense of violation of this section is guilty of a

72 felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$8,000 and
73 shall be imprisoned in a state correctional facility not less than one nor more than five years.

74 (h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
75 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
76 given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a
77 person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,
78 shall be imprisoned in a state correctional facility not less than three nor more than 10 years. A
79 person who is convicted of a second offense of violation of this section is guilty of a felony and shall
80 be imprisoned in a state correctional facility for not less than five years nor more than 10 years, or
81 both fined and imprisoned. A person who is convicted of a third and subsequent offense of
82 violation of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a
83 state correctional facility not less than five nor more than 15 years.

84 (i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
85 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
86 given a clear visual or audible signal directing the person to stop, and who causes death to a
87 person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,
88 shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A
89 person who is convicted of a second offense of violation of this section is guilty of a felony and shall
90 be imprisoned in a state correctional facility for not less than 10 years nor more than 20 years. A
91 person who is convicted of a third and subsequent offense of violation of this section is guilty of a
92 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than
93 15 nor more than 25 years. A person imprisoned pursuant to this subsection is not eligible for
94 parole prior to having served a minimum of three years of his or her sentence or the minimum
95 period required by §62-12-13 of this code, whichever is greater.

96 (j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
97 officer, probation officer, or parole officer acting in his or her official capacity after the officer has

98 given a clear visual or audible signal directing the person to stop, and who is under the influence of
99 alcohol, controlled substances, or drugs, is guilty of a felony and, upon conviction thereof, shall be
100 imprisoned in a state correctional facility not less than three nor more than 10 years. A person who
101 is convicted of a second offense of violation of this section is guilty of a felony and shall be
102 imprisoned in a state correctional facility for not less than five years nor more than 15 years. A
103 person who is convicted of a third and subsequent offense of violation of this section is guilty of a
104 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than
105 10 nor more than 20 years.

106 (k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle,
107 motorboat, all-terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code,
108 whether or not it is being operated on a public highway at the time and whether or not it is licensed
109 by the state.

110 (l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a
111 person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement
112 officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction
113 to stop.

114 (m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010
115 regular legislative session shall be known as the Jerry Alan Jones Act.

116 (n) (1) No person, with the intent to purposefully deprive another person of emergency
117 services, may interfere with or prevent another person from making an emergency
118 communication, which a reasonable person would consider necessary under the circumstances,
119 to law-enforcement, fire, or emergency medical services personnel.

120 (2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is
121 not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone,
122 telephone line, or equipment or other communication device.

123 (3) For the purpose of this subsection, the term "emergency communication" means

124 communication to transmit warnings or other information pertaining to a crime, fire, accident,
125 power outage, disaster, or risk of injury or damage to a person or property.

126 (4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction
127 thereof, shall be confined in jail for a period of not less than one day nor more than one year or
128 shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

129 (5) A person who is convicted of a second offense under this subsection is guilty of a
130 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months
131 nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and
132 confined.

133 (6) A person who is convicted of a third or subsequent offense under this subsection is
134 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six
135 months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and
136 confined.

137 (7) In determining the number of prior convictions for purposes of imposing punishment
138 under this subsection, the court shall disregard all such prior convictions occurring more than 10
139 years prior to the offense in question.

140 (o) A person is guilty of filing a false complaint against a law-enforcement officer when,
141 knowing the information reported is false or baseless, he or she:

142 (1) Initiates a false complaint of improper action of a law-enforcement officer relating to an
143 incident or other circumstance; or

144 (2) Reports, by word or action, to any official or quasi-official agency or organization having
145 the function of dealing with conduct of law-enforcement officers which did not occur, does not in
146 fact exist; or

147 (3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense
148 or incident which did not in fact occur.

149 Any person who violates this subsection is guilty of a misdemeanor and, upon conviction

150 thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both
151 fined and confined.

NOTE: The purpose of this bill is to create second and third offenses for fleeing from an officer.

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