

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 137

By Senators Trump, Woelfel, Phillips, Deeds, Oliverio,
Stuart, Clements, Queen, Grady, Hamilton, and
Woodrum

[Introduced January 11, 2023]

1 A BILL to amend and reenact §61-2-14a and §61-2-14g of the Code of West Virginia, 1931, as
2 amended, all relating generally to the offenses of kidnapping and unlawful restraint;
3 clarifying the distinct elements of the separate offenses; removing redundant language;
4 and making grammatical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

1 ~~(a) Any person who unlawfully takes custody of, conceals, confines, transports, or~~
2 ~~restrains another person against his or her will by means of force, threat of force, duress, fraud,~~
3 ~~deceit, inveiglement, misrepresentation, or enticement with the intent to:~~

4 ~~(1) Hold another person for ransom, reward, or concession;~~

5 ~~(2) Inflict bodily injury; or~~

6 ~~(3) Terrorize the victim or another person; or~~

7 ~~(4) Use another person as a shield or hostage;~~

8 (a) Any person who unlawfully:

9 (1) Takes custody of, conceals, confines, or restrains another person against his or her will
10 by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation, or
11 enticement with the intent to:

12 (A) Hold another person for ransom, reward, or concession; or

13 (B) Uses another as a shield or hostage; or

14 (2) Transports another person against his or her will in order obtain a ransom, reward, or
15 concession from any person or to terrorize him or her or another person, is guilty of a felony and,
16 upon conviction thereof, shall be punished by imprisonment by the Division of Corrections and
17 Rehabilitation for life and, notwithstanding the provisions of §62-12-1 *et seq.* of this code, is not
18 eligible for parole.

19 (b) The following exceptions apply to the penalty contained in subsection (a) of this section:

20 (1) A jury may, in its discretion, recommend mercy, and if the recommendation is added to
21 its verdict, the person is eligible for parole in accordance with the provisions of §62-12-1 *et seq.* of
22 this code;

23 (2) If the person pleads guilty, the court may, in its discretion, provide that the person is
24 eligible for parole in accordance with the provisions of §62-12-1 *et seq.* of this code and, if the court
25 so provides, the person is eligible for parole in accordance with the provisions of said article, in the
26 same manner and with like effect as if the person had been found guilty by the verdict of a jury and
27 the jury had recommended mercy;

28 (3) In all cases where the person against whom the offense is committed is returned, or is
29 permitted to return, alive, without bodily harm having been inflicted upon him or her, but after
30 ransom, money, or other thing, or any concession or advantage of any sort has been paid or
31 yielded, the punishment shall be imprisonment by the Division of Corrections and Rehabilitation
32 for a definite term of years not less than 20 nor more than 50; or

33 (4) In all cases where the person against whom the offense is committed is returned, or is
34 permitted to return, alive, without bodily harm having been inflicted upon him or her, but without
35 ransom, money, or other thing, or any concession or advantage of any sort having been paid or
36 yielded, the punishment shall be imprisoned by the Division of Corrections and Rehabilitation for a
37 definite term of years not less than 10 nor more than 30.

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

42 (d) Notwithstanding any other provision of this section, if a violation of this section is
43 committed by a family member of a minor abducted or held hostage and he or she is not motivated
44 by monetary purposes, but rather intends to conceal, take, remove the child, or refuse to return the
45 child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do

46 so, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional
47 facility for not less than one nor more than five years or fined not more than \$1,000, or both
48 imprisoned and fined.

49 (e) Notwithstanding any provision of this code to the contrary, where a law-enforcement
50 agency of this state or a political subdivision thereof receives a complaint that a violation of the
51 provisions of this section has occurred, the receiving law-enforcement agency shall notify any
52 other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the
53 State Police and each agency so notified shall cooperate in the investigation immediately.

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

§61-2-14g. Unlawful restraint; penalties.

1 (a) Any person who, without legal authority intentionally restrains another with the intent
2 that the other person not be allowed to leave the place of restraint and who does so by physical
3 force or by overt or implied threat of violence or by actual physical restraint but without the intent to
4 obtain any ~~other concession or tangible item~~ or economic advantage ~~as these terms are used in~~
5 ~~section fourteen-a of this article~~ is guilty of a misdemeanor and, upon conviction thereof, shall be
6 confined in jail for not more than one year, fined not more than \$1,000, or both.

7 (b) In any prosecution under this section, it is an affirmative defense that:

8 (1) The defendant acted reasonably and in good faith to protect the person from imminent
9 physical danger; or

10 (2) The person restrained was a child less than 18 years old and that the actor was a parent
11 or legal guardian, or a person acting under authority granted by a parent or legal guardian of such
12 child, or by a teacher or other school ~~personnel~~ employee acting under authority granted by §18A-
13 5-1 of this code, and that his or her sole purpose was to assume control of such child.

14 (c) As used in this section, to "restrain" means to restrict a person's movement without his
15 or her consent.

16 (d) This section shall not apply to acts done by a law-enforcement officer in the lawful
17 exercise of his or her duties.