

# **WEST VIRGINIA LEGISLATURE**

**2026 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 5101**

By Delegates Leavitt, Akers, D. Cannon, Roop,  
Moore, Maynor, T. Howell, Drennan, Ferrell, Dittman,  
and Kimble

[Originating in the Committee on the Judiciary;

Reported on February 12, 2026]



1 A BILL to amend and reenact §61-2-9d, §61-2-28, and §62-1C-1a of the Code of West Virginia,  
2 1931, as amended, relating to clarifying the definition of "domestic violence"; creating and  
3 increasing penalties for certain acts; and altering bail requirements for domestic violence  
4 acts.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 2. CRIMES AGAINST THE PERSON.**

#### **§61-2-9d. Strangulation; suffocation and asphyxiation; definitions; penalties.**

1 (a) As used in this section:

2 "Bodily injury" means substantial physical pain, illness or any impairment of physical  
3 condition;

4 "Strangle" means knowingly and willfully restricting another person's air intake or blood  
5 flow by the application of pressure on the neck or throat;

6 "Suffocate" means knowingly and willfully restricting the normal breathing or circulation of  
7 blood by blocking the nose or mouth of another; and

8 "Asphyxiate" means knowingly and willfully restricting the normal breathing or circulation of  
9 blood by the application of pressure on the chest or torso.

10 (b) Any person who strangles, suffocates or asphyxiates another without that person's  
11 consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a  
12 felony and, upon conviction thereof, shall be fined not more than \$2,500 or imprisoned in a state  
13 correctional facility not less than one year or more than five years, or both fined and imprisoned.

14 (c) Notwithstanding subsection (b) of this section, any person who, without the consent of  
15 the other person, strangles, suffocates, or asphyxiates: (1) A family or household member, as  
16 defined in §48-27-204 of this code; or (2) any other person during the commission of conduct that  
17 constitutes, or could reasonably be charged as, a violation of §61-8-12 of this code, or any felony

18 violation of the provisions of §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code,  
19 and thereby causes bodily injury or loss of consciousness, is guilty of a felony and, upon  
20 conviction, shall be imprisoned in a state correctional facility for not less than two nor more than 10  
21 years.

22 (d) Any person who violates the provisions of this section and has been previously  
23 convicted under this section, or under a law of another jurisdiction which requires proof of  
24 substantially similar elements, shall, upon conviction, be imprisoned in a state correctional facility  
25 for not less than three nor more than 15 years.

**§61-2-28. Domestic violence — criminal acts.**

1 (a) *Domestic battery.* — Any person who unlawfully and intentionally makes physical  
2 contact of an insulting or provoking nature with his or her family or household member, or  
3 unlawfully and intentionally causes physical harm to his or her family or household member, is  
4 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than  
5 ~~twelve~~ 12 months or fined not more than ~~\$500~~ \$2,000, or both fined and confined.

6 (b) *Domestic assault.* — Any person who unlawfully attempts to commit a violent injury  
7 against his or her family or household member, or unlawfully commits an act that places his or her  
8 family or household member in reasonable apprehension of immediately receiving a violent injury,  
9 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than  
10 six months or fined not more than ~~\$400~~ \$500, or both fined and confined.

11 (c) *Second offense.* — Domestic assault or domestic battery.

12 A person convicted of a violation of subsection (a) of this section after having been  
13 previously convicted of a violation of subsection (a) or (b) of this section or after having been  
14 convicted of a violation of ~~subsection (b), or (c) section nine~~ §61-2-9 (a) (b) or (c) of this code, of of  
15 ~~this article §61-2-9d (b) or (c) of this code; or of subsection (a) of section fourteen g of this article~~  
16 §61-2-14g (a) of this code, where the victim was his or her current or former spouse, current or  
17 former sexual or intimate partner, person with whom the defendant has a child in common, person

18 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or  
19 ward or a member of the defendant's household at the time of the offense or who has previously  
20 been granted a period of pretrial diversion pursuant to ~~section twenty-two, article eleven of this~~  
21 ~~chapter~~ §61-11-22 of this code for a violation of subsection (a) or (b) of this section, ~~or a violation of~~  
22 ~~subsection (b) or (c) of section nine~~ §61-2-9 (a) (b) or (c) of this code; §61-2-9d (b) or (c) of this  
23 ~~article~~ code; or ~~subsection (a), section fourteen-g~~ §61-2-14g (a) of this ~~article~~ code where the  
24 victim was a current or former spouse, current or former sexual or intimate partner, person with  
25 whom the defendant has a child in common, person with whom the defendant cohabits or has  
26 cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's  
27 household at the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall  
28 be confined in jail for not less than ~~sixty~~ 60 days nor more than one year or fined not more than  
29 ~~\$1,000~~ \$4,000, or both fined and confined.

30 A person convicted of a violation of subsection (b) of this section after having been  
31 previously convicted of a violation of subsection (a) or (b) of this section or after having been  
32 convicted of a violation of ~~subsection (b), or (c), section nine~~ §61-2-9 (a) (b) or (c) of this code; 61-  
33 2-9d (b) or (c) of this code of this article; or ~~subsection (a), section fourteen-g~~ §61-2-14g (a) of this  
34 article, where the victim was a current or former spouse, current or former sexual or intimate  
35 partner, person with whom the defendant has a child in common, person with whom the defendant  
36 cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the  
37 defendant's household at the time of the offense or ~~having~~ who has previously been granted a  
38 period of pretrial diversion pursuant to ~~section twenty-two, article eleven of this chapter~~ §61-11-22  
39 of this code for a violation of subsection (a) or (b) of this section; ~~or subsection (b), or (c) section~~  
40 ~~nine of this article~~ §61-2-9 (a) (b) or (c) of this code; §61-2-9d (b) or (c) of this code; or subsection  
41 ~~(a), section fourteen-g~~ §61-2-14g(a) of this code of this article where the victim was a current or  
42 former spouse, current or former sexual or intimate partner, person with whom the defendant has a  
43 child in common, person with whom the defendant cohabits or has cohabited, a parent or

44 guardian, the defendant's child or ward or a member of the defendant's household at the time of  
45 the offense shall be confined in jail for not less than ~~thirty~~ 30 days nor more than six months or  
46 fined not more than ~~\$500~~ \$1,000, or both fined and confined.

47 (d) Any person who has been convicted of a third or subsequent violation of the provisions  
48 of subsection (a) or (b) of this section or a third or subsequent violation of the provisions of ~~section~~  
49 ~~nine~~ §61-2-9 of this code, §61-2-9d of this code, of this article or subsection (a), or section  
50 ~~fourteen-g~~ §61-2-14g of this article, where the victim was a current or former spouse, current or  
51 former sexual or intimate partner, person with whom the defendant has a child in common, person  
52 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or  
53 ward or a member of the defendant's household at the time of the offense or who has previously  
54 been granted a period of pretrial diversion pursuant to ~~section twenty-two, article eleven of this~~  
55 ~~chapter~~ §61-11-22 of this code for a violation of subsection (a) or (b) of this section or a violation of  
56 the provisions of ~~section nine,~~ §61-2-9 of this code, §61-2-9d of this code, ~~of this article or~~  
57 ~~subsection (a), or~~ section ~~fourteen-g~~ §61-2-14g of this article in which the victim was a current or  
58 former spouse, current or former sexual or intimate partner, person with whom the defendant has a  
59 child in common, person with whom the defendant cohabits or has cohabited, a parent or  
60 guardian, the defendant's child or ward or a member of the defendant's household at the time of  
61 the offense, or any combination of convictions or diversions for these offenses, is guilty of a felony  
62 if the offense occurs within ~~ten~~ 20 years of a prior conviction of any of these offenses and, upon  
63 conviction thereof, shall be confined in a state correctional facility not less than ~~one~~ two nor more  
64 than ~~five~~ 10 years or fined not more than ~~\$2,500~~ \$5,000, or both fined and confined.

65 (e) As used in this section, "family or household member" means "family or household  
66 member" as defined in ~~section two hundred four, article twenty-seven, chapter forty-eight~~ §48-27-  
67 204 of this code.

68 (f) A person charged with a violation of this section may not also be charged with a violation  
69 of ~~subsection (b) or (c), section nine of this article~~ §61-2-9 (b) or (c) of this code for the same act.

70           (h) No law-enforcement officer may be subject to any civil or criminal action for false arrest  
71 or unlawful detention for effecting an arrest pursuant to this section or pursuant to ~~section one~~  
72 ~~thousand two, article twenty-seven, chapter forty-eight~~ §48-27-1002 of this code.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE

### 1C.

### BAIL.

#### **§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.**

1           (a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a  
2 violation or violations of the criminal laws of this state first appears before a judicial officer:

3           (1) Except for good cause shown, a judicial officer shall release a person charged with a  
4 misdemeanor offense on his or her own recognizance unless that person is charged with:

5           (A) A misdemeanor offense of actual violence or threat of violence against a person;

6           (B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this  
7 code;

8           (C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of  
9 this code;

10          (D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in  
11 chapter 60A of this code;

12          (E) Misdemeanor offenses of sexual abuse;

13          (F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or

14          (G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer  
15 or receiving of stolen property when alleged value on the property involved exceeds \$250.

16          (2) For the misdemeanor offenses specified in subsection (a) of this section and all other  
17 offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to  
18 bail subject to the least restrictive condition or combination of conditions that the judicial officer

19 determines reasonably necessary to assure that person will appear as required, and which will not  
20 jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community  
21 or the safety and maintenance of evidence. Further conditions may include that the person  
22 charged shall:

23 (A) Not violate any criminal law of this state, another state, or the United States;

24 (B) Remain in the custody of a person designated by the judicial officer, who agrees to  
25 assume supervision and to report any violation of a release condition to the court, if the designated  
26 person is reasonably able to assure the judicial officer that the person will appear as required and  
27 will not pose a danger to himself or herself or to the safety of any other person or the community;

28 (C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;

29 (D) Participate in an electronic monitoring program if one is available where the person is  
30 charged or will reside.

31 (E) Maintain employment, or, if unemployed, actively seek employment;

32 (F) Avoid all contact with an alleged victim of the alleged offense and with potential  
33 witnesses and other persons as directed by the court;

34 (G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other  
35 controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a  
36 licensed medical practitioner;

37 (H) Execute an agreement to forfeit, upon failing to appear as required, property of a  
38 sufficient unencumbered value, including money, as is reasonably necessary to assure the  
39 appearance of the person as required. The person charged shall provide the court with proof of  
40 ownership, the value of the property, and information regarding existing encumbrances of the  
41 property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure  
42 the subsequent appearance of the person as required;

43 (I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an  
44 agreement to forfeit an amount reasonably necessary to assure appearance of the person as

45 required. If other than an approved surety, the surety shall provide the court with information  
46 regarding the value of its assets and liabilities and the nature and extent of encumbrances against  
47 the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay  
48 the amount of the bail bond; or

49 (J) Satisfy any other condition that is reasonably necessary to assure the appearance of  
50 the person as required and to assure the safety of the arrested person, victims, witnesses, other  
51 persons in the community, or the safety and maintenance of evidence.

52 (3) Proper considerations in determining whether to release the arrested person on an  
53 unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of  
54 release are:

55 (A) The ability of the arrested person to give bail;

56 (B) The nature, number, and gravity of the offenses;

57 (C) The potential penalty the arrested person faces;

58 (D) Whether the alleged acts were violent in nature;

59 (E) The arrested person's prior record of criminal convictions and delinquency  
60 adjudications, if any;

61 (F) The character, health, residence, and reputation of the arrested person;

62 (G) The character and strength of the evidence which has been presented to the judicial  
63 officer:

64 (H) Whether the arrested person is currently on probation, extended supervision, or parole;

65 (I) Whether the arrested person is already on bail or subject to other release conditions in  
66 other pending cases;

67 (J) Whether the arrested person has been bound over for trial after a preliminary  
68 examination;

69 (K) Whether the arrested person has in the past forfeited bail or violated a condition of  
70 release or was ever a fugitive from justice; and

71 (L) The policy against unnecessary incarceration of arrested persons pending trial set forth  
72 in this section.

73 (b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided  
74 for the offense. If the person is charged with more than one misdemeanor, cash bail may not  
75 exceed three times the highest maximum fine of the cumulative charged offenses; except, in  
76 cases involving domestic violence defined in §48-27-101 et seq. of this code the court may  
77 determine a higher bail is appropriate given violations of any protective order or bond conditions,  
78 the seriousness of risk, and the likelihood of harm to others.

79 (c) Notwithstanding any provisions of this article to the contrary, whenever a person not  
80 subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial  
81 appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured  
82 bond, a magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine  
83 if there is a condition or combination of conditions which can meet the considerations set forth in  
84 §62-1C-1a(a)(2) of this code.

85 (d) A judicial officer may upon notice and hearing modify the conditions of release at any  
86 time by imposing additional or different conditions.

87 (e) A prosecuting attorney and defense counsel, unless expressly waived by the  
88 defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the  
89 proceeding at which the conditions of release are initially set.

90 (f) No judicial officer may recommend the services of a surety who is his or her relative as  
91 that term is defined in §6B-1-3 of this code.