

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

### **ENROLLED**

#### **Committee Substitute**

**for**

#### **House Bill 5101**

BY DELEGATES LEAVITT, AKERS, D. CANNON, ROOP,  
MOORE, MAYNOR, T. HOWELL, DRENNAN, FERRELL,  
DITTMAN, AND KIMBLE

[Passed March 14, 2026; in effect 90 days from  
passage (June 12, 2026)]



1 AN ACT to amend and reenact §61-2-9d, and §61-2-28 of the Code of West Virginia, 1931, as  
2 amended, relating to clarifying the definition of "domestic violence"; and creating and  
3 increasing criminal penalties for certain 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  
9 of 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  
21 10 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 12 months or fined not more than \$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  
8 her family or household member in reasonable apprehension of immediately receiving a violent  
9 injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not  
10 more than six months or fined not more than \$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 §61-2-9 (a) (b) or (c) of this code, of §61-2-9d (b) or (c) of this code; or  
15 of §61-2-14g (a) of this code, where the victim was his or her current or former spouse, current or  
16 former sexual or intimate partner, person with whom the defendant has a child in common, person  
17 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child  
18 or ward or a member of the defendant's household at the time of the offense or who has previously

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

27 A person convicted of a violation of subsection (b) of this section after having been  
28 previously convicted of a violation of subsection (a) or (b) of this section or after having been  
29 convicted of a violation of §61-2-9 (a) (b) or (c) of this code; 61-2-9d (b) or (c) of this code; or §61-  
30 2-14g (a) of this article, where the victim was a current or former spouse, current or former sexual  
31 or intimate partner, person with whom the defendant has a child in common, person with whom  
32 the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a  
33 member of the defendant's household at the time of the offense or who has previously been  
34 granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of  
35 subsection (a) or (b) of this section; §61-2-9 (a) (b) or (c) of this code; §61-2-9d (b) or (c) of this  
36 code; or §61-2-14g(a) of this code where the victim was a current or former spouse, current or  
37 former sexual or intimate partner, person with whom the defendant has a child in common, person  
38 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child  
39 or ward or a member of the defendant's household at the time of the offense shall be confined in  
40 jail for not less than 30 days nor more than six months or fined not more than \$1,000, or both  
41 fined and confined.

42 (d) Any person who has been convicted of a third or subsequent violation of the provisions  
43 of subsection (a) or (b) of this section or a third or subsequent violation of the provisions of §61-  
44 2-9 of this code, §61-2-9d of this code, or section §61-2-14g of this article, where the victim was

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

59 (e) As used in this section, "family or household member" means "family or household  
60 member" as defined in §48-27-204 of this code.

61 (f) A person charged with a violation of this section may not also be charged with a violation  
62 of §61-2-9 (b) or (c) of this code for the same act.

63 (h) No law-enforcement officer may be subject to any civil or criminal action for false arrest  
64 or unlawful detention for effecting an arrest pursuant to this section or pursuant to §48-27-1002  
65 of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect 90 days from passage.

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*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2026.

.....  
*Governor*