

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5101

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

[Introduced February 03, 2026; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §48-27-202, §61-2-9d, §61-2-28, and §62-1C-1a of the Code of
2 West Virginia, 1931, as amended, relating to clarifying the definition of "domestic violence";
3 providing a surcharge for trials for domestic violence; creating and increasing penalties for
4 certain acts; and altering bail requirements for domestic violence acts.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

§48-27-202. Domestic violence defined.

1 "Domestic violence" or "abuse" means the occurrence of one or more of the following acts
2 between family or household members, as that term is defined in section two hundred four of this
3 article:

4 (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to
5 another with or without dangerous or deadly weapons;

6 (2) Placing another in reasonable apprehension of physical harm;

7 (3) Creating fear of physical harm by harassment, stalking, psychological abuse or
8 threatening acts;

9 (4) Committing either sexual assault or sexual abuse as those terms are defined in articles
10 eight-b and eight-d, chapter sixty-one of this code; and

11 (5) Holding, confining, detaining or abducting another person against that person's will.

12 (6) Domestic violence does not include defensive measures a person uses to protect
13 oneself from the acts listed in subsections (1) through (5).

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

(a) As used in this section:

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

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

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

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

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

(c) Notwithstanding subsection (b) of this section, any person who, without the consent of the other person, strangles, suffocates, or asphyxiates: (1) a family or household member, as defined in §48-27-204 of this code; or (2) any other person during the commission of conduct that constitutes, or could reasonably be charged as, a violation of §61-8-12 of this code, or any felony violation of the provisions of §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code, and thereby causes bodily injury or loss of consciousness, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years.

(d) Any person who violates the provisions of this section and has been previously convicted under this section or under a law of another jurisdiction which requires proof of substantially similar elements shall, upon conviction, be imprisoned in a state correctional facility 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 (a), (b), or (c) of section nine of this article; of subsection (b)
15 or (c) of section nine-d of this article; or of subsection (a) of section fourteen-g of this article, where
16 the victim was his or her current or former spouse, current or former sexual or intimate partner,
17 person with whom the defendant has a child in common, person with whom the defendant
18 cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the
19 defendant's household at the time of the offense or who has previously been granted a period of
20 pretrial diversion pursuant to ~~section twenty-two, article eleven of this chapter~~ §61-11-22a of this
21 code for a violation of subsection (a) or (b) of this section, ~~or a violation of subsection (a)~~, (b) or (c)
22 of section nine of this article; subsection (b) or (c) of section nine-d of this article; or subsection (a),
23 section ~~fourteen-g~~ 14g of this article where the victim was a current or former spouse, current or
24 former sexual or intimate partner, person with whom the defendant has a child in common, person
25 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or
26 ward or a member of the defendant's household at the time of the offense is guilty of a

27 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ~~sixty~~ 60 days
28 nor more than one year or fined not more than ~~\$1,000~~ \$4,000, or both fined and confined.

29 A person convicted of a violation of subsection (b) of this section after having been
30 previously convicted of a violation of subsection (a) or (b) of this section or after having been
31 convicted of a violation of subsection (a), (b), or (c), section nine of this article; of subsection (b) or
32 (c) of section nine-d of this article; or subsection (a), section ~~fourteen-g~~ 14g of this article, where
33 the victim was a current or former spouse, current or former sexual or intimate partner, person with
34 whom the defendant has a child in common, person with whom the defendant cohabits or has
35 cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's
36 household at the time of the offense or ~~having~~ who has previously been granted a period of pretrial
37 diversion pursuant to ~~section twenty-two, article eleven of this chapter~~ §61-11-22 of this code for a
38 violation of subsection (a) or (b) of this section; ~~or~~ subsection (a), (b), or (c) of section nine of this
39 article; subsection (b) or (c) of section nine-d of this article; or subsection (a), section ~~fourteen-g~~
40 14g of this article where the victim was a current or former spouse, current or former sexual or
41 intimate partner, person with whom the defendant has a child in common, person with whom the
42 defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a
43 member of the defendant's household at the time of the offense shall be confined in jail for not less
44 than ~~thirty~~ 30 days nor more than six months or fined not more than ~~\$500~~ \$1,000, or both fined and
45 confined.

46 (d) Any person who has been convicted of a third or subsequent violation of the provisions
47 of subsection (a) or (b) of this section or a third or subsequent violation of the provisions of section
48 nine, section nine-d, of this article or subsection (a), or section ~~fourteen-g~~ 14g of this article, where
49 the victim was a current or former spouse, current or former sexual or intimate partner, person with
50 whom the defendant has a child in common, person with whom the defendant cohabits or has
51 cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's
52 household at the time of the offense or who has previously been granted a period of pretrial

diversion pursuant to ~~section twenty-two, article eleven of this chapter~~ §61-11-22 of this code for a violation of subsection (a) or (b) of this section or a violation of the provisions of section nine, ~~section nine-d, of this article or subsection (a), or section fourteen-g~~ 14g of this article in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or any combination of convictions or diversions for these offenses, is guilty of a felony if the offense occurs within ~~ten~~ 20 years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined in a state correctional facility not less than ~~one~~ two nor more than ~~five~~ 10 years or fined not more than ~~\$2,500~~ \$5,000, or both fined and confined.

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

(f) A person charged with a violation of this section may not also be charged with a violation of subsection (b) or (c), section nine of this article for the same act.

(g) Surcharge on certain domestic violence charges. —

(1) Upon the conviction of an offense under chapter 61, if the court determines that the offense involved domestic violence, as defined in §48-27-202 of this code, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.

(2) Beginning January 1, 2027, for each case involving an affirmative domestic violence finding, a surcharge of \$150 shall be assessed on the defendant. All surcharges shall be provided to the licensed domestic violence program where the finding occurred.

~~(g)~~ (h) No law-enforcement officer may be subject to any civil or criminal action for false arrest or unlawful detention for effecting an arrest pursuant to this section or pursuant to ~~section one 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.**

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

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

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

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

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

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

(E) Misdemeanor offenses of sexual abuse;

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

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

(2) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community 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

the amount of the bail bond; or

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

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

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

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

(C) The potential penalty the arrested person faces;

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

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

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

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

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

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

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

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

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

(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.

NOTE: The purpose of this bill is to create the Joanna Phillips Domestic Violence Prevention Act; create and increase penalties for certain acts of domestic violence; and change bail requirement for domestic violence.

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