

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2864**

4  
5 (By Delegates Miley, Lawrence, Ferro, Skaff,  
6 Perdue, Brown, Paxton and Stowers)

7 (Originating in the Committee on the Judiciary)

8 [February 3, 2011]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §61-2-14g; and to  
12 amend and reenact §61-2-28 of said code, all relating to the  
13 creation of a misdemeanor crime of unlawful restraint in the  
14 first and second degree; recidivist penalty; affirmative  
15 defenses; exemption for law-enforcement; and the addition of  
16 unlawful restraint as a domestic violence offense in section  
17 twenty-eight, article two, chapter sixty-one of the code.

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

19 That the Code of West Virginia, 1931, as amended, be amended  
20 by adding thereto a new section, designated §61-2-14g; and to amend  
21 and reenact §61-2-28 of said code, all to read as follows:

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

23 **§61-2-14g. Unlawful restraint in the first degree; unlawful**  
24 **restraint in the second degree; penalties; definitions.**

25 (a) Unlawful restraint in the first degree -- Any person who,  
26 without proper legal authority, intentionally restrains another by  
27 use, attempted use, or threatened use of force is guilty of a  
28 misdemeanor and, upon conviction, shall be confined in jail for not

1 more than one year, or fined not more than \$500, or both.

2 (b) Unlawful restraint in the second degree -- Any person who,  
3 without proper legal authority, intentionally restrains another by  
4 intimidation, is guilty of unlawful restraint in the second degree  
5 and, upon conviction, shall be confined in jail for not more six  
6 months, or fined not more than \$100, or both.

7 (c) Any person convicted of a violation of subsection (a) of  
8 this section who, in the ten years prior to said conviction, has  
9 been convicted of a violation of either:

10 (1) subsection (a) of this section or subsection (b) or (c),  
11 section nine of this article where the victim was:

12 (A) a current or former spouse,

13 (B) current or former sexual or intimate partner,

14 (C) a person with whom the defendant has a child in common,

15 (D) a person with whom the defendant cohabits or has  
16 cohabitated,

17 (E) a parent or guardian,

18 (F) the defendant's child or ward, or

19 (G) a member of the defendant's household at the time of the  
20 offense, or

21 (2) convicted of a violation of section twenty-eight of this  
22 article or

23 (3) has served a period of pretrial diversion for an alleged  
24 violation of either subsection (a) of this section or subsection  
25 (b) or (c), section nine of this article or (C) section twenty-eight  
26 of this article when the victim was:

27 (A) a current or former spouse,

28 (B) current or former sexual or intimate partner,

1 (C) a person with whom the defendant has a child in common,  
2 (D) a person with whom the defendant cohabits or has  
3 cohabitated,  
4 (E) a parent or guardian,  
5 (F) the defendant's child or ward, or  
6 (G) a member of the defendant's household at the time of the  
7 offense or such present or past relationship,  
8 shall upon conviction be subject to the penalties set forth in  
9 section twenty-eight of this article for a second, third or  
10 subsequent criminal act of domestic violence offense, as  
11 appropriate.

12 (d) For purposes of this section:

13 (1) "Intimidation" means intentional behavior that would cause  
14 a reasonable person fear of injury or harm; and

15 (2) "Restrain" means to restrict a person's movements by  
16 holding, confining, moving or detaining the person, without the  
17 person's consent, so as to interfere substantially with his or her  
18 personal liberty.

19 (e) In any prosecution under this section, it is an  
20 affirmative defense that:

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

23 (2) The person restrained was a child less than eighteen years  
24 old and that the actor was a parent or legal guardian, or a person  
25 acting under authority granted by a parent or legal guardian of  
26 such child, or by a teacher or other school personnel acting under  
27 authority granted by section one, article five, chapter eighteen-a  
28 of this code.

1        (f) This section does not apply to acts done in performance of  
2 duty by any law-enforcement officer.

3 **§61-2-28. Domestic violence -- Criminal acts.**

4        (a) *Domestic battery.* -- Any person who unlawfully and  
5 intentionally makes physical contact of an insulting or provoking  
6 nature with his or her family or household member or unlawfully and  
7 intentionally causes physical harm to his or her family or  
8 household member, is guilty of a misdemeanor and, upon conviction  
9 thereof, shall be confined in a county or regional jail for not  
10 more than twelve months, or fined not more than \$500, or both.

11        (b) *Domestic assault.* -- Any person who unlawfully attempts to  
12 commit a violent injury against his or her family or household  
13 member or unlawfully commits an act which places his or her family  
14 or household member in reasonable apprehension of immediately  
15 receiving a violent injury, is guilty of a misdemeanor and, upon  
16 conviction thereof, shall be confined in jail for not more than six  
17 months, or fined not more than \$100, or both.

18        (c) *Second offense.* -- Domestic assault or domestic battery.

19        A person convicted of a violation of subsection (a) of this  
20 section after having been previously convicted of a violation of  
21 subsection (a) or (b) of this section, after having been convicted  
22 of a violation of subsection (b) or (c), section nine of this  
23 article or subsection (a), section fourteen-g of this article,  
24 where the victim was his or her current or former spouse, current  
25 or former sexual or intimate partner, person with whom the  
26 defendant has a child in common, person with whom the defendant  
27 cohabits or has cohabited, a parent or guardian, the defendant's  
28 child or ward or a member of the defendant's household at the time

1 of the offense or who has previously been granted a period of  
2 pretrial diversion pursuant to section twenty-two, article eleven  
3 of this chapter for a violation of subsection (a) or (b) of this  
4 section, or a violation of subsection (b) or (c), section nine of  
5 this article or subsection (a), section fourteen-g of this article,  
6 where the victim was a current or former spouse, current or former  
7 sexual or intimate partner, person with whom the defendant has a  
8 child in common, person with whom the defendant cohabits or has  
9 cohabited, a parent or guardian, the defendant's child or ward or  
10 a member of the defendant's household at the time of the offense is  
11 guilty of a misdemeanor and, upon conviction thereof, shall be  
12 confined in jail for not less than sixty days nor more than one  
13 year, or fined not more than \$1000, or both.

14 A person convicted of a violation of subsection (b) of this  
15 section after having been previously convicted of a violation of  
16 subsection (a) or (b) of this section, after having been convicted  
17 of a violation of subsection (b) or (c), section nine of this  
18 article or subsection (a), section fourteen-g of this article,  
19 where the victim was a current or former spouse, current or former  
20 sexual or intimate partner, person with whom the defendant has a  
21 child in common, person with whom the defendant cohabits or has  
22 cohabited, a parent or guardian, the defendant's child or ward or  
23 a member of the defendant's household at the time of the offense or  
24 having previously been granted a period of pretrial diversion  
25 pursuant to section twenty-two, article eleven of this chapter for  
26 a violation of subsection (a) or (b) of this section or subsection  
27 (b) or (c), section nine of this article or subsection (a), section  
28 fourteen-g of this article, where the victim was a current or

1 former spouse, current or former sexual or intimate partner, person  
2 with whom the defendant has a child in common, person with whom the  
3 defendant cohabits or has cohabited, a parent or guardian, the  
4 defendant's child or ward or a member of the defendant's household  
5 at the time of the offense shall be confined in jail for not less  
6 than thirty days nor more than six months, or fined not more than  
7 \$500, or both.

8 (d) Any person who has been convicted of a third or subsequent  
9 violation of the provisions of subsection (a) or (b) of this  
10 section, a third or subsequent violation of the provisions of  
11 section nine of this article or subsection (a), section fourteen-g  
12 of this article, where the victim was a current or former spouse,  
13 current or former sexual or intimate partner, person with whom the  
14 defendant has a child in common, person with whom the defendant  
15 cohabits or has cohabited, a parent or guardian, the defendant's  
16 child or ward or a member of the defendant's household at the time  
17 of the offense or who has previously been granted a period of  
18 pretrial diversion pursuant to section twenty-two, article eleven  
19 of this chapter for a violation of subsection (a) or (b) of this  
20 section or a violation of the provisions of section nine of this  
21 article or subsection (a), section fourteen-g of this article, in  
22 which the victim was a current or former spouse, current or former  
23 sexual or intimate partner, person with whom the defendant has a  
24 child in common, person with whom the defendant cohabits or has  
25 cohabited, a parent or guardian, the defendant's child or ward or  
26 a member of the defendant's household at the time of the offense,  
27 or any combination of convictions or diversions for these offenses,  
28 is guilty of a felony, if the offense occurs within ten years of a

1 prior conviction of any of these offenses and, upon conviction  
2 thereof, shall be confined in a state correctional facility not  
3 less than one nor more than five years or fined not more than  
4 \$2,500, or both.

5 (e) As used in this section, "family or household member"  
6 means "family or household member" as defined in section two  
7 hundred four, article twenty-seven chapter forty-eight of this  
8 code.

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

12 (g) No law-enforcement officer may be subject to any civil or  
13 criminal action for false arrest or unlawful detention for  
14 effecting an arrest pursuant to this section or pursuant to  
15 section one thousand two, article twenty-seven, chapter forty-eight  
16 of this code.