

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 395**

(By Senators Sypolt, Facemire,  
Gaunch, Prezioso, Stollings, Plymale,  
Palumbo and Williams)

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[Originating in the Committee on  
the Judiciary;  
reported February 27, 2015.]

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A BILL to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-7-7 of said code, all relating generally to crimes against the person; modifying definitions of "battery" and "domestic battery" to conform with federal laws relating to firearms possession criminal offenses; and conforming list of persons prohibited from possessing firearms to federal law.

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

That §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-7-7 of said code be amended and reenacted, all to read as follows:

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

**§61-2-9. Malicious or unlawful assault; assault; battery; penalties.**

1           (a) Any person who maliciously ~~shoot, stab, cut or wound~~ shoots, stabs, cuts or wounds any  
2 person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or kill,  
3 he or she, ~~shall~~ except where it is otherwise provided, ~~be~~ is guilty of a felony and, upon conviction,  
4 shall be punished by confinement in a state correctional facility not less than two nor more than ten  
5 years. If ~~such~~ the act ~~be~~ is done unlawfully, but not maliciously, with the intent aforesaid, the  
6 offender is guilty of a felony and, upon conviction, shall either be imprisoned in a state correctional  
7 facility not less than one nor more than five years, or be confined in jail not exceeding twelve months

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1 and fined not exceeding \$500.

2 ~~(b) *Assault*. -- Any person who unlawfully attempts to use physical force capable of causing~~  
3 ~~physical pain or injury to the person of another or unlawfully commits an act that places another in~~  
4 ~~reasonable apprehension of immediately suffering physical pain or injury, he or she is guilty of a~~  
5 ~~misdemeanor and, upon conviction, shall be confined in jail for not more than six months, or fined~~  
6 ~~not more than \$100, or both fined and confined.~~

7 (b) *Assault*. -- Any person who unlawfully attempts to commit a violent injury to the person  
8 of another or unlawfully commits an act which places another in reasonable apprehension of  
9 immediately receiving a violent injury, he shall be guilty of a misdemeanor and, upon conviction,  
10 shall be confined in jail for not more than six months, or fined not more than \$100, or both.

11 ~~(e) *Battery*. -- Any person who unlawfully and intentionally makes physical contact with~~  
12 ~~force capable of causing physical pain or injury to the person of another or unlawfully and~~  
13 ~~intentionally causes physical pain or injury to another person, he or she is guilty of a misdemeanor~~  
14 ~~and, upon conviction, shall be confined in jail for not more than twelve months, or fined not more~~  
15 ~~than \$500, or both fined and confined.~~

16 (c) *Battery*. -- Any person who unlawfully and intentionally makes physical contact of an  
17 insulting or provoking nature with the person of another or unlawfully and intentionally causes  
18 physical harm to another person, he shall be guilty of a misdemeanor and, upon conviction, shall be  
19 confined in jail for not more than twelve months, fined not more than \$500, or both.

20 (d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in  
21 the ten years prior to ~~said~~ the conviction, been convicted of a violation of either subsection (b) or (c)  
22 of this section where the victim was a current or former spouse, current or former sexual or intimate  
23 partner, a person with whom the defendant has a child in common, a person with whom the  
24 defendant cohabits or has cohabited, a parent or guardian, or the defendant's child or ward ~~or a~~  
25 ~~member of the defendant's household~~ at the time of the offense or convicted of a violation of section  
26 twenty-eight of this article or has served a period of pretrial diversion for an alleged violation of  
27 subsection (b) or (c) of this section or section twenty-eight of this article when the victim has ~~such~~

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1 a present or past relationship ~~shall~~ upon conviction ~~be~~ is subject to the penalties set forth in section  
2 twenty-eight of this article for a second, third or subsequent criminal act of domestic violence  
3 offense, as appropriate.

4 **§61-2-28. Domestic violence -- Criminal acts.**

5 ~~(a) Domestic battery. -- Any person who unlawfully and intentionally makes physical contact~~  
6 ~~force capable of causing physical pain or injury to his or her family or household member or~~  
7 ~~unlawfully and intentionally causes physical harm to his or her family or household member, is~~  
8 ~~guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than~~  
9 ~~twelve months, or fined not more than \$500, or both fined and confined.~~

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

15 ~~(b) Domestic assault. -- Any person who unlawfully attempts to use force capable of causing~~  
16 ~~physical pain or injury against his or her family or household member or unlawfully commits an act~~  
17 ~~that places his or her family or household member in reasonable apprehension of immediately~~  
18 ~~suffering physical pain or injury is guilty of a misdemeanor and, upon conviction thereof, shall be~~  
19 ~~confined in jail for not more than six months, or fined not more than \$100, or both fined and~~  
20 ~~confined.~~

21 (b) Domestic Assault. -- Any person who unlawfully attempts to commit a violent injury  
22 against his or her family or household member or unlawfully commits an act which places his or her  
23 household member in reasonable apprehension of immediately receiving a violent injury is guilty  
24 of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not  
25 more than six months, or fined not more than \$100, or both.

26 (c) *Second offense.* – Domestic assault or domestic battery.

27 A person convicted of a violation of subsection (a) of this section after having been

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1 previously convicted of a violation of subsection (a) or (b) of this section, after having been  
2 convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section  
3 fourteen-g of this article where the victim was his or her current or former spouse, current or former  
4 sexual or intimate partner, person with whom the defendant has a child in common, person with  
5 whom the defendant cohabits or has cohabited, a parent or guardian; or the defendant's child or ward  
6 ~~or a member of the defendant's household~~ at the time of the offense or who has previously been  
7 granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter  
8 for a violation of subsection (a) or (b) of this section, or a violation of subsection (b) or (c), section  
9 nine of this article or subsection (a), section fourteen-g of this article where the victim was a ~~current~~  
10 ~~or former spouse, current or former sexual or intimate partner, person with whom the defendant has~~  
11 ~~a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian,~~  
12 ~~or the defendant's child or ward or a member of the defendant's household~~ family or household  
13 member at the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall be  
14 confined in jail for not less than sixty days nor more than one year, or fined not more than \$1,000,  
15 or both fined and confined.

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

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

4 (d) Any person who has been convicted of a third or subsequent violation of the provisions  
5 of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section  
6 nine of this article or subsection (a), section fourteen-g of this article where the victim was a ~~current~~  
7 ~~or former spouse, current or former sexual or intimate partner, person with whom the defendant has~~  
8 ~~a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian,~~  
9 ~~or the defendant's child or ward or a member of the defendant's household~~ family or household  
10 member at the time of the offense or who has previously been granted a period of pretrial diversion  
11 pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b)  
12 of this section or a violation of the provisions of section nine of this article or subsection (a), section  
13 fourteen-g of this article in which the victim was a ~~current or former spouse, current or former sexual~~  
14 ~~or intimate partner, person with whom the defendant has a child in common, person with whom the~~  
15 ~~defendant cohabits or has cohabited, a parent or guardian, or the defendant's child or ward or a~~  
16 ~~member of the defendant's household~~ family or household member at the time of the offense, or any  
17 combination of convictions or diversions for these offenses, is guilty of a felony if the offense occurs  
18 within ten years of a prior conviction of any of these offenses and, upon conviction thereof, shall be  
19 confined in a state correctional facility not less than one nor more than five years or fined not more  
20 than \$2,500, or both. ~~fined and confined.~~

21 (e) As used in this section, "family or household member" means "~~family or household~~  
22 ~~member~~" as defined in section two hundred four, ~~article twenty-seven, chapter forty-eight of this~~  
23 ~~code.~~ a current or former spouse, current or former sexual partner, person with whom the defendant  
24 has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or  
25 guardian, the defendant's child or ward or a person similarly situated to a spouse, parent or guardian.

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

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(g) 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 of this code.

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.**

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in section two of this article, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of chapter twenty-seven of this code or in similar law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that ~~they are~~ he or she is to immediately surrender any firearms in ~~their~~ his or her ownership or possession: *Provided, however*, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing ~~of~~ for which ~~such~~ the person received actual notice and at which ~~such~~ the person had an opportunity to participate;

(B) Restrains ~~such~~ the person from harassing, stalking or threatening an intimate partner of ~~such~~ the person or child of such intimate partner or person, or engaging in other conduct that would

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1 place an intimate partner in reasonable fear of bodily injury to the partner or child; and

2 (C) (i) Includes a finding that ~~such~~ the person represents a credible threat to the physical  
3 safety of ~~such~~ the intimate partner or child; or

4 (ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force  
5 against ~~such~~ the intimate partner or child that would reasonably be expected to cause bodily injury;  
6 or

7 (8) Has been convicted of a misdemeanor offense of assault or battery either under the  
8 provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or  
9 (c), section nine of said article or a federal or state statute with the same essential elements in which  
10 the victim was a current or former spouse, current or former sexual or intimate partner, person with  
11 whom the defendant has a child in common, person with whom the defendant cohabits or has  
12 cohabited, a parent or guardian, the defendant's child or ward or ~~a member of the defendant's~~  
13 household person similarly situated to a spouse, parent or guardian at the time of the offense or has  
14 been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic  
15 violence;

16 (9) Is a fugitive from justice;

17 (10) Having been a citizen of the United States, has renounced his or her citizenship.

18 Any person who violates the provisions of this subsection shall be guilty of a misdemeanor  
19 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in  
20 the county jail for not less than ninety days nor more than one year, or both.

21 (b) Notwithstanding the provisions of subsection (a) of this section, any person:

22 (1) Who has been convicted in this state or any other jurisdiction of a felony crime of  
23 violence against the person of another or of a felony sexual offense; or

24 (2) Who has been convicted in this state or any other jurisdiction of a felony controlled  
25 substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II  
26 or a Schedule III controlled substance as ~~such~~ those terms are defined in sections two hundred four,  
27 two hundred five and two hundred six, article two, chapter sixty-a of this code and who possesses

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1 a firearm as ~~such~~ that term is defined in section two of this article shall be guilty of a felony and,  
2 upon conviction thereof, shall be confined in a state correctional facility for not more than five years  
3 or fined not more than \$5,000, or both. The provisions of subsection (c) of this section shall not  
4 apply to persons convicted of offenses referred to in this subsection or to persons convicted of a  
5 violation of this subsection.

6 (c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of  
7 this section may petition the circuit court of the county in which he or she resides to regain the ability  
8 to possess a firearm and if the court finds by clear and convincing evidence that the person is  
9 competent and capable of exercising the responsibility concomitant with the possession of a firearm,  
10 the court may enter an order allowing the person to possess a firearm if such possession would not  
11 violate any federal law: *Provided*, That a person prohibited from possessing a firearm by the  
12 provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to  
13 possess a firearm in accordance with the provisions of section five, article seven-a of this chapter.

14 (d) Any person who has been convicted of an offense which disqualifies him or her from  
15 possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside  
16 or who ~~subsequent thereto~~ after conviction receives an unconditional pardon for said offense shall  
17 not be prohibited from possessing a firearm by the provisions of the section.