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Senate Bill No. 396

(By Senators Sypolt, Facemire, Gaunch, Prezioso, Stollings, D. Hall, Plymale, Karnes, Palumbo,
Romano and Williams)

[Introduced February 3, 2015; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §61-2-9 of the Code of West Virginia, 1931, as amended; and to
amend and reenact §61-8B-1 and §61-8B-3 of said code, all relating to crimes against the
person; providing that an act of domestic violence or sexual offense by strangling is an
aggravated felony offense; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
and that §61-8B-1 and §61-8B-3 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.

(a) If any person maliciously shoot, stab, cut, strangle or wound any person, or by any means
cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, ~~shall~~ except
where it is otherwise provided, ~~be~~ is guilty of a felony and, upon conviction, shall be punished by
confinement in a state correctional facility not less than two nor more than ten years. If ~~such~~ the act

1 ~~be~~ is done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony
2 and, upon conviction, shall either be imprisoned in a state correctional facility not less than one nor
3 more than five years, or be confined in jail not exceeding twelve months and fined not exceeding
4 \$500.

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

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

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

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

4 (e) As used in this section, "strangle" means intentionally knowing, or recklessly impeding
5 the normal breathing or circulation of the blood of a person by applying pressure to the throat or
6 neck, regardless of whether that conduct results in any visible injury or whether there is any intent
7 to kill or protractedly injure the victim.

8 **ARTICLE 8B. SEXUAL OFFENSES.**

9 **§61-8B-1. Definition of terms.**

10 In this article, unless a different meaning plainly is required:

11 (1) "Forcible compulsion" means:

12 (a) Physical force that overcomes such earnest resistance as might reasonably be expected
13 under the circumstances; or

14 (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death
15 or bodily injury to himself or herself or another person or in fear that he or she or another person will
16 be kidnapped; or

17 (c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied,
18 by another person who is at least four years older than the victim.

19 For the purposes of this definition "resistance" includes physical resistance or any clear
20 communication of the victim's lack of consent.

21 (2) "Married", for the purposes of this article in addition to its legal meaning, includes
22 persons living together as husband and wife regardless of the legal status of their relationship.

1 (3) "Mentally defective" means that a person suffers from a mental disease or defect which
2 renders that person incapable of appraising the nature of his or her conduct.

3 (4) "Mentally incapacitated" means that a person is rendered temporarily incapable of
4 appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating
5 substance administered to that person without his or her consent or as a result of any other act
6 committed upon that person without his or her consent.

7 (5) "Physically helpless" means that a person is unconscious or for any reason is physically
8 unable to communicate unwillingness to an act.

9 (6) "Sexual contact" means any intentional touching, either directly or through clothing, of
10 the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching
11 of any part of another person's body by the actor's sex organs, where the victim is not married to the
12 actor and the touching is done for the purpose of gratifying the sexual desire of either party.

13 (7) "Sexual intercourse" means any act between persons involving penetration, however
14 slight, of the female sex organ by the male sex organ or involving contact between the sex organs
15 of one person and the mouth or anus of another person.

16 (8) "Sexual intrusion" means any act between persons involving penetration, however slight,
17 of the female sex organ or of the anus of any person by an object for the purpose of degrading or
18 humiliating the person so penetrated or for gratifying the sexual desire of either party.

19 (9) "Bodily injury" means substantial physical pain, illness or any impairment of physical
20 condition.

21 (10) "Serious bodily injury" means bodily injury which creates a substantial risk of death,
22 which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss

1 or impairment of the function of any bodily organ.

2 (11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or
3 serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried
4 or used as a weapon.

5 (12) "Forensic medical examination" means an examination provided to a possible victim
6 of a violation of the provisions of this article by medical personnel qualified to gather evidence of
7 the violation in a manner suitable for use in a court of law, to include: An examination for physical
8 trauma; a determination of penetration or force; a patient interview; and the collection and evaluation
9 of other evidence that is potentially relevant to the determination that a violation of the provisions
10 of this article occurred and to the determination of the identity of the assailant.

11 (13) "Strangles" means intentionally knowing, or recklessly impeding the normal breathing
12 or circulation of the blood of a person by applying pressure to the throat or neck, regardless of
13 whether that conduct results in any visible injury or whether there is any intent to kill or protractedly
14 injure the victim.

15 **§61-8B-3. Sexual assault in the first degree.**

16 (a) A person is guilty of sexual assault in the first degree when:

17 (1) The person engages in sexual intercourse or sexual intrusion with another person and, in
18 so doing:

19 (i) (A) Strangles or inflicts serious bodily injury upon anyone; or

20 (ii) (B) Employs a deadly weapon in the commission of the act; or

21 (2) The person, being fourteen years old or more, engages in sexual intercourse or sexual
22 intrusion with another person who is younger than twelve years old and is not married to that person.

1 (b) Any person violating the provisions of this section is guilty of a felony and, upon
2 conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more
3 than thirty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a state
4 correctional facility not less than fifteen nor more than thirty-five years.

5 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any
6 person violating the provisions of subsection (a) of this section who is eighteen years of age or older
7 and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional
8 facility for not less than twenty-five nor more than one hundred years and a fine of not less than
9 \$5,000 nor more than \$25,000.

NOTE: The purpose of this bill is to provide that an act of domestic violence or a sexual offense by strangling is an aggravated felony offense.

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