

Senate Bill No. 536

(By Senator Woelfel)

[Introduced February 20, 2015; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §61-2-14a of the Code of West Virginia, 1931, as amended, relating to expanding definition of "kidnapping" to include taking or gaining custody of, confining or concealing another person by acts which include, but are not limited to, force, duress, fraud, deceit, misrepresentation or enticement; and including existing criminal penalty.

Be it enacted by the Legislature of West Virginia:

That §61-2-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnaping; penalty.

(a) Any person who unlawfully restrains another person with the intent:

(1) To hold another person for ransom, reward, or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or

(3) To take or gain custody of, confine or conceal another person by acts which include, but

1 are not limited to: Force, duress, fraud, deceit, misrepresentation or enticement; or

2 (3) ~~(4)~~ To use another person as a shield or hostage, ~~shall be~~ is guilty of a felony and, upon
3 conviction, shall be punished by confinement by the division of corrections for life, and,
4 notwithstanding the provisions of article twelve, chapter sixty-two of this code, ~~shall~~ is not be
5 eligible for parole.

6 (b) The following exceptions ~~shall~~ apply to the penalty contained in subsection (a):

7 (1) A jury may, in their discretion, recommend mercy, and if ~~such~~ the recommendation is
8 added to their verdict, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the
9 provisions of said article twelve;

10 (2) If ~~such~~ the person pleads guilty, the court may, in its discretion, provide that ~~such~~ the
11 person ~~shall be~~ is eligible for parole in accordance with the provisions of said article twelve, and, if
12 the court so provides, ~~such~~ the person ~~shall be~~ is eligible for parole in accordance with the provisions
13 of said article twelve in the same manner and with like effect as if ~~such~~ the person had been found
14 guilty by the verdict of a jury and the jury had recommended mercy;

15 (3) In all cases where the person against whom the offense is committed is returned, or is
16 permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom,
17 money or other thing, or any concession or advantage of any sort has been paid or yielded, the
18 punishment shall be confinement by the Division of Corrections for a definite term of years not less
19 than twenty nor more than fifty; or

20 (4) In all cases where the person against whom the offense is committed is returned, or is
21 permitted to return, alive, without bodily harm having been inflicted upon him or her, but without
22 ransom, money or other thing, or any concession or advantage of any sort having been paid or

1 yielded, the punishment shall be confinement by the Division of Corrections for a definite term of
2 years not less than ten nor more than thirty.

3 (c) For purposes of this section: "To use another as a hostage" means to seize or detain and
4 threaten to kill or injure another in order to compel, a third person or a governmental organization
5 to do or abstain from doing any legal act as an explicit or implicit condition for the release of the
6 person detained.

7 (d) Notwithstanding any other provision of this section, if a violation of this section is
8 committed by a family member of a minor abducted or held hostage and he or she is not motivated
9 by monetary purposes, but rather intends to conceal, take, remove the child or refuse to return the
10 child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do
11 so, he or she ~~shall be~~ is guilty of a felony and, upon conviction thereof, be confined in a correctional
12 facility for not less than one or more than five years or fined not more than \$1,000, or both.

13 (e) Notwithstanding any provision of this code to the contrary, where a law-enforcement
14 agency of this state or a political subdivision thereof receives a complaint that a violation of the
15 provisions of this section has occurred, the receiving law-enforcement agency shall notify any other
16 law-enforcement agency with jurisdiction over the offense, including, but not limited to, the state
17 police and each agency so notified, shall cooperate in the investigation forthwith.

18 (f) It ~~shall be~~ is a defense to a violation of subsection (d) of this section, that the accused's
19 action was necessary to preserve the welfare of the minor child and the accused promptly reported
20 his or her actions to a person with lawful custody of the minor, to law-enforcement or to Child
21 Protective Services Division of the Department of Health and Human Resources.

NOTE: The purpose of this bill is to expand the definition of kidnaping to include taking or gaining custody of, confining or concealing another person by acts which include, but are not limited to: Force, duress, fraud, deceit, misrepresentation or enticement; including existing criminal penalty.

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