

COMMITTEE SUBSTITUTE

for

H. B. 2240

(BY DELEGATE(S) KURCABA, FLEISCHAUER, STATLER,
HOUSEHOLDER, ESPINOSA, MOFFATT,
SUMMERS, BLAIR, HICKS, BYRD AND UPSON)

(Originating in the Committee on the Judiciary.)

(February 2, 2015)

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 strangling is an aggravated felony offense; defining strangling; providing that a 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.

1 (a) If any person maliciously shoot, stab, cut, strangle or
2 wound any person, or by any means cause him or her bodily
3 injury with intent to maim, disfigure, disable or kill, he or she,
4 ~~shall~~ except where it is otherwise provided, ~~be~~ is guilty of a
5 felony and, upon conviction, shall be punished by confinement
6 in a state correctional facility not less than two nor more than ten
7 years. If ~~such~~ the act ~~be~~ is done unlawfully, but not maliciously,
8 with the intent aforesaid, the offender is guilty of a felony and,
9 upon conviction, shall either be imprisoned in a state
10 correctional facility not less than one nor more than five years,
11 or be confined in jail not exceeding twelve months and fined not
12 exceeding \$500.

13 (b) *Assault.* — Any person who unlawfully attempts to use
14 physical force capable of causing physical pain or injury to the

15 person of another or unlawfully commits an act that places
16 another in reasonable apprehension of immediately suffering
17 physical pain or injury, he or she is guilty of a misdemeanor and,
18 upon conviction, shall be confined in jail for not more than six
19 months, or fined not more than \$100, or both fined and confined.

20 (c) *Battery*. — Any person who unlawfully and intentionally
21 makes physical contact with force capable of causing physical
22 pain or injury to the person of another or unlawfully and
23 intentionally causes physical pain or injury to another person, he
24 or she is guilty of a misdemeanor and, upon conviction, shall be
25 confined in jail for not more than twelve months, or fined not
26 more than \$500, or both fined and confined.

27 (d) Any person convicted of a violation of subsection (b) or
28 (c) of this section who has, in the ten years prior to ~~said~~ the
29 conviction, been convicted of a violation of either subsection (b)
30 or (c) of this section where the victim was a current or former
31 spouse, current or former sexual or intimate partner, a person
32 with whom the defendant has a child in common, a person with
33 whom the defendant cohabits or has cohabited, a parent or
34 guardian, the defendant's child or ward or a member of the

35 defendant's household at the time of the offense or convicted of
36 a violation of section twenty-eight of this article or has served a
37 period of pretrial diversion for an alleged violation of subsection
38 (b) or (c) of this section or section twenty-eight of this article
39 when the victim has ~~such a~~ present or past relationship ~~that~~
40 upon conviction ~~be~~ is subject to the penalties set forth in section
41 twenty-eight of this article for a second, third or subsequent
42 criminal act of domestic violence offense, as appropriate.

43 (e) As used in this section, "strangle" means intentionally,
44 knowingly and recklessly impeding the normal breathing or
45 circulation of the blood of a person by applying pressure to the
46 throat or neck. ~~regardless of whether that conduct results in any~~
47 ~~visible injury or whether there is any intent to kill or protractedly~~
48 ~~injure the victim.~~

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.

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

2 (1) "Forcible compulsion" means:

3 (a) Physical force that overcomes such earnest resistance as

4 might reasonably be expected under the circumstances; or

5 (b) Threat or intimidation, expressed or implied, placing a
6 person in fear of immediate death or bodily injury to himself or
7 herself or another person or in fear that he or she or another
8 person will be kidnaped; or

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

12 For the purposes of this definition “resistance” includes
13 physical resistance or any clear communication of the victim’s
14 lack of consent.

15 (2) “Married”, for the purposes of this article in addition to
16 its legal meaning, includes persons living together as husband
17 and wife regardless of the legal status of their relationship.

18 (3) “Mentally defective” means that a person suffers from a
19 mental disease or defect which renders that person incapable of
20 appraising the nature of his or her conduct.

21 (4) “Mentally incapacitated” means that a person is rendered
22 temporarily incapable of appraising or controlling his or her
23 conduct as a result of the influence of a controlled or intoxicating
24 substance administered to that person without his or her consent

25 or as a result of any other act committed upon that person
26 without his or her consent.

27 (5) “Physically helpless” means that a person is unconscious
28 or for any reason is physically unable to communicate
29 unwillingness to an act.

30 (6) “Sexual contact” means any intentional touching, either
31 directly or through clothing, of the breasts, buttocks, anus or any
32 part of the sex organs of another person, or intentional touching
33 of any part of another person’s body by the actor’s sex organs,
34 where the victim is not married to the actor and the touching is
35 done for the purpose of gratifying the sexual desire of either
36 party.

37 (7) “Sexual intercourse” means any act between persons
38 involving penetration, however slight, of the female sex organ by
39 the male sex organ or involving contact between the sex organs
40 of one person and the mouth or anus of another person.

41 (8) “Sexual intrusion” means any act between persons
42 involving penetration, however slight, of the female sex organ or
43 of the anus of any person by an object for the purpose of

44 degrading or humiliating the person so penetrated or for
45 gratifying the sexual desire of either party.

46 (9) “Bodily injury” means substantial physical pain, illness
47 or any impairment of physical condition.

48 (10) “Serious bodily injury” means bodily injury which
49 creates a substantial risk of death, which causes serious or
50 prolonged disfigurement, prolonged impairment of health or
51 prolonged loss or impairment of the function of any bodily
52 organ.

53 (11) “Deadly weapon” means any instrument, device or
54 thing capable of inflicting death or serious bodily injury, and
55 designed or specially adapted for use as a weapon, or possessed,
56 carried or used as a weapon.

57 (12) “Forensic medical examination” means an examination
58 provided to a possible victim of a violation of the provisions of
59 this article by medical personnel qualified to gather evidence of
60 the violation in a manner suitable for use in a court of law, to
61 include: An examination for physical trauma; a determination of
62 penetration or force; a patient interview; and the collection and
63 evaluation of other evidence that is potentially relevant to the

64 determination that a violation of the provisions of this article
65 occurred and to the determination of the identity of the assailant.

66 (13) “Strangles” means intentionally, knowingly and
67 recklessly impeding the normal breathing or circulation of the
68 blood of a person by applying pressure to the throat or neck.
69 regardless of whether that conduct results in any visible injury or
70 whether there is any intent to kill or protractedly injure the
71 victim.

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

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

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

5 ~~(i)~~ (A) Maliciously Strangles, as defined in section one,
6 article eight-b, chapter sixty-one, or inflicts serious bodily injury
7 upon anyone; or

8 ~~(ii)~~ (B) Employs a deadly weapon in the commission of the
9 act; or

10 (2) The person, being fourteen years old or more, engages in
11 sexual intercourse or sexual intrusion with another person who

12 is younger than twelve years old and is not married to that
13 person.

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

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

