

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 442

SENATORS WELD AND CLINE, *original sponsors*

[Passed March 31, 2017; in effect 90 days from passage]

1 AN ACT to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as
2 amended, all relating generally to crimes against the person; modifying definitions of
3 “assault”, “battery”, “domestic assault” and “domestic battery”; and establishing penalties
4 therefore.

Be it enacted by the Legislature of West Virginia:

1 That §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended, be amended
2 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 shoots, stabs, cuts or wounds any person, or by any means
2 cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where
3 it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by
4 confinement in a state correctional facility not less than two nor more than ten years. If the act is
5 done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony
6 and, upon conviction thereof, shall either be imprisoned in a state correctional facility not less than
7 one nor more than five years, or be confined in jail not exceeding twelve months and fined not
8 exceeding \$500.

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

14 (c) *Battery.* — Any person who unlawfully and intentionally makes physical contact of an
15 insulting or provoking nature to the person of another or unlawfully and intentionally causes
16 physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be

17 confined in jail for not more than twelve months or fined not more than \$500, or both fined and
18 confined.

19 (d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in
20 the ten years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of
21 this section where the victim was a current or former spouse, current or former sexual or intimate
22 partner, a person with whom the defendant has a child in common, a person with whom the
23 defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward at the
24 time of the offense or convicted of a violation of section twenty-eight of this article or has served
25 a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or
26 section twenty-eight of this article when the victim has a present or past relationship, upon
27 conviction, is subject to the penalties set forth in section twenty-eight of this article for a second,
28 third or subsequent criminal act of domestic violence offense, as appropriate.

§61-2-28. Domestic violence — criminal acts.

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

6 (b) *Domestic assault.* — Any person who unlawfully attempts to commit a violent injury
7 against his or her family or household member, or unlawfully commits an act that places his or
8 her family or household member in reasonable apprehension of immediately receiving a violent
9 injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
10 more than six months or fined not more than \$100, or both fined and confined.

11 (c) *Second offense.* — Domestic assault or domestic battery.

12 A person convicted of a violation of subsection (a) of this section after having been
13 previously convicted of a violation of subsection (a) or (b) of this section, after having been

14 convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section
15 fourteen-g of this article, where the victim was his or her current or former spouse, current or
16 former sexual or intimate partner, person with whom the defendant has a child in common, person
17 with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child
18 or ward or a member of the defendant's household at the time of the offense or who has previously
19 been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this
20 chapter for a violation of subsection (a) or (b) of this section, or a violation of subsection (b) or (c),
21 section nine of this article or subsection (a), section fourteen-g of this article where the victim was
22 a current or former spouse, current or former sexual or intimate partner, person with whom the
23 defendant has a child in common, person with whom the defendant cohabits or has cohabited, a
24 parent or guardian, the defendant's child or ward or a member of the defendant's household at
25 the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined
26 in jail for not less than sixty days nor more than one year or fined not more than \$1,000, or both
27 fined and confined.

28 A person convicted of a violation of subsection (b) of this section after having been
29 previously convicted of a violation of subsection (a) or (b) of this section, after having been
30 convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section
31 fourteen-g of this article, where the victim was a current or former spouse, current or former sexual
32 or intimate partner, person with whom the defendant has a child in common, person with whom
33 the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a
34 member of the defendant's household at the time of the offense or having previously been granted
35 a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a
36 violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article
37 or subsection (a), section fourteen-g of this article where the victim was a current or former
38 spouse, current or former sexual or intimate partner, person with whom the defendant has a child
39 in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the

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

43 (d) Any person who has been convicted of a third or subsequent violation of the provisions
44 of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section
45 nine of this article or subsection (a), section fourteen-g of this article, where the victim was a
46 current or former spouse, current or former sexual or intimate partner, person with whom the
47 defendant has a child in common, person with whom the defendant cohabits or has cohabited, a
48 parent or guardian, the defendant's child or ward or a member of the defendant's household at
49 the time of the offense or who has previously been granted a period of pretrial diversion pursuant
50 to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this
51 section or a violation of the provisions of section nine of this article or subsection (a), section
52 fourteen-g of this article in which the victim was a current or former spouse, current or former
53 sexual or intimate partner, person with whom the defendant has a child in common, person with
54 whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or
55 ward or a member of the defendant's household at the time of the offense, or any combination of
56 convictions or diversions for these offenses, is guilty of a felony if the offense occurs within ten
57 years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined
58 in a state correctional facility not less than one nor more than five years or fined not more than
59 \$2,500, or both fined and confined.

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2017.

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Governor