

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4425

FISCAL
NOTE

BY DELEGATE LOVE

[Introduced February 5, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §61-11-6 of said code; and to amend and reenact §62-1D-8 of said code, all
3 relating to crimes involving acts of violence; making it a crime for a spouse, parent,
4 stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether
5 related by blood or marriage, of a person under investigation to impede or obstruct a law-
6 enforcement officer by knowingly and willfully making a materially false statement in the
7 conduct of an investigation of a felony when the offense that is being investigated involves
8 an act of violence; allowing certain family members to be prosecuted as an accessory
9 after the fact if they aid or assist a principal felon, or accessory before the fact, to avoid or
10 escape from prosecution or punishment when offense that is being investigated involves
11 an act of violence; and allowing orders authorizing the interception of wire, oral or
12 electronic communications when the prosecuting attorney or special prosecutor has
13 shown reasonable cause to believe the interception would provide evidence of the
14 commission of any crime of violence.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.

1 (a) A person who by threats, menaces, acts or otherwise forcibly or illegally hinders or
2 obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer or parole
3 officer acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or
5 both fined and confined.

6 (b) A person who intentionally disarms or attempts to disarm a law-enforcement officer,
7 correctional officer, probation officer or parole officer, acting in his or her official capacity, is guilty
8 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less
9 than one nor more than five years.

10 (c) A person who, with intent to impede or obstruct a law-enforcement officer in the conduct
11 of an investigation of a felony offense, knowingly and willfully makes a materially false statement
12 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more
13 than \$200, or confined in jail for five days, or both fined and confined. The provisions of this
14 section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling,
15 half sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person
16 under investigation, when the felony offense that is being investigated did not involve an act of
17 violence. Statements made by the person under investigation may not be used as the basis for
18 prosecution under this subsection. For purposes of this subsection, "law-enforcement officer"
19 does not include a watchman, a member of the West Virginia State Police or college security
20 personnel who is not a certified law-enforcement officer.

21 (d) A person who intentionally flees or attempts to flee by any means other than the use
22 of a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her
23 official capacity who is attempting to make a lawful arrest of the person, and who knows or
24 reasonably believes that the officer is attempting to arrest him or her, is guilty of a misdemeanor
25 and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in
26 jail not more than one year, or both fined and confined.

27 (e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
28 officer, probation officer or parole officer acting in his or her official capacity after the officer has
29 given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and,
30 upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be
31 confined in jail not more than one year.

32 (f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
33 officer, probation officer or parole officer acting in his or her official capacity after the officer has
34 given a clear visual or audible signal directing the person to stop, and who operates the vehicle
35 in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon
36 conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be
37 imprisoned in a state correctional facility not less than one nor more than five years.

38 (g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
39 officer, probation officer or parole officer acting in his or her official capacity after the officer has
40 given a clear visual or audible signal directing the person to stop, and who causes damage to the
41 real or personal property of a person during or resulting from his or her flight, is guilty of a
42 misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
43 \$3,000 and shall be confined in jail for not less than six months nor more than one year.

44 (h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
45 officer, probation officer or parole officer acting in his or her official capacity after the officer has
46 given a clear visual or audible signal directing the person to stop, and who causes bodily injury to
47 a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,
48 shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

49 (i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
50 officer, probation officer or parole officer acting in his or her official capacity after the officer has
51 given a clear visual or audible signal directing the person to stop, and who causes death to a
52 person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,
53 shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A
54 person imprisoned pursuant to this subsection is not eligible for parole prior to having served a
55 minimum of three years of his or her sentence or the minimum period required by §62-12-13 of
56 this code, whichever is greater.

57 (j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
58 officer, probation officer or parole officer acting in his or her official capacity after the officer has
59 given a clear visual or audible signal directing the person to stop, and who is under the influence
60 of alcohol, controlled substances or drugs, is guilty of a felony and, upon conviction thereof, shall
61 be imprisoned in a state correctional facility not less than three nor more than 10 years.

62 (k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle,
63 motorboat, all-terrain vehicle or snowmobile as those terms are defined in §17A-1-1 of this code,
64 whether or not it is being operated on a public highway at the time and whether or not it is licensed
65 by the state.

66 (l) For purposes of this section, the terms "flee", "fleeing" and "flight" do not include a
67 person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement
68 officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction
69 to stop.

70 (m) The revisions to subsections (e), (f), (g) and (h) of this section enacted during the
71 regular session of the 2010 regular legislative session shall be known as the Jerry Alan Jones
72 Act.

73 (n) (1) No person, with the intent to purposefully deprive another person of emergency
74 services, may interfere with or prevent another person from making an emergency
75 communication, which a reasonable person would consider necessary under the circumstances,
76 to law-enforcement, fire, or emergency medical service personnel.

77 (2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is
78 not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone,
79 telephone line or equipment or other communication device.

80 (3) For the purpose of this subsection, the term "emergency communication" means
81 communication to transmit warnings or other information pertaining to a crime, fire, accident,
82 power outage, disaster or risk of injury or damage to a person or property.

83 (4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction
 84 thereof, shall be confined in jail for a period of not less than one day nor more than one year or
 85 shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

86 (5) A person who is convicted of a second offense under this subsection is guilty of a
 87 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months
 88 nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and
 89 confined.

90 (6) A person who is convicted of a third or subsequent offense under this subsection is
 91 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six
 92 months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined
 93 and confined.

94 (7) In determining the number of prior convictions for purposes of imposing punishment
 95 under this subsection, the court shall disregard all such prior convictions occurring more than 10
 96 years prior to the offense in question.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-6. Punishment of principals in the second degree and accessories before and after the fact.

1 (a) (1) In the case of every felony, every principal in the second degree and every
 2 accessory before the fact shall be punishable as if he or she were the principal in the first degree;
 3 and every accessory after the fact shall be confined in jail not more than one year and fined not
 4 exceeding \$500.

5 (2) ~~But no~~ A person in the relation of husband and wife, parent or grandparent, child or
 6 grandchild, brother or sister, by consanguinity or affinity, or servant to the offender, who, after the
 7 commission of a felony, ~~shall aid or assist~~ aids or assists a principal felon, or accessory before
 8 the fact, to avoid or escape from prosecution or punishment ~~shall be deemed~~ is an accessory
 9 after the fact under this subsection, only if the crime for which the principal felon, or accessory

10 before the fact, is sought involves an act of violence.

11 (b) (1) Notwithstanding the provisions of subsection (a) of this section, any person who
 12 knowingly harbors, conceals, maintains or assists the principal felon after the commission of the
 13 underlying offense violating the felony provisions of §61-2-1, §61-2-4, or §61-2-9 of this code, or
 14 gives such offender aid knowing that he or she has committed such felony, with the intent that the
 15 offender avoid or escape detention, arrest, trial or punishment, shall be considered an accessory
 16 after the fact and, upon conviction, be guilty of a felony and, confined in a state correctional facility
 17 for a period not to exceed five years, or a period of not more than one half of the maximum penalty
 18 for the underlying felony offense, whichever is the lesser maximum term of confinement. ~~But no~~

19 (2) A person who is a person in the relation of husband and wife, parent, grandparent,
 20 child, grandchild, brother or sister, whether by consanguinity or affinity, or servant to the offender
 21 ~~shall be considered~~ is an accessory after the fact under this subsection, only if the crime for which
 22 the principal felon is sought involves an act of violence.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

1 The prosecuting attorney of any county or duly appointed special prosecutor may apply to
 2 one of the designated circuit judges referred to in §62-1D-7 of this code and such judge, in
 3 accordance with the provisions of this article, may grant an order authorizing the interception of
 4 wire, oral or electronic communications by an officer of the investigative or law-enforcement
 5 agency when the prosecuting attorney or special prosecutor has shown reasonable cause to
 6 believe the interception would provide evidence of the commission of: (i) Kidnapping or abduction
 7 as defined and prohibited by the provisions of §61-2-14 and §61-2-14a of this code and including
 8 threats to kidnap or demand ransom as defined and prohibited by the provisions of §61-2-14c of

9 this code; (ii) of any offense included and prohibited by §25-4-11 of this code, §61-5-8, §61-5-9,
10 and §61-5-10 of this code or §62-8-1 of this code to the extent that any of said sections provide
11 for offenses punishable as a felony; (iii) dealing, transferring or trafficking in any controlled
12 substance or substances in the felonious violation of chapter 60A of this code; (iv) of any offense
13 included and prohibited by §61-14-1 of this code; ~~or~~ (v) any aider or abettor to any of the foregoing
14 offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or
15 conspirator is a party to the communication to be intercepted; or (vi) any crime of violence.

NOTE: The purpose of this bill is to make it a crime for a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether related by blood or marriage, of a person under investigation to impede or obstruct a law-enforcement officer by knowingly and willfully making a materially false statement in the conduct of an investigation of a felony when the offense that is being investigated involves an act of violence. Similarly, it allows certain family members to be prosecuted as an accessory after the fact if they aid or assist a principal felon, or accessory before the fact, to avoid or escape from prosecution or punishment when offense that is being investigated involves an act of violence. It also allows orders authorizing the interception of wire, oral or electronic communications when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of any crime of violence.

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