

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 585

BY SENATORS WELD, IHLENFELD, LINDSAY, WOELFEL,
BOSO, PALUMBO, ROMANO, PLYMALE, PREZIOSO, AND
TARR

[Introduced February 12, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating
2 to defining the term “stalking” as a repeated course of conduct; and including stalking with
3 existing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON

§61-2-9a. Stalking; harassment; penalties; definitions.

1 (a) Any person who ~~repeatedly follows another knowing or having reason to know that the~~
2 ~~conduct causes the person followed to reasonably~~ engages in a course of conduct directed at a
3 specific person that would cause a reasonable person to fear for his or her safety or suffer
4 significant emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be
5 incarcerated in the regional jail for not more than six months or fined not more than \$1,000, or
6 both.

7 (b) Any person who repeatedly harasses or repeatedly makes credible threats against
8 another is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the
9 regional jail for not more than six months or fined not more than \$1,000, or both.

10 (c) Notwithstanding any provision of this code to the contrary, any person who violates the
11 provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court,
12 magistrate court or family court judge, in effect and entered pursuant to §48-5-501 *et seq.*, §48-
13 5-601 *et seq.* or §48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof,
14 shall be incarcerated in jail for not less than 90 days nor more than one year or fined not less than
15 \$2,000 nor more than \$5,000, or both.

16 (d) A second or subsequent conviction for a violation of this section occurring within five
17 years of a prior conviction is a felony punishable by incarceration in a state correctional facility for
18 not less than one year nor more than five years or fined not less than \$3,000 nor more than
19 \$10,000, or both.

20 (e) Notwithstanding any provision of this code to the contrary, any person against whom

21 a protective order for injunctive relief is in effect pursuant to the provisions of §48-27-501 of this
22 code who has been served with a copy of said order or §48-5-608 of this code who is convicted
23 of a violation of the provisions of this section shall be guilty of a felony and, punishable by
24 incarceration in a state correctional facility for not less than one year nor more than five years or
25 fined not less than \$3,000 nor more than \$10,000, or both.

26 (f) For the purposes of this section:

27 (1) "Bodily injury" means substantial physical pain, illness or any impairment of physical
28 condition;

29 (2) "Course of conduct" means a pattern of conduct composed of two or more acts,
30 evidencing a continuity of purpose.

31 ~~(3)~~ (3) "Credible threat" means a threat of bodily injury made with the apparent ability to
32 carry out the threat and with the result that a reasonable person would believe that the threat
33 could be carried out;

34 ~~(4)~~ (4) "Harasses" means willful conduct directed at a specific person or persons which
35 would cause a reasonable person mental injury or emotional distress

36 ~~(5)~~ (5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-
37 law, child, stepchild, sibling, or any person who regularly resides in the household or within the
38 prior six months regularly resided in the household; and

39 ~~(6)~~ (6) "Repeatedly" means on two or more occasions.

40 (g) Nothing in this section shall be construed to prevent lawful assembly and petition for
41 the lawful redress of grievances, including, but not limited to: Any labor or employment relations
42 issue; demonstration at the seat of federal, state, county or municipal government; activities
43 protected by the West Virginia Constitution or the United States Constitution or any statute of this
44 state or the United States.

45 (h) Any person convicted under the provisions of this section who is granted probation or
46 for whom execution or imposition of a sentence or incarceration is suspended is to have as a

47 condition of probation or suspension of sentence that he or she participate in counseling or
48 medical treatment as directed by the court.

49 (i) Upon conviction, the court may issue an order restraining the defendant from any
50 contact with the victim for a period not to exceed 10 years. The length of any restraining order
51 shall be based upon the seriousness of the violation before the court, the probability of future
52 violations, and the safety of the victim or his or her immediate family. The duration of the
53 restraining order may be longer than five years only in cases when a longer duration is necessary
54 to protect the safety of the victim or his or her immediate family.

55 (j) It is a condition of bond for any person accused of the offense described in this section
56 that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

57 (k) Nothing in this section may be construed to preclude a sentencing court from exercising
58 its power to impose home confinement with electronic monitoring as an alternative sentence.

59 (l) The Governor's Committee on Crime, Delinquency and Correction, after consultation
60 with representatives of labor, licensed domestic violence programs and rape crisis centers which
61 meet the standards of the West Virginia Foundation for Rape Information and Services, is
62 authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-1 *et seq.* of
63 this code, establishing appropriate standards for the enforcement of this section by state, county,
64 and municipal law-enforcement officers and agencies.

NOTE: The purpose of this bill is to define the term stalking and include stalking within existing penalties.

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