

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 585**

SENATORS WELD, IHLENFELD, LINDSAY, WOELFEL, BOSO,

PALUMBO, ROMANO, PLYMALE, PREZIOSO, AND TARR,

*original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 20, 2019]



1 A BILL to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating  
2 generally to the criminal offenses of stalking and harassment; clarifying essential elements  
3 of harassment; defining terms; and continuing criminal 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 fear for his or her safety or suffer significant  
3 emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated  
4 in the county or regional jail for not more than six months or fined not more than \$1,000, or both.

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

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

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

18 (e) Notwithstanding any provision of this code to the contrary, any person against whom  
19 a protective order for injunctive relief is in effect pursuant to the provisions of §48-27-501 of this  
20 code who has been served with a copy of said order or §48-5-608 of this code who is convicted

21 of a violation of the provisions of this section shall be guilty of a felony and punishable by  
22 incarceration in a state correctional facility for not less than one year nor more than five years or  
23 fined not less than \$3,000 nor more than \$10,000, or both.

24 (f) For the purposes of this section:

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

27 (2) "Course of conduct" means a pattern of conduct composed of two or more acts,  
28 evidencing a continuity of purpose;

29 ~~(2)~~ (3) "Credible threat" means a threat of bodily injury made with the apparent ability to  
30 carry out the threat and with the result that a reasonable person would believe that the threat  
31 could be carried out;

32 ~~(3)~~ (4) "Harasses" means a willful course of conduct directed at a specific person or  
33 persons which would cause a reasonable person mental injury or emotional distress;

34 ~~(4)~~ (5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-  
35 law, child, stepchild, sibling, or any person who regularly resides in the household or within the  
36 prior six months regularly resided in the household; and

37 ~~(5)~~ (6) "Repeatedly" means on two or more occasions.

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

43 (h) Any person convicted under the provisions of this section who is granted probation or  
44 for whom execution or imposition of a sentence or incarceration is suspended is to have as a  
45 condition of probation or suspension of sentence that he or she participate in counseling or  
46 medical treatment as directed by the court.

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

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

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

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