

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 169

FISCAL
NOTE

BY SENATORS RUCKER AND CLINE

[Introduced January 9, 2020; 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 generally to stalking and harassment; creating the offense of harassment with the intent
 3 to cause another to physically injure himself or herself or to take his or her own life;
 4 creating the offense of continuing to harass another knowing, or having reason to know,
 5 that such harassment is likely to cause another to physically injure himself or herself or
 6 take his or her own life due, in whole or part, to the harassment; removing the time limit
 7 within which a second or subsequent violation constitutes a felony; and creating criminal
 8 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, et seq., §48-
 11 5-601, et seq., or §48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof,
 12 shall be incarcerated in the ~~county~~ jail for not less than 90 days nor more than one year or fined
 13 not less than \$2,000 nor more than \$5,000, or both.

14 (d) A second or subsequent conviction for a violation of subsection (a), (b), or (c) of this
 15 ~~section occurring within five years of a prior conviction~~ is a felony punishable by incarceration in

16 a state correctional facility for not less than one year nor more than five years or fined not less
17 than \$3,000 nor more than \$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) Notwithstanding any provisions of subsection (a) or (b) of this section, any person who
25 harasses another with the intent to cause the person to physically injure himself or herself or to
26 take his or her own life or who continues to harass another knowing or having reason to know
27 that the person is likely to physically injure himself or herself or to take his or her own life based,
28 in whole or in part, on such harassment is guilty of a felony and, upon conviction, shall be
29 imprisoned in a state correctional facility for a determinate sentence of not less than two years
30 nor more than 10 years.

31 (f) (g) For the purposes of this section:

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

34 (2) "Credible threat" means a threat of bodily injury made with the apparent ability to carry
35 out the threat and with the result that a reasonable person would believe that the threat could be
36 carried out;

37 (3) "Harasses" means willful conduct directed at a specific person or persons which would
38 cause a reasonable person mental injury or emotional distress;

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

42 (5) "Repeatedly" means on two or more occasions.

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

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

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

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

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

65 ~~(l)~~ (m) The Governor's Committee on Crime, Delinquency and Correction, after
66 consultation with representatives of labor, licensed domestic violence programs and rape crisis
67 centers which meet the standards of the West Virginia Foundation for Rape Information and

68 Services, is authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-
69 1 *et seq.* of this code, establishing appropriate standards for the enforcement of this section by
70 state, county, and municipal law-enforcement officers and agencies.

NOTE: The purpose of this bill is to create a felony of harassing another with intent to have the person do injury to self or take his or her own life, or of continuing to harass someone with knowledge that the person may injure himself or herself or take his or her own life.

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