

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 201

BY SENATORS WELD, HAMILTON, LINDSAY, IHLENFELD,

RUCKER, WOELFEL, BALDWIN, AND ROMANO

[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 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.

NOTE: The purpose of this bill is to clarify the essential elements of harassment.

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