

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 201**

SENATORS WELD, HAMILTON, LINDSAY, IHLENFELD, RUCKER,

WOELFEL, BALDWIN, AND ROMANO, *original sponsors*

[Passed March 3, 2020; in effect 90 days from passage]



1 AN ACT 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; modifying and clarifying  
3 elements of offenses; creating new offense of violating a personal safety order where the  
4 person against whom the violation is directed is the subject of the order; creating a new  
5 offense of harassment to cause a person to physically harm or kill himself or herself;  
6 defining terms; enhancing penalties for second and subsequent offenses; authorizing  
7 proposal of legislative rules and promulgation of emergency rules by the Governor's Office  
8 of Crime, Delinquency, and Correction; and establishing criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-9a. Harassment; penalties; definitions.**

1 (a) Any person who engages in a course of conduct directed at another person with the  
2 intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer  
3 substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and,  
4 upon conviction thereof, shall be fined not more than \$1,000, confined in jail for not more than six  
5 months, or both fined and confined.

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

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

15 (d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section  
16 is a felony punishable by imprisonment in a state correctional facility for not less than one year  
17 nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and  
18 imprisoned.

19 (e) Notwithstanding any provision of this code to the contrary, any person against whom  
20 a protective order is in effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-  
21 27-501 of this code, who has been served with a copy of said order, who commits a violation of  
22 the provisions of this section, in which the subject in the protective order is the victim, shall be  
23 guilty of a felony and, upon conviction thereof, be imprisoned in a state correctional facility for not  
24 less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000,  
25 or both fined and imprisoned.

26 (f) Notwithstanding any provision of this code to the contrary, any person against whom a  
27 protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been  
28 previously served with a copy of said order, who commits a violation of the provisions of this  
29 section, in which the subject in the protective order is the victim, is guilty of a felony and punishable  
30 by imprisonment in a state correctional facility for not less than one year nor more than five years,  
31 or fined not less than \$3,000 nor more than \$10,000, or both fined and confined.

32 (g) Notwithstanding any provision of this code to the contrary, any person who harasses  
33 another person with the intent to cause the person to physically injure himself or herself, or to  
34 take his or her own life, or who continues to harass another, knowing or having reason to know  
35 that the person is likely to physically injure himself or herself, or to take his or her own life based,  
36 in whole or in part, on such harassment, is guilty of a felony and, upon conviction, shall be  
37 imprisoned in a state correctional facility for a determinate sentence of not less than two years  
38 nor more than 10 years.

39 (h) For the purposes of this section:

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

42 (2) "Course of conduct" means a pattern of conduct composed of two or more acts in which  
43 a defendant directly, indirectly, or through a third party by any action, method, device, or means:

44 (A) Follows, monitors, observes, surveils, or threatens a specific person or persons;

45 (B) Engages in other nonconsensual contact and/or communications, including contact  
46 through electronic communication, with a specific person or persons; or

47 (C) Interferes with or damages a person's property or pet;

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

51 (4) "Harasses" means a willful course of conduct directed at a specific person or persons  
52 which would cause a reasonable person mental injury or emotional distress and which serves no  
53 legitimate or lawful purpose;

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

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

58 (i) Any person convicted under the provisions of this section who is granted probation or  
59 for whom execution or imposition of a sentence or incarceration is suspended, shall have as a  
60 condition of probation or suspension of sentence that he or she participate in counseling or  
61 medical treatment as directed by the court.

62 (j) Upon conviction, the court may issue an order restraining the defendant from any  
63 contact with the victim for a period not to exceed 10 years. The length of any restraining order  
64 shall be based upon the seriousness of the violation before the court, the probability of future  
65 violations, and the safety of the victim or his or her immediate family. The duration of the

66 restraining order may be longer than five years only in cases when a longer duration is necessary  
67 to protect the safety of the victim or his or her immediate family.

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2020.

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*Governor*