

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 201

SENATORS WELD, HAMILTON, LINDSAY, IHLENFELD, RUCKER,

WOELFEL, BALDWIN, AND ROMANO, *original sponsors*

[Originating in the Committee on the Judiciary;

reported on January 23, 2020]

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; 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. 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 county or regional jail for not more than six months or fined not more than~~
6 ~~\$1,000, or both.~~

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

12 (b) Any person who ~~repeatedly~~ harasses or repeatedly makes credible threats against
13 another is guilty of a misdemeanor and, upon conviction thereof, shall be ~~incarcerated~~ confined

14 in ~~the county or regional~~ jail for not more than six months, or fined not more than \$1,000, or both
15 fined and confined.

16 (c) Notwithstanding any provision of this code to the contrary, any person who violates
17 the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit
18 court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-
19 601, or §48-27-403 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall
20 be ~~incarcerated~~ confined in the ~~county~~ jail for not less than 90 days nor more than one year, or
21 fined not less than \$2,000 nor more than \$5,000, or both fined and confined.

22 (d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section
23 ~~occurring within five years of a prior conviction~~ is a felony punishable by ~~incarceration~~
24 imprisonment 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 fined and confined.

26 (e) Notwithstanding any provision of this code to the contrary, any person against whom
27 a protective order is in effect pursuant to the provisions of §48-27-501 of this code, who has been
28 served with a copy of said order or §48-5-608 of this code, who commits ~~is convicted of~~ a violation
29 of the provisions of this section, in which the subject in the protective order is the victim, shall be
30 guilty of a felony and punishable by ~~incarceration~~ imprisonment in a state correctional facility for
31 not less than one year nor more than five years, or fined not less than \$3,000 nor more than
32 \$10,000, or both fined and confined.

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

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

46 (f) (h) For the purposes of this section:

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

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

51 (A) Follows, monitors, observes, surveils, threatens;

52 (B) Engages in other non-consensual contact and/or communications; or

53 (C) Interferes with or damages a person's property or pet.

54 A course of conduct may include contact via electronic communication.

55 (2) (3) "Credible threat" means a threat of bodily injury made with the apparent ability to
56 carry out the threat and with the result that a reasonable person would believe that the threat
57 could be carried out;

58 (3) (4) "Harasses" means a willful course of conduct directed at a specific person or
59 persons which would cause a reasonable person mental injury or emotional distress and which
60 serves no legitimate or lawful purpose;

61 (4) (5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-
62 law, child, stepchild, sibling, or any person who regularly resides in the household or within the
63 prior six months regularly resided in the household; and

64 (5) (6) "Repeatedly" means on two or more occasions.

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

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

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

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

81 ~~(l)~~ (m) The Governor's Committee on Crime, Delinquency, and Correction, after
82 consultation with representatives of labor, licensed domestic violence programs and rape crisis
83 centers which meet the standards of the West Virginia Foundation for Rape Information and
84 Services, is authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-
85 1 *et seq.* of this code, establishing appropriate standards for the enforcement of this section by
86 state, county, and municipal law-enforcement officers and agencies.