

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 109

FISCAL
NOTE

BY SENATORS BALDWIN AND CAPUTO

[Introduced February 10, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-6-21 of the Code of West Virginia, 1931, as amended, relating
 2 to prohibiting civil rights violations based on gender identity or sexual orientation; criminal
 3 penalties; when evidence of constitutionally protected speech or associations is not
 4 admissible in criminal prosecutions; exceptions; and providing for sentencing alternatives
 5 for persons convicted of violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-21. Prohibiting violations of an individual's civil rights; penalties; when evidence not admissible; sentencing alternatives.

1 (a) All persons within the boundaries of the State of West Virginia have the right to be free
 2 from any violence, or intimidation by threat of violence, committed against their persons or
 3 property because of their race, color, religion, ancestry, national origin, political affiliation, ~~or~~ sex,
 4 or sexual orientation.

5 (b) If any person does by force or threat of force, willfully injure, intimidate or interfere with,
 6 or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the
 7 free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or
 8 laws of the State of West Virginia or by the Constitution or laws of the United States, ~~because of~~
 9 ~~such other person's~~ and the other person was intentionally selected due to their actual or
 10 perceived race, color, religion, ancestry, national origin, political affiliation, ~~or~~ sex, or sexual
 11 orientation, he or she ~~shall be~~ is guilty of a felony and, upon conviction, shall be fined not more
 12 than \$5,000 or imprisoned in a state correctional facility not more than 10 years, or both fined and
 13 imprisoned: *Provided,* That an adjudication under subsection (h) of this section is an appropriate
 14 alternative sentencing.

15 (c) If any person conspires with another person or persons to, by force or threat of force,
 16 willfully injure, oppress, threaten, or intimidate or interfere with any citizen ~~because of such other~~
 17 intentionally selected due to that other person's race, color, religion, ancestry, national origin,

18 political affiliation, ~~or sex,~~ or sexual orientation in the free exercise or enjoyment of any right or
19 privilege secured to him or her by the Constitution or laws of the State of West Virginia or by the
20 Constitution or laws of the United States, and in willful furtherance thereof to assemble with one
21 or more persons for the purpose of teaching any technique or means capable of causing property
22 damage, bodily injury, or death when such person or persons intend to employ such techniques
23 or means to violate this section, each such person ~~shall be~~ is guilty of a felony and, upon
24 conviction, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not
25 more than 10 years, or both fined and imprisoned: *Provided, That an adjudication under*
26 subsection (h) of this section is an appropriate alternative sentencing.

27 (d) The fact that a person committed a felony or misdemeanor, or attempted to commit a
28 felony, ~~because of the~~ and intentionally selected the victim due to the victim's actual or perceived
29 race, color, religion, ancestry, national origin, political affiliation, ~~or sex,~~ or sexual orientation shall
30 be considered a circumstance in aggravation of any crime in imposing sentence.

31 (e) Nothing contained in this section makes unlawful the teaching of any technique in self-
32 defense.

33 (f) Nothing in this section ~~shall~~ may be construed so as to make it unlawful nor to prohibit
34 nor, in any manner, to impede or to interfere with any person in conducting labor union or labor
35 union organizing activities.

36 (g) In any prosecution under this section, evidence of constitutionally protected speech or
37 associations is not admissible in the prosecution of the charge, unless the speech or associations
38 are:

39 (1) Specifically related to the crime charged; and

40 (2) Probative of intent to target a specific victim or to commit a specific crime, as defined
41 in subsections (a), (b), (c), and (d) of this section.

42 (h) A person convicted under this section shall be considered for deferred adjudication
43 under §61-11-22a of this code, and alternative sentencing including, but not limited to, community

44 corrections programming under §62-11C-1 et seq. of this code.

45 (i) The judge or magistrate shall determine if alternative sentencing is appropriate by
46 considering the following factors:

47 (1) Whether appropriate community corrections programs exist in the county or
48 municipality with jurisdiction; and

49 (2) Whether a community corrections program provides an opportunity for the harm to be
50 remediated, or for the convicted to be reintegrated into the community.

NOTE: The purpose of this bill is to prohibit civil rights violations based on sexual orientation. The bill provides that evidence of constitutionally protected speech or associations is not admissible in criminal prosecutions except in certain situations. The bill provides for sentencing alternatives for persons convicted of violations.

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