

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 578**

BY SENATORS IHLENFELD AND LINDSAY

[Introduced March 5, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating  
 2 to removing the requirement for the likelihood of imminent lawless action of a violent nature  
 3 that could cause bodily harm to the prerequisites for the crime of intimidation and  
 4 retaliation.

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

## **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE**

### **§61-5-27. Intimidation of and retaliation against public officers and employees, jurors, and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.**

1 (a) Definitions. — As used in this section:

2 (1) “Fraudulent” means not legally issued or sanctioned under the laws of this state or of  
 3 the United States, including forged, false, and materially misstated;

4 (2) “Legal process” means an action, appeal, document instrument, or other writing  
 5 issued, filed, or recorded to pursue a claim against person or property, exercise jurisdiction,  
 6 enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest  
 7 a person, incarcerate a person, or direct a person to appear, perform, or refrain from performing  
 8 a specified act. “Legal process” includes, but is not limited to, a complaint, decree, demand,  
 9 indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence,  
 10 subpoena, summons, warrant, or writ;

11 (3) “Official proceeding” means a proceeding involving a legal process or other process of  
 12 a tribunal of this state or of the United States;

13 (4) “Person” means an individual, group, association, corporation, or any other entity;

14 (5) “Public official or employee” means an elected or appointed official or employee of a  
 15 state or federal court, commission, department, agency, political subdivision, or any governmental  
 16 instrumentality;

17 (6) “Recorder” means a clerk or other employee in charge of recording instruments in a

18 court, commission, or other tribunal of this state or of the United States; and

19 (7) "Tribunal" means a court or other judicial or quasi-judicial entity, or an administrative,  
20 legislative, or executive body, or that of a political subdivision, created or authorized under the  
21 constitution or laws of this state or of the United States.

22 (b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical  
23 force, harassment, or a fraudulent legal process or official proceeding, or to threaten ~~to do so~~  
24 ~~where such threat is directed at inciting or producing imminent lawless action of a violent nature~~  
25 ~~that could cause bodily harm and is likely to incite or produce such action or to attempt to do so,~~  
26 with the intent to:

27 (1) Impede or obstruct a public official or employee from performing his or her official  
28 duties;

29 (2) Impede or obstruct a juror or witness from performing his or her official duties in an  
30 official proceeding;

31 (3) Influence, delay, or prevent the testimony of any person in an official proceeding; or

32 (4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document  
33 or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal a record,  
34 document, or other object impairing its integrity or availability for use in an official proceeding; (C)  
35 evade an official proceeding summoning a person to appear as a witness or produce a record,  
36 document, or other object for an official proceeding; or (D) be absent from an official proceeding  
37 to which such person has been summoned.

38 (c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property,  
39 or to threaten ~~to do so where such threat is directed at inciting or producing imminent lawless~~  
40 ~~action of a violent nature that could cause bodily harm and is likely to incite or produce such action~~  
41 or to attempt to do so, with the intent to:

42 (1) Retaliate against a public official or employee for the performance or nonperformance  
43 of an official duty;

44           (2) Retaliate against a juror or witness for performing his or her official duties in an official  
45 proceeding; or

46           (3) Retaliate against any other person for attending, testifying, or participating in an official  
47 proceeding, or for the production of any record, document, or other object produced by a person  
48 in an official proceeding.

49           (d) Penalty. — A person convicted of an offense under subsections (b) or (c) of this section  
50 is guilty of a felony and shall be confined in a correctional facility not less than one nor more than  
51 10 years, fined not more than \$2,000, or both.

52           (e) Civil cause of action. — A person who violates this section is liable in a civil action to  
53 any person harmed by the violation for injury or loss to person or property incurred as a result of  
54 the commission of the offense and for reasonable attorney's fees, court costs, and other expenses  
55 incurred as a result of prosecuting a civil action commenced under this subsection, which is not  
56 the exclusive remedy of a person who suffers injury or loss to person or property as a result of a  
57 violation of this section.

58           (f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section,  
59 any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of  
60 this section shall be dismissed by the tribunal and the person may be ordered to reimburse the  
61 aggravated person for reasonable attorney's fees, court costs, and other expenses incurred in  
62 defending or dismissing such action.

63           (1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other  
64 legal process against a public official or employee or his or her property. The recorder does not  
65 have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the  
66 recorder liable for refusing to record a lien or other legal process that the recorder believes is in  
67 violation of this section; and

68           (2) If a fraudulent lien or other legal process against a public official or employee or his or  
69 her property is recorded then:

70 (A) Request to release lien. — The public official or employee may send a written request  
71 by certified mail to the person who filed the fraudulent lien or legal process requesting the person  
72 to release or dismiss the lien or legal process. If such lien or legal process is not properly released  
73 or dismissed within 21 days, then it shall be inferred that the person intended to harass the public  
74 official or employee in violation of subsection (b) of this section and shall be subject to the criminal  
75 penalties in subsection (d) of this section and any other remedies provided in this section; or

76 (B) Notice of fraudulent lien. — A government attorney on behalf of the public official or  
77 employee may record a notice of fraudulent lien or legal process with the recorder who accepted  
78 the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process  
79 and cause it to be removed from the records. No filing fee shall be charged for the filing of the  
80 notice.

81 (g) A person's lack of belief in the jurisdiction or authority of this state or of the United  
82 States is no defense to prosecution of a civil or criminal action under this section.

83 (h)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate  
84 public officials or employees;

85 (2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
86 right to freely assemble, express opinions, or designate group affiliation; or

87 (3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
88 access to a tribunal of this state or prevents a person from instituting or responding to a lawful  
89 action.

NOTE: The purpose of this bill is to remove the 2016 addition of the Brandenburg language which was not appropriate and has resulted in the decriminalization of witness and public official intimidation, harassment, and retaliation.

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