

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 123

BY SENATORS HAMILTON, DEEDS, STUART, OLIVERIO,

AND HUNT

[Originating in the Committee on the Judiciary;

reported on February 25, 2023]

1 A BILL to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating
2 to creating enhanced second and third offenses for fleeing from an officer on foot or in a
3 vehicle; establishing criminal penalties for the new offenses; and declaring that a
4 conviction for fleeing while under the influence of alcohol or drugs is treated as a driving
5 under the influence for licensure purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

**§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer;
interfering with emergency communications; penalties; definitions.**

1 (a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders,
2 obstructs, or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole
3 officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy
4 or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more
6 than one year, or both fined and confined.

7 (b) A person who intentionally disarms or attempts to disarm a law-enforcement officer,
8 correctional officer, probation officer, parole officer, courthouse security officer, the State Fire
9 Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty
10 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less
11 than one nor more than five years.

12 (c) A person who, with intent to impede or obstruct a law-enforcement officer, the State
13 Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a
14 misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty
15 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than
16 \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do
17 not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling,

18 child, stepchild or grandchild, whether related by blood or marriage, of the person under
19 investigation. Statements made by the person under investigation may not be used as the basis
20 for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer"
21 does not include a watchman, a member of the West Virginia State Police, or college security
22 personnel who is not a certified law-enforcement officer. A criminal charge under this subsection
23 relating to the investigation of a misdemeanor offense may not be used to seek or support a
24 secured bond or pre-trial incarceration.

25 (d) A person who intentionally flees or attempts to flee by any means other than the use
26 of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security
27 officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal
28 acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain
29 the person, and who knows or reasonably believes that the officer is attempting to arrest or
30 lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined
31 not less than \$50 nor more than \$500, or confined in jail not more than one year, or both fined
32 and confined. A person who is convicted of a second offense of violation of this section is guilty
33 of a felony and shall be fined not less than \$250 nor more than \$1,000 or shall be imprisoned in
34 a state correctional facility for not less than one year nor more than three years, or both fined and
35 imprisoned. A person who is convicted of a third and subsequent offense of violation of this section
36 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
37 \$2,000 and shall be imprisoned in a state correctional facility not less than three nor more than
38 five years.

39 (e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
40 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
41 given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and,
42 upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be
43 confined in jail not more than one year. A person who is convicted of a second offense of violation

44 of this section is guilty of a felony and shall be fined not less than \$1000 nor more than \$2,000,
45 or shall be imprisoned in a state correctional facility for not less than one year nor more than three
46 years, or both fined and imprisoned. A person who is convicted of a third and subsequent offense
47 of violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less
48 than \$2,000, nor more than \$5,000 and shall be imprisoned in a state correctional facility not less
49 than one nor more than five years.

50 (f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
51 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
52 given a clear visual or audible signal directing the person to stop, and who operates the vehicle
53 in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon
54 conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be
55 imprisoned in a state correctional facility not less than one nor more than five years. A person
56 who is convicted of a second offense of violation of this section is guilty of a felony and shall be
57 fined not less than \$1,000 nor more than \$2,000 or shall be imprisoned in a state correctional
58 facility for not less than one year nor more than 10 years, or both fined and imprisoned. A person
59 who is convicted of a third and subsequent offense of violation of this section is guilty of a felony
60 and, upon conviction thereof, shall be fined not less than \$2,000 nor more than \$5,000 and shall
61 be imprisoned in a state correctional facility not less than one nor more than 15 years.

62 (g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
63 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
64 given a clear visual or audible signal directing the person to stop, and who causes damage to the
65 real or personal property of a person during or resulting from his or her flight, is guilty of a
66 misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than
67 \$3,000 and shall be confined in jail for not less than six months nor more than one year. A person
68 who is convicted of a second offense of violation of this section is guilty of a felony and shall be
69 fined not less than \$3,000 nor more than \$5,000, or shall be imprisoned in a state correctional

70 facility for not less than one year nor more than three years, or both fined and imprisoned. A
71 person who is convicted of a third and subsequent offense of violation of this section is guilty of a
72 felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$8,000 and
73 shall be imprisoned in a state correctional facility not less than one nor more than five years.

74 (h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
75 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
76 given a clear visual or audible signal directing the person to stop, and who causes bodily injury to
77 a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,
78 shall be imprisoned in a state correctional facility not less than three nor more than 10 years. A
79 person who is convicted of a second offense of violation of this section is guilty of a felony and
80 shall be imprisoned in a state correctional facility for not less than five years nor more than 10
81 years. A person who is convicted of a third and subsequent offense of violation of this section is
82 guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
83 not less than five nor more than 15 years.

84 (i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
85 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
86 given a clear visual or audible signal directing the person to stop, and who causes death to a
87 person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,
88 shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A
89 person who is convicted of a second offense of violation of this section is guilty of a felony and
90 shall be imprisoned in a state correctional facility for not less than 10 years nor more than 20
91 years. A person who is convicted of a third and subsequent offense of violation of this section is
92 guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
93 not less than 15 nor more than 25 years. A person imprisoned, pursuant to this subsection, is not
94 eligible for parole prior to having served a minimum of three years of his or her sentence or the
95 minimum period required by §62-12-13 of this code, whichever is greater.

96 (j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement
97 officer, probation officer, or parole officer acting in his or her official capacity after the officer has
98 given a clear visual or audible signal directing the person to stop, and who is under the influence
99 of alcohol, controlled substances, or drugs, is guilty of a felony and, upon conviction thereof, shall
100 be imprisoned in a state correctional facility not less than three nor more than 10 years. A person
101 who is convicted of a second offense of violation of this section is guilty of a felony and shall be
102 imprisoned in a state correctional facility for not less than five years nor more than 15 years. A
103 person who is convicted of a third and subsequent offense of violation of this section is guilty of a
104 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less
105 than 10 nor more than 20 years. A conviction for a violation of this subsection shall be treated as
106 driving under the influence conviction for licensure purposes by the Division of Motor Vehicles.

107 (k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle,
108 motorboat, all-terrain vehicle, or snowmobile, as those terms are defined in §17A-1-1 of this code,
109 whether or not it is being operated on a public highway at the time and whether or not it is licensed
110 by the state.

111 (l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a
112 person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement
113 officer to maintain appropriate surveillance, for the purpose of complying with the officer's
114 direction to stop.

115 (m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the
116 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

117 (n) (1) No person, with the intent to purposefully deprive another person of emergency
118 services, may interfere with or prevent another person from making an emergency
119 communication, which a reasonable person would consider necessary under the circumstances,
120 to law-enforcement, fire, or emergency medical services personnel.

121 (2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is
122 not limited to, seizing, concealing, obstructing access to, or disabling or disconnecting a
123 telephone, telephone line, or equipment or other communication device.

124 (3) For the purpose of this subsection, the term "emergency communication" means
125 communication to transmit warnings or other information pertaining to a crime, fire, accident,
126 power outage, disaster, or risk of injury or damage to a person or property.

127 (4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction
128 thereof, shall be confined in jail for a period of not less than one day nor more than one year, or
129 shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

130 (5) A person who is convicted of a second offense under this subsection is guilty of a
131 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months
132 nor more than one year, or fined not less than \$500 nor more than \$3,000, or both fined and
133 confined.

134 (6) A person who is convicted of a third or subsequent offense under this subsection is
135 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six
136 months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined
137 and confined.

138 (7) In determining the number of prior convictions for purposes of imposing punishment
139 under this subsection, the court shall disregard all such prior convictions occurring more than 10
140 years prior to the offense in question.

141 (o) A person is guilty of filing a false complaint against a law-enforcement officer when,
142 knowing the information reported is false or baseless, he or she:

143 (1) Initiates a false complaint of improper action of a law-enforcement officer relating to an
144 incident or other circumstance; or

145 (2) Reports, by word or action, to any official or quasi-official agency, or organization
146 having the function of dealing with conduct of law-enforcement officers which did not occur, does
147 not in fact exist; or

148 (3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense
149 or incident which did not in fact occur.

150 Any person who violates this subsection is guilty of a misdemeanor and, upon conviction
151 thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both
152 fined and confined.