

HB # 4645

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. 4645

(By ~~Delegate~~ *Mr. Speaker, Mr. Chambers,*
and Delegates Reggs, Burk, Douglas
and Lowe)

Passed March 12, 1994

In Effect 90 Day From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4645
(By MR. SPEAKER, MR. CHAMBERS, AND
DELEGATES RIGGS, BURK, DOUGLAS AND ROWE)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the crime of stalking generally; establishing conditions under which following, harassing, or threatening constitutes stalking; definitions; misdemeanor and felony offenses and penalties therefor; definitions; labor exemption; conditions for probation, restraining orders, and bonds; alternative sentencing.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; penalties; definitions.

1 (a) Any person who knowingly, willfully, and repeat-
2 edly follows and harasses, or knowingly, willfully, and
3 repeatedly follows and makes a credible threat or
4 knowingly, willfully and repeatedly harasses and makes
5 a credible threat against a person with whom he or she
6 has, or in the past has had or with whom he or she seeks

7 to establish a personal or social relationship, whether or
8 not such intention is reciprocated, or against a member
9 of that person's immediate family, with the intent to
10 place that person in reasonable apprehension that he or
11 she or a member of his or her immediate family will
12 suffer death, bodily injury, sexual assault, battery or
13 kidnapping, is guilty of a misdemeanor and, upon
14 conviction thereof, shall be incarcerated in the county
15 or regional jail for not more than six months or fined
16 not more than one thousand dollars, or both.

17 (b) Notwithstanding the provisions of section ten,
18 article two-a, chapter forty-eight of this code, any person
19 who violates the provisions of subsection (a) of this
20 section in violation of an order entered by a circuit
21 court, magistrate court or family law master, in effect
22 and entered pursuant to sections thirteen or fifteen,
23 article two, chapter forty-eight of this code or sections
24 five or six, article two-a, chapter forty-eight is guilty of
25 a misdemeanor and, upon conviction thereof, shall be
26 incarcerated in the county jail for not less than ninety
27 days nor more than one year or fined not less than two
28 thousand dollars nor more than five thousand dollars, or
29 both.

30 (c) A second conviction for a violation of this section
31 occurring within five years of a prior conviction is
32 punishable by incarceration in the county jail for not
33 less than ninety days nor more than one year or fined
34 not less than two thousand dollars nor more than five
35 thousand dollars, or both.

36 (d) A third or subsequent conviction for a violation of
37 this section occurring within five years of a prior
38 conviction is a felony punishable by incarceration in the
39 penitentiary for not less than one year nor more than
40 five years or fined not less than three thousand dollars
41 nor more than ten thousand dollars, or both.

42 (e) Notwithstanding any provision of this code, any
43 person against whom a permanent restraining order
44 issued pursuant to subsection (i) of this section who is
45 convicted of a second or subsequent violation of the
46 provisions of this section shall be incarcerated in the

47 county jail for not less than six months nor more than
48 one year, or fined not less than two thousand dollars nor
49 more than five thousand dollars, or both.

50 (f) For the purposes of this section:

51 (1) "Harasses" means knowing and willful conduct
52 directed at a specific person which is done with the
53 intent to cause mental injury or emotional distress;

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

58 (3) "Bodily injury" means substantial physical pain,
59 illness or any impairment of physical condition;

60 (4) "Immediate family" means a spouse, parent, child,
61 sibling, or any person who regularly resides in the
62 household or within the prior six months regularly
63 resided in the household.

64 (g) Nothing in this section shall be construed to
65 prevent lawful assembly and petition for the redress of
66 grievances, including, but not limited to: any labor
67 dispute; demonstration at the seat of federal, state,
68 county or municipal government; activities protected by
69 the West Virginia Constitution or the United States
70 Constitution or any statute of this state or the United
71 States.

72 (h) Any person convicted under the provisions of this
73 section who is granted probation or for whom execution
74 or imposition of a sentence or incarceration is suspended
75 shall have as a condition of probation or suspension of
76 sentence that he or she participate in counseling or
77 medical treatment as directed by the court.

78 (i) Upon conviction, the court may issue an order
79 restraining the defendant from any contact with the
80 victim for a period not to exceed ten years. The length
81 of any restraining order shall be based upon the
82 seriousness of the violation before the court, the
83 probability of future violations, and the safety of the
84 victim or his or her immediate family. The duration of

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

89 (j) It shall be a condition of bond for any person
90 accused of the offense described in this section that the
91 person shall have no contact, direct or indirect, verbal
92 or physical, with the alleged victim.

93 (k) Nothing in this section shall be construed to
94 preclude a sentencing court from exercising its power
95 to impose home confinement with electronic monitoring
96 as an alternative sentence.

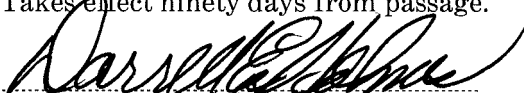
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

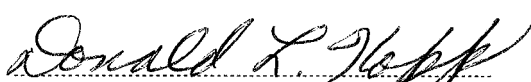

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Chairman Senate Committee


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Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

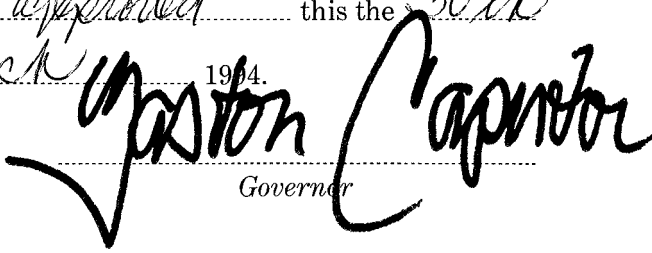

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Clerk of the Senate


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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

The within *is approved* this the *30th*
day of *March* 19*44*.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/94

Time 9:34 am