WEST VIRGINIA CODE: §61-2-28

§61-2-28. Domestic violence — criminal acts.

(a) Domestic battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member, or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than 12 months or fined not more than $2,000, or both fined and confined.

(b) Domestic assault. — Any person who unlawfully attempts to commit a violent injury against his or her family or household member, or unlawfully commits an act that places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months or fined not more than $500, or both fined and confined.

(c) Second offense. — Domestic assault or domestic battery.

A person convicted of a violation of subsection (a) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section or after having been convicted of a violation of §61-2-9 (a) (b) or (c) of this code, of §61-2-9d (b) or (c) of this code; or of §61-2-14g (a) of this code, where the victim was his or her current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of subsection (a) or (b) of this section, of §61-2-9 (a) (b) or (c) of this code; §61-2-9d (b) or (c) of this code; or §61-2-14g (a) of this code where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than 60 days nor more than one year or fined not more than $4,000, or both fined and confined.

A person convicted of a violation of subsection (b) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section or after having been convicted of a violation of §61-2-9 (a) (b) or (c) of this code; 61-2-9d (b) or (c) of this code; or §61-2-14g (a) of this article, where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of subsection (a) or (b) of this section; §61-2-9 (a) (b) or

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(c) of this code; §61-2-9d (b) or (c) of this code; or §61-2-14g(a) of this code where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense shall be confined in jail for not less than 30 days nor more than six months or fined not more than $1,000, or both fined and confined.

(d) Any person who has been convicted of a third or subsequent violation of the provisions of subsection (a) or (b) of this section or a third or subsequent violation of the provisions of §61-2-9 of this code, §61-2-9d of this code, or section §61-2-14g of this article, where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of subsection (a) or (b) of this section or a violation of the provisions of §61-2-9 of this code, §61-2-9d of this code, or section §61-2-14g of this article in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or any combination of convictions or diversions for these offenses, is guilty of a felony if the offense occurs within 20 years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined in a state correctional facility not less than two nor more than 10 years or fined not more than $5,000, or both fined and confined.

(e) As used in this section, "family or household member" means "family or household member" as defined in §48-27-204 of this code.

(f) A person charged with a violation of this section may not also be charged with a violation of §61-2-9 (b) or (c) of this code for the same act.

(h) No law-enforcement officer may be subject to any civil or criminal action for false arrest or unlawful detention for effecting an arrest pursuant to this section or pursuant to §48-27-1002 of this code.

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