

# WEST VIRGINIA CODE: §61-2-9

## **§61-2-9. Malicious or unlawful assault; assault; battery; penalties.**

(a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by confinement in a state correctional facility not less than two nor more than ten years. If the act is done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony and, upon conviction thereof, shall either be imprisoned in a state correctional facility not less than one nor more than five years, or be confined in jail not exceeding twelve months and fined not exceeding \$500.

(b) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act that places another 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 \$100, or both fined and confined.

(c) Battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally causes physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than twelve months or fined not more than \$500, or both fined and confined.

(d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in the ten years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of this section where the victim was a current or former spouse, current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward at the time of the offense or convicted of a violation of section twenty-eight of this article or has served a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or section twenty-eight of this article when the victim has a present or past relationship, upon conviction, is subject to the penalties set forth in section twenty-eight of this article for a second, third or subsequent criminal act of domestic violence offense, as appropriate.