WEST VIRGINIA CODE CHAPTER 61 ARTICLE 2

WV Legislature

§61-2-1. First and second degree murder defined; allegations in indictment for homicide.

Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in article four, chapter sixty-a of this code, is murder of the first degree. All other murder is murder of the second degree.

In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately and unlawfully slay, kill and murder the deceased.

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§61-2-2. Penalty for murder of first degree.

Murder of the first degree shall be punished by confinement in the penitentiary for life.

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§61-2-3. Penalty for murder of second degree.

Murder of the second degree shall be punished by a definite term of imprisonment in the penitentiary which is not less than 15 nor more than 60 years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of 15 years of his or her sentence or the minimum period required by the provisions of §62-12-13 of this code, whichever is greater.

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§61-2-4. Voluntary manslaughter; penalty.

Voluntary manslaughter shall be punished by a definite term of imprisonment in the penitentiary which is not less than five nor more than 25 years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of five years of his or her sentence or the minimum period required by the provisions of §62-12-13 of this code, whichever is greater.

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§61-2-5. Involuntary manslaughter; penalty.

Involuntary manslaughter is a misdemeanor and, any person convicted thereof shall be confined in jail not to exceed one year, or fined not to exceed $1,000, or both, in the discretion of the court.

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§61-2-5a. Concealment of deceased human body; penalty.

(a) Any person who, by any means, knowingly and willfully conceals, attempts to conceal or who otherwise aids and abets any person to conceal a deceased human body where death occurred as a result of criminal activity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than five years and fined not less than $1,000, nor more than $5,000.

(b) It shall be a complete defense in a prosecution pursuant to subsection (a) of this section that the defendant affirmatively brought to the attention of law enforcement within forty-eight hours of concealing the body and prior to being contacted regarding the death by law enforcement the existence and location of the concealed deceased human body.

(c) The provisions of subsection (a) of this section do not apply to practitioners regulated by the provisions of article six, chapter thirty of this code or their agents while acting in their lawful professional capacities.

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§61-2-6. Homicide punishable within state if injury occurs within and death without, or vice versa.

If any person be stricken, wounded or poisoned in, and die by reason thereof out of, this state, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county in which the stroke, wound or poison was given or administered. And if any person be stricken, wounded or poisoned out of this state, and die by reason thereof within this state, the offender shall be as guilty, and may be prosecuted and punished, as if the mortal stroke or wound had been given, or poison administered, in the county in which the person so stricken, wounded or poisoned may so die.

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§61-2-7. Attempt to kill or injure by poison; penalty.

If any person administer, or attempt to administer, any poison or other destructive thing in food, drink, medicine or otherwise, or poison any spring, well, reservoir, conduit or pipe of water, with intent to kill or injure another person, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than three nor more than eighteen years.

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§61-2-8. Abortion; penalty.

(a) Any person other than a licensed medical professional, as defined in §16-2R-2 of this code, who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, as defined in §16-2R-2 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(b) A person who was formerly a licensed medical professional, as defined in §16-2R-2 of this code and whose license has been revoked pursuant to the provisions of §16-2R-7 of this code, and who knowingly and willfully performs, induces, or attempts to perform or induce a subsequent abortion, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(c) This section shall not be construed to subject any pregnant female upon whom an abortion is performed or induced or attempted to be performed or induced to a criminal penalty for any violation of this section as a principal, accessory, accomplice, conspirator, or aider and abettor.

(d) The amendments to this section enacted during the third extraordinary session of the Legislature, 2022, shall be effective 90 days from passage.

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§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.

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

(a) Stalking. — Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, confined in jail for not more than six months, or both fined and confined.

(b) Harassment. — Any person who harasses, or repeatedly makes credible threats against another 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 $1,000, or both fined and confined.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-601, or §48-27-403 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than 90 days nor more than one year, or fined not less than $2,000 nor more than $5,000, or both fined and confined.

(d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and imprisoned.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-27-501 of this code, who has been served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, shall be guilty of a felony and, upon conviction thereof, be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and imprisoned.

(f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been previously served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, is guilty of a felony and , upon conviction thereof, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and confined.

(g) Notwithstanding any provision of this code to the contrary, any person who harasses or stalks another person with the intent to cause the person to physically injure himself or herself, or to take his or her own life, or who continues to harass or stalk another, knowing or having reason to know that the person is likely to physically injure himself or herself, or to take his or her own life based, in whole or in part, on such harassment or stalking, is guilty

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of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two years nor more than 10 years.

(h) For the purposes of this section:

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

(2) "Course of conduct" means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third party by any action, method, device, or means:

(A) Follows, monitors, observes, surveils, or threatens a specific person or persons;

(B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or

(C) Interferes with or damages a person’s property or pet;

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

(4) "Harasses" means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress and which serves no legitimate or lawful purpose;

(5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

(6) "Repeatedly" means on two or more occasions.

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

(j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(k) It is a condition of bond for any person accused of the offenses described in this section

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that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-1 *et seq*. of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

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§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.

Any person who, under the provisions of section nine of this article, maliciously assaults a child sixteen years of age or under within one thousand feet of a school is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

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§61-2-9c. Wanton endangerment involving the use of fire; penalty.

Any person who, during the manufacture or production of an illegal controlled substance uses fire, the use of which creates substantial risk of death or serious bodily injury to another due to the use of fire, is guilty of a felony and, upon conviction, shall be committed to the custody of the Division of Corrections for a definite term of years of not less than one nor more than five years or, in the discretion of the court, confined in the regional jail for not more than one year, or fined not less than $250 or more than $2,500, or both.

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§61-2-9d. Strangulation; suffocation and asphyxiation; definitions; penalties.

(a) As used in this section:

"Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

"Strangle" means knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat;

"Suffocate" means knowingly and willfully restricting the normal breathing or circulation of blood by blocking the nose or mouth of another; and

"Asphyxiate" means knowingly and willfully restricting the normal breathing or circulation of blood by the application of pressure on the chest or torso.

(b) Any person who strangles, suffocates or asphyxiates another without that person’s consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,500 or imprisoned in a state correctional facility not less than one year or more than five years, or both fined and imprisoned.

(c) Notwithstanding subsection (b) of this section, any person who, without the consent of the other person, strangles, suffocates, or asphyxiates: (1) A family or household member, as defined in §48-27-204 of this code; or (2) any other person during the commission of conduct that constitutes, or could reasonably be charged as, a violation of §61-8-12 of this code, or any felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code, and thereby causes bodily injury or loss of consciousness, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years.

(d) Any person who violates the provisions of this section and has been previously convicted under this section, or under a law of another jurisdiction which requires proof of substantially similar elements, shall, upon conviction, be imprisoned in a state correctional facility for not less than three nor more than 15 years.

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§61-2-10. Assault during commission of or attempt to commit a felony; penalty.

If any person in the commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person, he shall be guilty of a felony and, upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than two nor more than ten years, or be confined in jail not exceeding one year and be fined not exceeding $1,000.

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§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

(a) If any person be convicted and sentenced for an offense defined under the provisions of section nine or ten of this article, and if the person shall have committed such offense against a person who is sixty-five years of age or older, then the sentence shall be mandatory and shall not be subject to suspension or probation: Provided, That the court may, in its discretion, suspend the sentence and order probation to any person so convicted upon condition that such person perform public service for a period of time deemed appropriate by the court: Provided, however, That the public service may not be rendered in or about facilities or programs providing care or services for the elderly: Provided further, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person committed to a term of one year or less.

(b) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the commission or attempted commission of a felony against a victim sixty-five years of age or older shall not be applicable unless such fact is: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter is tried before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.

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§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees and emergency medical service personnel; definitions; penalties.

(a) For purposes of this section:

(1) "Government representative" means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision of this state.

(2) "Health care worker" means any nurse, nurse practitioner, physician, physician assistant, or technician practicing at, and all persons employed by or under contract to a hospital, county, or district health department, long-term care facility, physician's office, clinic, or outpatient treatment facility.

(3) "Emergency service personnel" means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

(4) "Utility worker" means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative, or interstate pipeline.

(5) "Law-enforcement officer" has the same definition as this term is defined in §30-29-1 of this code, except for purposes of this section, "law-enforcement officer" additionally includes those individuals defined as "chief executive" in §30-29-1 of this code.

(6) "Correctional employee" means any individual employed by the West Virginia Division of Corrections and Rehabilitation, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile Services and an employee of an entity providing services to incarcerated, detained, or housed persons pursuant to a contract with such agencies.

(b) Malicious assault. — Any person who maliciously shoots, stabs, cuts, or wounds or by any means causes bodily injury with intent to maim, disfigure, disable, or kill a government representative, health care worker, utility worker, emergency service personnel, correctional employee, or law-enforcement officer acting in his or her official capacity, and the person committing the malicious assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years.

(c) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts, or wounds or by any means causes a government representative, health care worker, utility worker, emergency service personnel, correctional employee, or law-enforcement officer acting in his or her official capacity bodily injury with intent to maim, disfigure, disable, or

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kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years.

(d) Battery. — Any person who unlawfully, knowingly, and intentionally makes physical contact of an insulting or provoking nature with a government representative, health care worker, utility worker, emergency service personnel, correctional employee, or law-enforcement officer acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be fined not more than $500 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned in a state correctional facility not less than five years nor more than 10 years, or both fined and imprisoned.

(e) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of a government representative, health care worker, utility worker, emergency service personnel, correctional employee, or law-enforcement officer, acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully commits an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than three years or fined not more than $200, or both fined and imprisoned.

(f) Any person convicted of any crime set forth in this section who is incarcerated in a facility operated by the West Virginia Division of Corrections and Rehabilitation or the West Virginia Regional Jail Authority, or is in the custody of the Division of Juvenile Services and is at least 18 years of age or subject to prosecution as an adult, at the time of committing the offense and whose victim is a correctional employee may not be sentenced in a manner by which the sentence would run concurrent with any other sentence being served at the time the offense giving rise to the conviction of a crime set forth in this section was committed.

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§61-2-11. Unlawful shooting at another in street, alley or public resort; penalty.

If any person unlawfully shoot at another person in any street or alley in a city, town or village, or in any place of public resort, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months nor more than three years, and be fined not less than $100 nor more than $1,000.

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§61-2-12. Robbery or attempted robbery; penalties.

(a) Any person who commits or attempts to commit robbery by: (1) Committing violence to the person, including, but not limited to, partial strangulation or suffocation or by striking or beating; or (2) uses the threat of deadly force by the presenting of a firearm or other deadly weapon, is guilty of robbery in the first degree and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten years.

(b) Any person who commits or attempts to commit robbery by placing the victim in fear of bodily injury by means other than those set forth in subsection (a) of this section or any person who commits or attempts to commit robbery by the use of any means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device, is guilty of robbery in the second degree and, upon conviction thereof, shall be confined in a correctional facility for not less than five years nor more than eighteen years.

(c) If any person: (1) By force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten nor more than twenty years; and (2) if any person in committing, or in attempting to commit, any offense defined in the preceding clause (1) of this subsection, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, disabling chemical substance or an electronic shock device, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten years nor more than twenty-five years.

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§61-2-13. Extortion or attempted extortion by threats; penalties.

(a) A person who threatens, by direct threat, indirect threat, or innuendo, injury to the character, person, property, or any other thing of value of another person, or to the character, person, property, or any other thing of value of his or her spouse, child, or family or household member, as defined in §48-27-204 of this code, residing in the household at the time of the offense, or accuses him or her or them of a criminal offense, and thereby obtains anything of value, or other consideration, or compels the other person, against the other person's will, to perform any act, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years. A person who makes such threat of injury or accusation of an offense as set forth in this subsection, but fails to obtain anything of value or other consideration, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than three years and fined not less than $1,000 nor more than $5,000, or both fined and imprisoned.

(b) For purposes of this section, "consideration" includes sexual contact, sexual intercourse, and sexual intrusion as defined in §61-8B-1 of this code, and private images as defined in §61-8B-6 of this code.

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§61-2-14. Abduction of person; kidnapping or concealing child; penalties.

(a) Any person who takes away another person, or detains another person against such person's will, with intent to marry or defile the person, or to cause the person to be married or defiled by another person; or takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.

(b) Any person, other than the father or mother, who illegally, or for any unlawful, improper or immoral purpose other than the purposes stated in subsection (a) of this section or section fourteen-a or fourteen-c of this article, seizes, take or secretes a child under sixteen years of age, from the person or persons having lawful charge of such child, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years.

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§61-2-14a. Kidnapping; penalty.

(a) Any person who unlawfully takes custody of, conceals, confines, transports, or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation, or enticement with the intent to:

(1) Hold another person for ransom, reward, or concession;

(2) Inflict bodily injury;

(3) Terrorize the victim or another person; or

(4) Use another person as a shield or hostage, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment by the Division of Corrections and Rehabilitation for life, and, notwithstanding the provisions of §62-12-1 *et seq*. of this code, is not eligible for parole.

(b) The following exceptions apply to the penalty contained in subsection (a) of this section:

(1) A jury may, in their discretion, recommend mercy, and if the recommendation is added to their verdict, the person is eligible for parole in accordance with the provisions of §62-12-1 *et seq*. of this code;

(2) If the person pleads guilty, the court may, in its discretion, provide that the person is eligible for parole in accordance with the provisions of §62-12-1 *et seq*. of this code and, if the court so provides, the person is eligible for parole in accordance with the provisions of said article, in the same manner and with like effect as if the person had been found guilty by the verdict of a jury and the jury had recommended mercy;

(3) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but after ransom, money, or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be imprisonment by the Division of Corrections and Rehabilitation for a definite term of years not less than 20 nor more than 50; or

(4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money, or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be imprisoned by the Division of Corrections and Rehabilitation for a definite term of years not less than 10 nor more than 30.

(c) For purposes of this section, "to use another as a hostage" means to seize or detain and threaten to kill or injure another in order to compel a third person or a governmental organization to do, or abstain from doing, any legal act as an explicit or implicit condition for the release of the person detained.

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(d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a minor abducted or held hostage and he or she is not motivated by monetary purposes, but rather intends to conceal, take, remove the child, or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do so, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than five years or fined not more than $1,000, or both imprisoned and fined.

(e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the State Police and each agency so notified, shall cooperate in the investigation immediately.

(f) It is a defense to a violation of subsection (d) of this section, that the accused's action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law enforcement, or to the Child Protective Services Division of the Department of Human Services.

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§61-2-14b. Venue of offenses under §§61-2-14 and 61-2-14a.

In the case of every offense committed in violation of the provisions of section fourteen and section fourteen-(a) of this article, regardless of whether the offense originated within or without this state, the venue of the offense shall lie in the county where the person was taken, or induced to go away or otherwise kidnapped, in the county where such person was held or detained, or in the county through which such person was conducted or transported.

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§61-2-14c. Penalty for threats to kidnap or demand ransom.

If any person, with intent to extort from any other person any ransom, money or other thing, or any concession or advantage of any sort, shall, by speech, writing, printing, drawing or any other method or means of communication, directly or indirectly threaten to take away forcibly or by stealth or otherwise kidnap any person, or shall directly or indirectly demand, orally or in writing, or by any other method or means of communication, any ransom, money or other thing, or any concession or advantage of any sort, on a threat to take away forcibly or by stealth or otherwise kidnap any person, he shall be guilty of a felony, and, upon conviction, shall be punished with confinement in the penitentiary for any term of years not less than five.

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§61-2-14d. Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses.

(a) Any person who conceals, takes or removes a minor child in violation of any court order an with the intent to deprive another person of lawful custody or visitation right shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years, or in the discretion of the court, shall be imprisoned in the county jail not more than one year of fined not more than $1,000, or both fined and imprisoned.

(b) Any person who violates this section and in so doing removes the minor child from this state or conceals the minor child in another state shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years, or fined not more than $1,000, or both fined and imprisoned.

(c) It shall be a defense under this section that the accused reasonably believed such action was necessary to preserve the welfare of the minor child. The mere failure to return a minor child at the expiration of any lawful custody or visitation period without the intent to deprive another person of lawful custody or visitation rights shall not constitute an offense under this section.

WV Legislature

§61-2-14e. One aiding or abetting in offense under §61-2-14, §61-2-14a, §61-2-14c or §61-2-14d guilty as principal; venue.

If any person in any way knowingly aid or abet any other person in the commission of any offense described in section fourteen, fourteen-a, fourteen-c or fourteen-d of this article, either as accessory before or an accessory after the fact, such person so aiding and abetting shall be guilty as a principal in the commission of such offense and shall be punished in the same manner and to the same extent as is provided in said sections for the person who committed the offense. The venue of any offense committed in violation of the provisions of this section shall be as provided in section seven, article eleven of this chapter.

WV Legislature

§61-2-14f. Penalties for abduction of a child near a school.

Any person who, under the provisions of section fourteen of this article, abducts a child sixteen years of age or under within one thousand feet of a school is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

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§61-2-14g. Unlawful restraint; penalties.

(a) Any person who, without legal authority intentionally restrains another with the intent that the other person not be allowed to leave the place of restraint and who does so by physical force or by overt or implied threat of violence or by actual physical restraint but without the intent to obtain any other concession or advantage as those terms are used in section fourteen-a of this article is guilty of a misdemeanor and, upon conviction shall be confined in jail for not more than one year, fined not more than $1,000, or both.

(b) In any prosecution under this section, it is an affirmative defense that:

(1) The defendant acted reasonably and in good faith to protect the person from imminent physical danger; or

(2) The person restrained was a child less than eighteen years old and that the actor was a parent or legal guardian, or a person acting under authority granted by a parent or legal guardian of such child, or by a teacher or other school personnel acting under authority granted by section one, article five, chapter eighteen-a of this code, and that his or her sole purpose was to assume control of such child.

(c) As used in this section to "restrain" means to restrict a persons movement without his or her consent.

(d) This section shall not apply to acts done by a law-enforcement officer in the lawful exercise of his or her duties.

WV Legislature

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives, or agrees to give to another person money, property, service, or other thing of value in consideration for the recipient's locating, providing, or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(b) Any person who knowingly receives, accepts, or offers to accept money, property, service, or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in the state correctional facility for not less than one year nor more than 10 years or, in the discretion of the court, be confined in jail not more than one year and fined not less than $2,000 nor more than $10,000.

(d) A child whose parent, guardian, or custodian has sold or attempted to sell said child in violation of the provisions of §48-22-1 *et seq*. of this code may be deemed an abused child as defined by §49-1-201 of this code. The court may place such a child in the custody of the Department of Human Services or with another responsible person as dictated by the best interests of the child.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the Department of Human Services or any licensed or duly authorized adoption or child-placing agency;

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth, and adoption proceedings;

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother; or

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement, or placement of a minor child for adoption.

(f) At the final hearing on the adoption as provided in §48-22-1 *et seq*. of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.

WV Legislature

§61-2-15. Assault, battery on school employees; penalties.

(a) If any person commits an assault: (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than five days nor more than six months and fined not less than $50 nor more than $100.

(b) If any person commits a battery: (1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than ten days nor more than twelve months and fined not less than $100 nor more than $500.

(c) For the purposes of this section, “school employee” means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a “school employee” includes a student teacher.

WV Legislature

§61-2-15a. Assault, battery on athletic officials or participants; penalties.

(a) If any person commits an assault as defined in §61-2-9(b) of this code to the person of an athletic official or participant during the time the official or person is acting as an athletic official or participant, the offender is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250, nor more than $500 or confined in jail not more than six months, or both fined and confined.

(b) If any person commits a battery, as defined in §61-2-9(c) of this code against an athletic official or participant during the time the official or person is acting as an athletic official or participant, the offender is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, nor more than $1,000 or confined in jail not more than one year, or both fined and confined.

(c) For the purpose of this section, "athletic official or participant" means a player on a sports team, a person at a sports event who enforces the rules of that event, including, but not limited to, an umpire or referee, or a person who supervises the participants, including, but not limited to, a coach, school administrator, assistant coach, or any other official team members during the course of a game or related event.

(d) In addition to the criminal penalties set forth in this section, a county board of education or a governing board for a state institution of higher education may provide written notification to any person convicted of an offense under subsection (a) or subsection (b) of this section that he or she is banned from all state school sports events or school-sponsored sports events as a result of the conviction for a minimum of one year. Any person receiving the written notification set forth in this subsection who refuses to leave the premises of any state school sports event or school-sponsored sports event upon request is subject to prosecution pursuant to the provisions of §61-3B-1 and §61-3B-2 of this code.

(e) Participants who are players on a sports team in the game are exempt from prosecution under this section for acts, including, but not limited to, hard fouls, committed during the sporting event, provided the participant acts within the scope of the rules or nature of the sport.

WV Legislature

§61-2-16. Injury to passenger by person in charge of public conveyance or boat; penalty.

If any driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, shall, in the management of such vehicle or boat, willfully or negligently inflict bodily injury on any person, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than six months, or be fined not exceeding $500, or both.

WV Legislature

§61-2-16a. Malicious assault; unlawful assault; battery and recidivism of battery; assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance.

(a) Malicious assault. -- Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill any driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) Unlawful assault. -- Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes any driver, conductor, motorman, captain or other person in charge of any vehicle, aircraft or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(c) Battery. -- Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, in such capacity, and the person committing the battery knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one month nor more than twelve months, fined the sum of $500, or both. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than three years or fined the sum of $1,000 or both fined and confined. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than two years nor more than five years or fined not more than $2,000 or both fined and confined.

(d) Assault. -- Any person who unlawfully attempts to commit a violent injury to the person of a driver, conductor, motorman, captain or other person in charge of any vehicle or boat,

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driven by steam, electricity, gasoline or other motive power and used for public conveyance, acting in his or her official capacity, or unlawfully commits an act which places a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, acting in his or her official capacity, in reasonable apprehension of immediately receiving a violent injury, and the person committing the assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than twenty-four hours nor more than six months, fined not more than $200, or both fined and confined.

WV Legislature

§61-2-17

Repealed

Acts, 2017 Reg. Sess., Ch. 129.

WV Legislature

§61-2-18.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

WV Legislature

§61-2-19.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

WV Legislature

§61-2-20.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

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§61-2-21.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

WV Legislature

§61-2-22.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

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§61-2-23.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

WV Legislature

§61-2-24.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

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§61-2-25.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

WV Legislature

§61-2-26. Doors to be removed from abandoned refrigerators, freezers and other appliances; penalties.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length greater than two feet without first removing all entry doors therefrom.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $200, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

Justices of the peace shall have jurisdiction of cases arising hereunder concurrent with courts of record.

WV Legislature

§61-2-27. Required reporting of gunshot and other wounds.

(a) Any medical provider who provides medical treatment to a person suffering from a wound caused by a gunshot or a knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe resulted from a violation of the criminal laws of this state, shall report the same to a law-enforcement agency located within the county within which such wound is treated. The report shall be made initially by telephone and shall be followed by a written report delivered to such agency within forty-eight hours following the initial report: Provided, That where two or more persons participate in the medical treatment of such wound, the obligation to report imposed by this section shall apply only to the attending physician or, if none, to the person primarily responsible for providing the medical treatment.

(b) Any medical provider person who in good faith reports a wound described in subsection (a) of this section shall be immune from any civil liability which may otherwise result solely from reporting the same.

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§61-2-27a. Required reporting of burns.

(a) Any health care provider who examines or renders medical treatment to a person suffering from an injury caused by a burn resulting from fire or a chemical, where the circumstances under which the examination is made or treatment is rendered, or where the condition of the injury gives the health care provider reasonable cause to suspect that the injury occurred during the commission, or attempted commission, of an arson as defined in article three of this chapter, shall report the same to the office of the state Fire Marshal. A written report shall be made by the provider, or by an employee or agent of the provider at the direction of the provider, to the office of the state Fire Marshal within forty-eight hours after the initial report: Provided, That where two or more health care providers participate in the examination or treatment of such injury, the obligation to report imposed by this section applies only to the attending physician or, if none, to the person primarily responsible for providing medical treatment for the injury.

(b) Any health care provider who in good faith makes or causes to be made a report pursuant to subsection (a) of this section is immune from any civil liability which may otherwise arise as the result of making such report.

(c) Within available funding and as may be determined necessary by the state Fire Marshal, the state Fire Marshal shall conduct educational programs for persons required to report injuries under this section.

WV Legislature

§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 (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

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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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§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties.

(a) The following words and phrases have the meanings ascribed to them when used in this section and §61-2-29a and §61-2-29b of this code, unless the context clearly indicates otherwise.

"Abuse" means the intentional infliction of bodily injury on an incapacitated adult.

"Bodily injury" means substantial physical pain, illness, or any impairment of physical condition.

"Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of an incapacitated adult or has voluntarily assumed responsibility for the care of an incapacitated adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for, the care of an incapacitated adult.

"Gross neglect" or “grossly neglects” means reckless or intentional conduct, behavior, or inaction by a caregiver that evidences a clear disregard for the health, safety, or welfare of an incapacitated adult.

"Incapacitated adult" means any person 18 years of age or older who, because of advanced age, physical, mental, or other infirmity, is unable to carry out the daily activities of life necessary to sustaining life and reasonable health.

"Neglect" means the unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(b) Any person who neglects an incapacitated adult or any caregiver who knowingly permits another person to neglect an incapacitated adult is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or confined in jail for not more than one year, or both fined and confined.

(c) Any person who grossly neglects an incapacitated adult or any caregiver who knowingly permits another person to grossly neglect an incapacitated adult is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or confined in jail for not less than 60 days nor more than one year, or both fined and confined.

(d) Any person who abuses an incapacitated adult or any caregiver who knowingly permits another person to abuse an incapacitated adult is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or confined in jail for not less than 90 days nor more than one year, or both fined and confined.

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(e) Any person who abuses, grossly neglects, or neglects an incapacitated adult and by that abuse, gross neglect, or neglect creates a substantial risk of serious bodily injury or death to the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(f) Any person who abuses, grossly neglects, or neglects an incapacitated adult and causes the incapacitated adult bodily injury is guilty of a felony and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 and imprisoned in a state correctional facility not less than two years nor more than 10 years.

(g) Any person who abuses, grossly neglects, or neglects an incapacitated adult and causes the incapacitated adult serious bodily injury is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 and imprisoned in a state correctional facility not less than three years nor more than 15 years.

(h) Nothing in this section nor in §61-2-29a of this code may be construed to mean an adult is abused or neglected for the sole reason that his or her independent decision is to rely upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment.

(i) Nothing in this section nor §61-2-29a of this code may be construed to mean an incapacitated adult is abused or neglected if deprivation of life-sustaining treatment or other act has been provided for by the West Virginia Health Care Decisions Act, pursuant to §16-30-1 *et seq*. of this code.

(j) An offense under this section is a separate and distinct offense in addition to any other offenses set forth in this code.

WV Legislature

§61-2-29a. Death of an incapacitated adult.

(a) Any person who neglects an incapacitated adult causing death of the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 and be imprisoned in a state correctional facility for a definite term of not less than five nor more than 15 years.

(b) A caregiver of an incapacitated adult who causes the death of an incapacitated adult by knowingly allowing any other person to neglect the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 and be imprisoned in a state correctional facility for a definite term of not less than five nor more than 15 years.

(c) Any person who grossly neglects an incapacitated adult causing death of the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 and be imprisoned in a state correctional facility for a definite term of not less than five nor more than 25 years.

(d) Any caregiver of an incapacitated adult who causes the death of an incapacitated adult by knowingly allowing any other person to grossly neglect the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 and be imprisoned in a state correctional facility for a definite term of not less than five nor more than 25 years.

(e) Any person who abuses the incapacitated adult which causes the death of the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of not less than five nor more than 40 years.

(f) A caregiver of an incapacitated adult who causes the death of the incapacitated adult by knowingly allowing any other person to abuse the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of not less than five nor more than 40 years.

(g) The provisions of this section do not apply to any person, caregiver or health care provider who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse to supply an incapacitated adult with necessary medical care when the medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the incapacitated adult is an adherent member.

(h) An offense under this section is a separate and distinct offense in addition to any other offenses set forth in this code.

WV Legislature

§61-2-29b. Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

(a) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of less than $1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of $1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 and imprisoned in a state correctional facility not less than two nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(d) In determining the value of the money, goods, property, or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where the money, goods, property, or services were fraudulently obtained as part of a common scheme or plan.

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by §61-2-29 of this code;

(2) "Elderly person" means a person who is 65 years or older;

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(3) "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) "Protected person" means any person who is defined as a "protected person" in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq*. or §44C-1-1 *et seq*. of this code.

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee, or attorney for, or holding power of attorney for, an elderly person, protected person, or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

(j) Any person who willfully violates a material term of an order entered pursuant to §55-7J-1 *et seq*. of this code is guilty of a misdemeanor and, upon conviction, shall:

(1) For the first offense, be fined not more than $1,000 or confined in jail not more than 90 days, or both fined and confined; and

(2) For a second or subsequent offense, be fined not more than $2,500 or confined in jail not more than one year, or both fined and confined.

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§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

(a) This section may be known and cited as the Unborn Victims of Violence Act.

(b) For the purposes of this article, the following definitions shall apply: *Provided*, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section.

(1) "Embryo" means the developing human in its early stages. The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization or 10 weeks after the onset of the last menstrual period.

(2) "Fetus" means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth.

(c) For purposes of enforcing the provisions of §20-7-18a, §61-2-1, §61-2-4, §61-2-7, §61-2-9(a), §61-2-9(c), §61-2-10, §61-2-10b, §61-2-28(a), and §17C-5-1, §17C-5-2(b), or §17C-5-2(c) of this code, a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims.

(d) Exceptions. — The provisions of this section do not apply to:

(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law;

(2) Acts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing or fertility treatment;

(3) Acts or omissions by medical or health care personnel or scientific research personnel in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

(4) Acts involving the use of force in lawful defense of self or another, but not an embryo or fetus; and

(5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying.

(e) For purposes of the enforcement of the provisions of this section, a violation of the provisions of Chapter 16, Article 2I of this code shall not serve as a waiver of the protection afforded by the provisions of subdivision (1), subsection (d) of this section.

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(f) Other convictions not barred. — A prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant arising from the same incident.

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§61-2-31. Prohibiting violations of an individual's right to seek appropriate medical treatment or medical forensic care related to a sexual offense; coercion to have an illegal abortion; conspiracy; definitions.

(a) All persons within the boundaries of the State of West Virginia have the right to seek appropriate medical treatment permitted under West Virginia law or medical forensic care related to a sexual offense, without delay, in a private, age-appropriate, or developmentally appropriate space required to ensure the health, safety, and welfare of the victim of the sexual offense.

(b) If any person by force or threat of force willfully injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, or oppresses or threatens any other person in the free exercise of the right to seek appropriate medical treatment permitted under West Virginia law or medical forensic care to obtain biological evidence, as defined in §15-9B-1a of this code and consistent with §16-2R-1 *et seq*. of this code, related to a sexual offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 15 years, or fined not more than $50,000, or both fined and confined.

(c) Any person who knowingly and intentionally forces or coerces a victim of a sexual offense which results in the pregnancy of the victim to have an illegal abortion in violation of the provisions of §16-2R-1 *et seq*. of this code is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 15 years, or fined not more than $50,000, or both fined and confined.

(d) It is unlawful for two or more persons to conspire to commit an offense in violation of subsections (b) or (c) of this section. Any person who violates this section by conspiring to commit an offense in violation of subsections (b) or (c) of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 15 years, or fined not more than $50,000, or both fined and confined. Nothing in this subsection shall be construed to impart criminal liability on the victim of the sexual offense.

(e) For purposes of this section:

(1) "Force or coerce" means committing, attempting to commit, or threatening to commit physical harm to a woman, the unborn child, or another individual where such conduct is intended to compel the woman to have an abortion against her will: *Provided*, That the provision of information, counseling, or assistance regarding alternatives to an abortion does not constitute either force or coercion.

(2) "Sexual offense" includes the listed offenses as that term is defined in §15-9B-1a of this code and any violation of §61-14-1 *et seq*. of this code which includes an element of sexual servitude, commercial sexual activity, or other sexual exploitation.

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