

HB 4484

FILED

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OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4484

(By Delegates Webster, Mahan, Fleischauer, Hrutkay, Guthrie,
Long, Staggers, Shook, Vamer, Brown and Pino)

Passed March 8, 2008

In Effect Ninety Days from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4484

(BY DELEGATES WEBSTER, MAHAN, FLEISCHAUER, HRUTKAY,
GUTHRIE, LONG, STAGGERS, SHOOK, VARNER, BROWN AND PINO)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, all relating to the criminal offense of stalking, including penalties.

Be it enacted by the Legislature of West Virginia:

That §61-2-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

- 1 (a) Any person who repeatedly follows another knowing
- 2 or having reason to know that the conduct causes the person
- 3 followed to reasonably fear for his or her safety or suffer
- 4 significant emotional distress, is guilty of a misdemeanor
- 5 and, upon conviction thereof, shall be incarcerated in the

6 county or regional jail for not more than six months or fined
7 not more than one thousand dollars, or both.

8 (b) Any person who repeatedly harasses or repeatedly
9 makes credible threats against another is guilty of a
10 misdemeanor and, upon conviction thereof, shall be
11 incarcerated in the county or regional jail for not more than
12 six months or fined not more than one thousand dollars, or
13 both.

14 (c) Notwithstanding any provision of this code to the
15 contrary, any person who violates the provisions of
16 subsection (a) or (b) of this section in violation of an order
17 entered by a circuit court, magistrate court or family court
18 judge, in effect and entered pursuant to part 48-5-501, et seq.,
19 part 48-5-601, et seq. or 48-27-403 of this code is guilty of a
20 misdemeanor and, upon conviction thereof, shall be
21 incarcerated in the county jail for not less than ninety days
22 nor more than one year or fined not less than two thousand
23 dollars nor more than five thousand dollars, or both.

24 (d) A second or subsequent conviction for a violation of
25 this section occurring within five years of a prior conviction
26 is a felony punishable by incarceration in a state correctional
27 facility for not less than one year nor more than five years or
28 fined not less than three thousand dollars nor more than ten
29 thousand dollars, or both.

30 (e) Notwithstanding any provision of this code to the
31 contrary, any person against whom a protective order for
32 injunctive relief is in effect pursuant to the provisions of
33 section five hundred one, article twenty-seven, chapter forty-
34 eight of this code who has been served with a copy of said
35 order or section six hundred eight, article five, chapter forty-
36 eight of this code who is convicted of a violation of the
37 provisions of this section shall be guilty of a felony and
38 punishable by incarceration in a state correctional facility for

39 not less than one year nor more than five years or fined not
40 less than three thousand dollars nor more than ten thousand
41 dollars, or both.

42 (f) For the purposes of this section:

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

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

49 (3) "Harasses" means willful conduct directed at a
50 specific person or persons which would cause a reasonable
51 person mental injury or emotional distress

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

57 (5) "Repeatedly" means on two or more occasions.

58 (g) Nothing in this section shall be construed to prevent
59 lawful assembly and petition for the lawful redress of
60 grievances, including, but not limited to: Any labor or
61 employment relations issue; demonstration at the seat of
62 federal, state, county or municipal government; activities
63 protected by the West Virginia constitution or the United
64 States Constitution or any statute of this state or the United
65 States.

66 (h) Any person convicted under the provisions of this
67 section who is granted probation or for whom execution or

68 imposition of a sentence or incarceration is suspended is to
69 have as a condition of probation or suspension of sentence
70 that he or she participate in counseling or medical treatment
71 as directed by the court.

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

82 (j) It is a condition of bond for any person accused of the
83 offense described in this section that the person is to have no
84 contact, direct or indirect, verbal or physical, with the alleged
85 victim.

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

90 (l) The Governor's Committee on Crime, Delinquency
91 and Correction, after consultation with representatives of
92 labor, licensed domestic violence programs and rape crisis
93 centers which meet the standards of the West Virginia
94 Foundation for Rape Information and Services, is authorized
95 to promulgate legislative rules and emergency rules pursuant
96 to article three, chapter twenty-nine-a of this code,
97 establishing appropriate standards for the enforcement of this
98 section by state, county, and municipal law-enforcement
99 officers and agencies.

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



Chairman Senate Committee



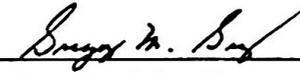
Chairman House Committee

Originating in the House.

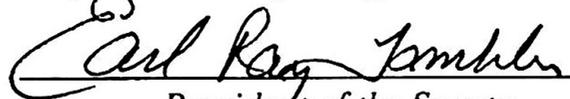
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

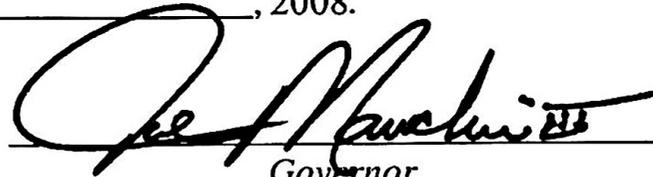


President of the Senate



Speaker of the House of Delegates

The within is approved this the 18th
day of April, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 3:05 p