

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5510

BY DELEGATES WINZENREID, GARCIA, FLUHARTY,
MCGEEHAN, ZATEZALO, WESTFALL, MALLOW, AND
KIMBLE

[Passed March 8, 2024; in effect ninety days from
passage.]

FILED

2024 MAR 26 P 2:35

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SECRETARY OF STATE

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1 AN ACT to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating
2 to offenses against public officers, public employees, jurors and witnesses; amending and
3 modifying the essential elements of the offenses of intimidation and retaliation; and
4 removing the requirement that there be predicate behavior.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

**§61-5-27. Intimidation of and retaliation against public officers and employees, jurors, and
witnesses; fraudulent official proceedings and legal processes against public
officials and employees; making public threats directed at inciting lawless action
penalties.**

1 (a) Definitions. — As used in this section:

2 "Fraudulent" means not legally issued or sanctioned under the laws of this state or of the
3 United States, including forged, false, and materially misstated;

4 "Legal process" means an action, appeal, document instrument, or other writing issued,
5 filed, or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a
6 judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person,
7 incarcerate a person, or direct a person to appear, perform, or refrain from performing a specified
8 act. "Legal process" includes, but is not limited to, a complaint, decree, demand, indictment,
9 injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena,
10 summons, warrant, or writ;

11 "Official proceeding" means a proceeding involving a legal process or other process of a
12 tribunal of this state or of the United States;

13 "Person" means an individual, group, association, corporation, or any other entity;

14 "Public official or employee" means an elected or appointed official or employee of a state
15 or federal court, commission, department, agency, political subdivision, or any governmental
16 instrumentality;

17 "Recorder" means a clerk or other employee in charge of recording instruments in a court,
18 commission, or other tribunal of this state or of the United States; and

19 "Tribunal" means a court or other judicial or quasi-judicial entity, or an administrative,
20 legislative, or executive body, or that of a political subdivision, created or authorized under the
21 constitution or laws of this state or of the United States.

22 (b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical
23 force, harassment, or a fraudulent legal process or official proceeding, or to threaten or to attempt
24 to do so, with the intent to:

25 (1) Impede or obstruct a public official or employee from performing his or her official
26 duties;

27 (2) Impede or obstruct a juror or witness from performing his or her official duties in an
28 official proceeding;

29 (3) Influence, delay, or prevent the testimony of any person in an official proceeding; or

30 (4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document
31 or other object from an official proceeding; (B) Alter, destroy, mutilate, or conceal a record,
32 document, or other object impairing its integrity or availability for use in an official proceeding; (C)
33 Evade an official proceeding summoning a person to appear as a witness or produce a record,
34 document, or other object for an official proceeding; or (D) Be absent from an official proceeding
35 to which such person has been summoned.

36 (c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property,
37 or to threaten or to attempt to do so, with the intent to:

38 (1) Retaliate against a public official or employee for the performance or nonperformance
39 of an official duty;

40 (2) Retaliate against a juror or witness for performing his or her official duties in an official
41 proceeding; or

42 (3) Retaliate against any other person for attending, testifying, or participating in an official
43 proceeding, or for the production of any record, document, or other object produced by a person
44 in an official proceeding.

45 (d) Penalty. — A person convicted of an offense under subsections (b) or (c) of this section
46 is guilty of a felony and shall be confined in a state correctional facility not less than one nor more
47 than 10 years, fined not more than \$2,000, or both fined and confined.

48 (e) Civil cause of action. — A person who violates this section is liable in a civil action to
49 any person harmed by the violation for injury or loss to person or property incurred as a result of
50 the commission of the offense and for reasonable attorney's fees, court costs, and other expenses
51 incurred as a result of prosecuting a civil action commenced under this subsection, which is not
52 the exclusive remedy of a person who suffers injury or loss to person or property as a result of a
53 violation of this section.

54 (f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section,
55 any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of
56 this section shall be dismissed by the tribunal and the person may be ordered to reimburse the
57 aggrieved person for reasonable attorney's fees, court costs, and other expenses incurred in
58 defending or dismissing such action.

59 (1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other
60 legal process against a public official or employee or his or her property. The recorder does not
61 have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the
62 recorder liable for refusing to record a lien or other legal process that the recorder believes is in
63 violation of this section; and

64 (2) If a fraudulent lien or other legal process against a public official or employee or his or
65 her property is recorded then:

66 (A) Request to release lien. — The public official or employee may send a written request
67 by certified mail to the person who filed the fraudulent lien or legal process requesting the person

68 to release or dismiss the lien or legal process. If such lien or legal process is not properly released
69 or dismissed within 21 days, then it shall be inferred that the person intended to harass the public
70 official or employee in violation of subsection (b) of this section and shall be subject to the criminal
71 penalties in subsection (d) of this section and any other remedies provided in this section; or

72 (B) Notice of fraudulent lien. — A government attorney on behalf of the public official or
73 employee may record a notice of fraudulent lien or legal process with the recorder who accepted
74 the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process
75 and cause it to be removed from the records. No filing fee shall be charged for the filing of the
76 notice.

77 (f) A person's lack of belief in the jurisdiction or authority of this state or of the United States
78 is no defense to prosecution of a civil or criminal action under this section.

79 (g)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate
80 public officials or employees;

81 (2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate
82 right to freely assemble, express opinions, or designate group affiliation; or

83 (3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate
84 access to a tribunal of this state or prevents a person from instituting or responding to a lawful
85 action.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Steve Harris
.....
Clerk of the House of Delegates

Joe Linn
.....
Clerk of the Senate

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SECRETARY OF STATE

FILED

Originated in the House of Delegates.

In effect ninety days from passage.

Don Hancock
.....
Speaker of the House of Delegates

C. P. Blaylock
.....
President of the Senate

The within is *approved* this the *26th*
March
Day of 2024.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am