

H. B. 2129

(By Delegate Paxton)

[Introduced January 12, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §61-2-10b of the Code of West Virginia,
1931, as amended, relating to providing a mandatory sentence
of fifteen years for any person who maliciously shoots a
police officer on duty; and providing a mandatory sentence of
ten years for any person who unlawfully, but not maliciously,
shoots a police officer on duty.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-10b. Malicious assault; unlawful assault; battery; and
assault on governmental representatives, health
care providers, and emergency medical service
personnel; definitions; penalties.**

1 (a) For purposes of this section:

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

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

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

15 (b) *Malicious assault.* -- Any person who maliciously shoots,
16 stabs, cuts or wounds or by any means causes bodily injury with
17 intent to maim, disfigure, disable or kill a government
18 representative, health care worker or emergency service personnel
19 acting in his or her official capacity, and the person committing
20 the malicious assault knows or has reason to know that the victim
21 is acting in his or her official capacity is guilty of a felony
22 and, upon conviction thereof, shall be confined in a correctional
23 facility for not less than ~~three nor more than~~ fifteen years.

24 (c) *Unlawful assault.* -- Any person who unlawfully but not

1 maliciously shoots, stabs, cuts or wounds or by any means causes a
2 government representative, health care worker or emergency service
3 personnel acting in his or her official capacity bodily injury with
4 intent to maim, disfigure, disable or kill him or her and the
5 person committing the unlawful assault knows or has reason to know
6 that the victim is acting in his or her official capacity is guilty
7 of a felony and, upon conviction thereof, shall be confined in a
8 correctional facility for not less than ~~two nor more than five~~
9 ~~years~~ ten years.

10 (d) *Battery*. -- Any person who unlawfully, knowingly and
11 intentionally makes physical contact of an insulting or provoking
12 nature with a government representative, health care worker or
13 emergency service personnel acting in his or her official capacity,
14 or unlawfully and intentionally causes physical harm to that person
15 acting in such capacity, is guilty of a misdemeanor and, upon
16 conviction thereof, shall be fined not more than \$500 or confined
17 in jail not less than onemonth nor more than twelve months or both
18 fined and confined. If any person commits a second such offense,
19 he or she is guilty of a felony and, upon conviction thereof, shall
20 be fined not more than \$1,000 or imprisoned in a state correctional
21 facility not less than one year nor more than three years, or both
22 fined and imprisoned. Any person who commits a third violation of
23 this subsection is guilty of a felony and, upon conviction thereof,
24 shall be fined not more than \$2,000 or imprisoned in a state

1 correctional facility not less than two years nor more than five
2 years, or both fined and imprisoned.

3 (e) *Assault.* -- Any person who unlawfully attempts to commit
4 a violent injury to the person of a government representative,
5 health care worker or emergency service personnel acting in his or
6 her official capacity, or unlawfully commits an act which places
7 that person acting in his or her official capacity in reasonable
8 apprehension of immediately receiving a violent injury, is guilty
9 of a misdemeanor and, upon conviction thereof, shall be confined in
10 jail for not less than twenty-four hours nor more than six months,
11 fined not more than \$200, or both fined and confined.

NOTE: The purpose of this bill is to provide a mandatory sentence of fifteen years for any person who maliciously shoots a police officer on duty, while providing a mandatory sentence of ten years for any person who unlawfully, but not maliciously, shoots a police officer on duty.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.