

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2130**

(BY DELEGATES WESTFALL, ESPINOSA, HAMRICK,  
McCuskey, STANSBURY, B. WHITE AND IHLE)

[Originating in the Committee on the Judiciary]

1 A BILL to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating  
 2 to enhanced charges and penalties for assaults and batteries of law-enforcement officers;  
 3 adding law-enforcement officers among the list of professionals the malicious assault,  
 4 unlawful assault, battery or assault of which leads to enhanced criminal penalties; adding  
 5 an element of the criminal offense of battery a requirement that the perpetrator have  
 6 knowledge that the victim was acting in his or her official capacity; adding an element of  
 7 the criminal offense of assault a requirement that the perpetrator have knowledge that the  
 8 victim was acting in his or her official capacity; and defining law-enforcement officers.

*Be it enacted by the Legislature of West Virginia:*

1 That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and  
 2 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, law-enforcement officers and  
 emergency medical service personnel; definitions; penalties**

1 (a) For purposes of this section:

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

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

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

12           (4) “Law-enforcement officer” has the same definition as this term is defined in W.Va. Code  
13 §30-29-1, except for purposes of this section, “law-enforcement officer” shall additionally include  
14 those individuals defined as “chief executive” in W.Va. Code §30-29-1.

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

22           (c) *Unlawful assault.* -- Any person who unlawfully but not maliciously shoots, stabs, cuts  
23 or wounds or by any means causes a government representative, health care worker or  
24 emergency service personnel or law-enforcement officer acting in his or her official capacity bodily  
25 injury with intent to maim, disfigure, disable or kill him or her and the person committing the  
26 unlawful assault knows or has reason to know that the victim is acting in his or her official capacity  
27 is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not  
28 less than two nor more than five years.

29           (d) *Battery.* -- Any person who unlawfully, knowingly and intentionally makes physical  
30 contact of an insulting or provoking nature with a government representative, health care worker  
31 or emergency service personnel or law-enforcement officer acting in his or her official capacity  
32 and the person committing the battery knows or has reason to know that the victim is acting in his  
33 or her official capacity, or unlawfully and intentionally causes physical harm to that person acting  
34 in such capacity and the person committing the battery knows or has reason to know that the  
35 victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction  
36 thereof, shall be fined not more than \$500 or confined in jail not less than one month nor more  
37 than twelve months or both fined and confined. If any person commits a second such offense, he

38 or she is guilty of a felony and, upon conviction thereof, shall be fined not more than \$1,000 or  
39 imprisoned in a state correctional facility not less than one year nor more than three years, or both  
40 fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a  
41 felony and, upon conviction thereof, shall be fined not more than \$2,000 or imprisoned in a state  
42 correctional facility not less than two years nor more than five years, or both fined and imprisoned.

43 (e) *Assault*. -- Any person who unlawfully attempts to commit a violent injury to the person  
44 of a government representative, health care worker ~~or~~ emergency service personnel or law-  
45 enforcement officer, acting in his or her official capacity and the person committing the battery  
46 knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully  
47 commits an act which places that person acting in his or her official capacity in reasonable  
48 apprehension of immediately receiving a violent injury and the person committing the battery  
49 knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a  
50 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four  
51 hours nor more than six months, fined not more than \$200, or both fined and confined.

NOTE: The purpose of this bill is to include law-enforcement officers among those professionals the assault or battery of which leads to enhanced criminal penalties.

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