

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

House Bill 3018

BY DELEGATES ISNER, CANESTRARO, SOBONYA,
SUMMERS, BOGGS, FAST, KESSINGER, R. MILLER,
CAPITO, ROBINSON AND LOVEJOY

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended,
2 relating to crimes against the person; defining correctional employee; including
3 correctional employees as persons to whom the criminal penalties for malicious assault,
4 unlawful assault, battery and assault in this section apply; establishing penalties; and
5 prohibiting certain persons so convicted from receiving concurrent sentences under
6 certain circumstances.

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, utility workers, law-enforcement officers,
correctional employees 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) “Utility worker” means any individual employed by a public utility or electric cooperative
13 or under contract to a public utility, electric cooperative or interstate pipeline.

14 (5) “Law-enforcement officer” has the same definition as this term is defined in W.Va. Code
15 §30-29-1, except for purposes of this section, “law-enforcement officer” shall additionally include
16 those individuals defined as “chief executive” in W.Va. Code §30-29-1.

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

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

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

35 (d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical
36 contact of an insulting or provoking nature with a government representative, health care worker,
37 utility worker, emergency service personnel, correctional employee or law-enforcement officer

38 acting in his or her official capacity and the person committing the battery knows or has reason to
39 know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes
40 physical harm to that person acting in such capacity and the person committing the battery knows
41 or has reason to know that the victim is acting in his or her official capacity, is guilty of a
42 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail
43 not less than one month nor more than twelve months or both fined and confined. If any person
44 commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall
45 be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year
46 nor more than three years, or both fined and imprisoned. Any person who commits a third violation
47 of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than
48 \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five
49 years, or both fined and imprisoned.

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

60 (f) Any person convicted of any crime set forth in this section who is incarcerated in a
61 facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail
62 Authority, or is in the custody of the Division of Juvenile Services and is at least eighteen years
63 of age or subject to prosecution as an adult, at the time of committing the offense and whose

64 victim is a correctional employee may not be sentenced in a manner by which the sentence would
65 run concurrent with any other sentence being served at the time the offense giving rise to the
66 conviction of a crime set forth in this section was committed.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor