

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 277**

BY SENATORS BALDWIN, HAMILTON, BEACH, JEFFRIES,

AND TARR

[Introduced January 11, 2019; Referred

to 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 certain crimes against certain government representatives; and clarifying that  
 3 concealing or attempting to conceal a hypodermic needle in certain circumstances  
 4 constitutes a criminal offense.

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

**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 ~~(6)~~ (1) "Correctional employee" means any individual employed by the West Virginia  
 3 Division of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division  
 4 of Juvenile Services and an employee of an entity providing services to incarcerated, detained or  
 5 housed persons pursuant to a contract with such agencies.

6 ~~(3)~~ (2) "Emergency service personnel" means any paid or volunteer firefighter, emergency  
 7 medical technician, paramedic, or other emergency services personnel employed by or under  
 8 contract with an emergency medical service provider or a state agency or political subdivision  
 9 thereof.

10 ~~(4)~~ (3) "Government representative" means any officer or employee of the state or a  
 11 political subdivision thereof, or a person under contract with a state agency or political subdivision  
 12 thereof.

13 ~~(2)~~ (4) "Health care worker" means any nurse, nurse practitioner, physician, physician  
 14 assistant or technician practicing at, and all persons employed by or under contract to a hospital,  
 15 county or district health department, long-term care facility, physician's office, clinic or outpatient  
 16 treatment facility.

17 (5) "Law-enforcement officer" has the same definition as this term is defined in W.Va. Code  
18 §30-29-1, except for purposes of this section, "law-enforcement officer" shall additionally include  
19 those individuals defined as "chief executive" in W.Va. Code §30-29-1.

20 ~~(4)~~ (6) "Utility worker" means any individual employed by a public utility or electric  
21 cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

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

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

36 (d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical  
37 contact of an insulting or provoking nature with a government representative, health care worker,  
38 utility worker, emergency service personnel, correctional employee or law-enforcement officer  
39 acting in his or her official capacity and the person committing the battery knows or has reason to  
40 know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes  
41 physical harm to that person acting in such capacity and the person committing the battery knows  
42 or has reason to know that the victim is acting in his or her official capacity, is guilty of a

43 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail  
44 not less than one month nor more than 12 months or both fined and confined. If any person  
45 commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall  
46 be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year  
47 nor more than three years, or both fined and imprisoned. Any person who commits a third violation  
48 of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than  
49 \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five  
50 years, or both fined and imprisoned.

51 (e) *Assault.* — Any person who unlawfully attempts to commit a violent injury to the person  
52 of a government representative, health care worker, utility worker, emergency service personnel,  
53 correctional employee or law-enforcement officer, acting in his or her official capacity and the  
54 person committing the battery knows or has reason to know that the victim is acting in his or her  
55 official capacity, or unlawfully commits an act which places that person acting in his or her official  
56 capacity in reasonable apprehension of immediately receiving a violent injury and the person  
57 committing the battery knows or has reason to know that the victim is acting in his or her official  
58 capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not  
59 less than 24 hours nor more than six months, fined not more than \$200, or both fined and  
60 confined.

61 (f) Any person convicted of any crime set forth in this section who is incarcerated in a  
62 facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail  
63 Authority, or is in the custody of the Division of Juvenile Services and is at least 18 years of age  
64 or subject to prosecution as an adult, at the time of committing the offense and whose victim is a  
65 correctional employee may not be sentenced in a manner by which the sentence would run  
66 concurrent with any other sentence being served at the time the offense giving rise to the  
67 conviction of a crime set forth in this section was committed.

68 (g) For the purposes of this section, if a person conceals or attempts to conceal a

69 hypodermic needle on his or her person and intentionally or knowingly penetrates a government  
70 representative, health care worker, utility worker, emergency service personnel, correctional  
71 employee or law-enforcement officer acting in his or her official capacity, the conduct constitutes  
72 battery, as defined in subsection §61-2-10(d) of this code, and upon conviction that person shall  
73 be punished according to subsection §61-2-10(d) of this code.

NOTE: The purpose of this bill is to clarify that concealing or attempting to conceal a hypodermic needle and knowingly or intentionally exposing certain government officials to the needle is a crime.

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