

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Introduced**

## **House Bill 4533**

BY DELEGATES R. THOMPSON, N. BROWN, EVANS,

HICKS, TOMBLIN, RODIGHIERO AND PYLES

[Introduced January 24, 2020; Referred to the

Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating  
2 to strengthening the criminal penalty for assault on governmental representatives, health  
3 care providers, utility workers, law-enforcement officers, correctional employees and  
4 emergency medical service personnel to a felony.

*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 (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 15 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  
31 in his or her official capacity bodily injury with intent to maim, disfigure, disable, or kill him or her  
32 and the person committing the unlawful assault knows or has reason to know that the victim is  
33 acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be  
34 confined in 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 12 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 shall be fined not more than \$1,000 or imprisoned in a state correctional facility not~~  
60 less than one year nor more than three years, or both fined and imprisoned.

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.

NOTE: The purpose of this bill is to strengthen the criminal penalty for assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees and emergency medical service personnel to a felony.

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