

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3362

By Delegates Riley, Kimble, Honaker, Heckert,

Foggin, Ward, and Kelly

[Introduced February 10, 2023; 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, all
 2 relating to adding definition of police service canine and revising definition of law
 3 enforcement officer to include police service canine.

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 §30-29-1 of
 15 this code. ~~except~~ For purposes of this section, "law-enforcement officer" shall additionally also
 16 include a police service canine and those individuals defined as "chief executive" in §30-29-1 of
 17 this code.

18 (6) "Police service canine" means any dog used by a law enforcement agency and handled
19 by a law enforcement officer, as defined in §30-29-1 of this code, which is specially trained for law
20 enforcement work or is contracted to assist a law enforcement agency in the performance of law
21 enforcement duties.

22 ~~(6)~~(7) "Correctional employee" means any individual employed by the West Virginia
23 Division of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of
24 Juvenile Services and an employee of an entity providing services to incarcerated, detained or
25 housed persons pursuant to a contract with such agencies.

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

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

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

44 know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes
45 physical harm to that person acting in such capacity and the person committing the battery knows
46 or has reason to know that the victim is acting in his or her official capacity, is guilty of a
47 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail
48 not less than one month nor more than 12 months or both fined and confined. If any person
49 commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall
50 be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year
51 nor more than three years, or both fined and imprisoned. Any person who commits a third violation
52 of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than
53 \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five
54 years, or both fined and imprisoned.

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

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

70 conviction of a crime set forth in this section was committed.

NOTE: The purpose of this bill is to define of police service canine and revising definition of law enforcement officer to include police service canine

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