

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 235

BY SENATORS IHLENFELD, BALDWIN, HAMILTON,

WOELFEL, ROMANO, AND FACEMIRE

[Introduced January 9, 2020; 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 increasing the criminal penalties for the battery of a law-enforcement officer.

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
15 of this code, except for purposes of this section, "law-enforcement officer" shall additionally
16 include those individuals defined as "chief executive" in §30-29-1 of this code.

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.* — (1) 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 or ~~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~~ confined in a state correctional facility not less than
46 one year nor more than three years, or both fined and ~~imprisoned~~ confined. Any person who
47 commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall
48 be fined not more than \$2,000 or ~~imprisoned~~ confined in a state correctional facility not less than
49 two years nor more than five years, or both fined and ~~imprisoned~~ confined.

50 (2) Any person who unlawfully, knowingly and intentionally, makes physical contact of an
51 insulting or provoking nature with a law-enforcement officer acting in his or her official capacity
52 and the person committing the battery knows or has reason to know that the victim is acting in his
53 or her official capacity, or unlawfully and intentionally causes physical harm to that person acting
54 in such capacity and the person committing the battery knows or has reason to know that the
55 victim is acting in his or her official capacity, is guilty of a felony and, upon conviction, shall be
56 fined not more than \$1,000 or confined in a state correctional facility not less than one year nor
57 more than three years, or both fined and confined. Any person who commits a second violation
58 of this subsection is guilty of a felony and, upon conviction, shall be fined not more than \$2,000
59 or confined in a state correctional facility not less than two years nor more than five years, or both
60 fined and confined.

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

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

NOTE: The purpose of this bill is to increase the criminal penalties for the battery of a law-enforcement officer.

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