

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3381**

By Delegates Kimble, Riley, Kelly, Ward, Adkins,  
Pinson, Kirby, Heckert, Foggin, Steele, and Petitto

[Introduced February 13, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §30-29-1, of the Code of West Virginia, 1931, as amended, and to  
 2 amend and reenact §61-2-10b of said code, all relating to classifying police canine units as  
 3 "law enforcement officers" in relation to their standing as victims and the level of force able  
 4 to be used in their protection.

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

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS**

**ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

**§30-29-1. Definitions.**

1 For the purposes of this article, unless a different meaning clearly appears in the context:

2 (1) "Approved law-enforcement training academy" means any training facility which is  
 3 approved and authorized to conduct law-enforcement training as provided in this article;

4 (2) "Chief executive" means the Superintendent of the State Police; the chief Natural  
 5 Resources police officer of the Division of Natural Resources; the sheriff of any West Virginia  
 6 county; any administrative deputy appointed by the chief natural resources police officer of the  
 7 Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement  
 8 agency;

9 (3) "County" means the 55 major political subdivisions of the state;

10 (4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or  
 11 above;

12 (5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's  
 13 committee" means the Governor's Committee on Crime, Delinquency, and Correction established  
 14 as a state planning agency pursuant to §15-9-1 of this code;

15 (6) "Law-enforcement officer" means any duly authorized member of a law-enforcement  
 16 agency who is authorized to maintain public peace and order, prevent and detect crime, make  
 17 arrests, and enforce the laws of the state or any county or municipality thereof, other than parking

18 ordinances, and includes those persons employed as campus police officers at state institutions of  
19 higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as  
20 hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons  
21 employed by the Public Service Commission as motor carrier inspectors and weight-enforcement  
22 officers charged with enforcing commercial motor vehicle safety and weight restriction laws,  
23 although those institutions and agencies may not be considered law-enforcement agencies. The  
24 term also includes those persons employed as county litter control officers charged with enforcing  
25 litter laws: *Provided*, That those persons have been trained and certified as law-enforcement  
26 officers and that certification is currently active. The term also includes those persons employed as  
27 rangers by resort area districts in accordance with the provisions of §7-25-23 of this code,  
28 although no resort area district may be considered a law-enforcement agency: *Provided, however*,  
29 That the subject rangers shall pay the tuition and costs of training. As used in this article, the term  
30 "law-enforcement officer" does not apply to the chief executive of any West Virginia law-  
31 enforcement agency, nor to any watchman or special natural resources police officer.

32 (A) The term further includes animals trained to assist law enforcement officers, including  
33 canines and other animals trained for a law enforcement purposes. This inclusion extends only  
34 insofar as the animals are designated as law enforcement officers while they are actively working  
35 with a human officer in the field or resting in between assignments with a human law enforcement  
36 officer in the field.

37 (B) If a human officer is forced to defend an animal working as a law enforcement officer,  
38 that human officer will have the freedom to use whatever force the human officer would use while  
39 defending or protecting another human officer.

40 (C) The animal is not an employee of the state and is entitled to neither the administrative  
41 protections nor personnel status afforded to other employees.

42 (7) "Law-enforcement official" means the duly appointed chief administrator of a  
43 designated law-enforcement agency or a duly authorized designee;

44 (8) "Municipality" means any incorporated town or city whose boundaries lie within the  
45 geographic boundaries of the state;

46 (9) "Pre-certified law-enforcement officer" means a person employed or offered  
47 employment by a West Virginia law-enforcement agency prior to his or her initial certification by  
48 the subcommittee. This term does not include a person employed or offered employment by a  
49 West Virginia law-enforcement agency whose certification status is inactive, suspended, or has  
50 been revoked;

51 (10) "Subcommittee" or "law-enforcement professional standards subcommittee" means  
52 the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created by  
53 §30-29-2 of this code; and

54 (11) "West Virginia law-enforcement agency" means any duly authorized state, county, or  
55 municipal organization employing one or more persons whose responsibility is the enforcement of  
56 laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service  
57 Commission nor any state institution of higher education, nor any hospital, nor any resort area  
58 district is a law-enforcement agency.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENTS

### 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. This includes the animals  
17 used in police investigations, including, but not limited to, canines used in the field. All crimes  
18 against an animal acting in its capacity as a law enforcement officer will carry the same penalties  
19 as though the crime were committed against a human law enforcement officer.

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

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

31 including, but not limited to, canines, who are working in the field with a human law enforcement  
32 officer.

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. This penalty also applies to  
40 animals, including, but not limited to, canines, who are working in the field with a human law  
41 enforcement officer.

42 (d) Battery. — Any person who unlawfully, knowingly and intentionally makes physical  
43 contact of an insulting or provoking nature with a government representative, health care worker,  
44 utility worker, emergency service personnel, correctional employee or law-enforcement officer  
45 acting in his or her official capacity and the person committing the battery knows or has reason to  
46 know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes  
47 physical harm to that person acting in such capacity and the person committing the battery knows  
48 or has reason to know that the victim is acting in his or her official capacity, is guilty of a  
49 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail  
50 not less than one month nor more than twelve months or both fined and confined. If any person  
51 commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall  
52 be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year  
53 nor more than three years, or both fined and imprisoned. Any person who commits a third violation  
54 of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than  
55 \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five  
56 years, or both fined and imprisoned. This penalty also applies to animals, including, but not limited

57 to, canines, who are working in the field with a human law enforcement officer.

58 (e) Assault. — Any person who unlawfully attempts to commit a violent injury to the person  
59 of a government representative, health care worker, utility worker, emergency service personnel,  
60 correctional employee or law-enforcement officer, acting in his or her official capacity and the  
61 person committing the battery knows or has reason to know that the victim is acting in his or her  
62 official capacity, or unlawfully commits an act which places that person acting in his or her official  
63 capacity in reasonable apprehension of immediately receiving a violent injury and the person  
64 committing the battery knows or has reason to know that the victim is acting in his or her official  
65 capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not  
66 less than twenty-four hours nor more than six months, fined not more than \$200, or both fined and  
67 confined. This penalty also applies to animals, including, but not limited to, canines, who are  
68 working in the field with a human law enforcement officer.

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

NOTE: The purpose of this bill is to include canines in definitions of "law enforcement officers" in relation to crimes against law enforcement officers and the level of force allowable to protect said canines as law enforcement officers.

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