

1 **H. B. 3259**

2  
3 (By Delegate Smith)

4 [Introduced February 21, 2011; referred to the  
5 Committee on the Judiciary.]  
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10 A BILL to amend and reenact §61-2-10b of the Code of West Virginia,  
11 1931, as amended, relating to aggressive and violent behavior  
12 that is otherwise criminal activity of persons committed to  
13 state hospitals; authorizing immediate discharge and  
14 transportation to a regional jail.

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

16 That §61-2-10b of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

19 **§61-2-10b. Malicious assault; unlawful assault; battery; and**  
20 **assault on governmental representatives, health**  
21 **care providers, and emergency medical service**  
22 **personnel; definitions; penalties.**

23 (a) For purposes of this section:

24 (1) "Government representative" means any officer or employee  
25 of the state, or a political subdivision thereof, or a person under  
26 contract with a state agency or political subdivision thereof.

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

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

12       (b) Malicious assault. ~~Any~~ A person who maliciously shoots,  
13 stabs, cuts or wounds or by any means causes bodily injury with  
14 intent to maim, disfigure, disable or kill a government  
15 representative, health care worker or emergency service personnel  
16 acting in his or her official capacity and the person committing  
17 the malicious assault knows or has reason to know that the victim  
18 is acting in his or her official capacity, is guilty of a felony  
19 and, upon conviction thereof, shall be confined in a correctional  
20 facility for not less than three nor more than fifteen years.

21       (c) Unlawful assault. ~~Any~~ A person who unlawfully but not  
22 maliciously shoots, stabs, cuts or wounds or by any means causes a  
23 government representative, health care worker or emergency service  
24 personnel acting in his or her official capacity bodily injury with  
25 intent to maim, disfigure, disable or kill him or her and the  
26 person committing the unlawful assault knows or has reason to know

1 that the victim is acting in his or her official capacity, is  
2 guilty of a felony and, upon conviction thereof, shall be confined  
3 in a correctional facility for not less than two nor more than five  
4 years.

5 (d) Battery. ~~Any~~ A person who unlawfully, knowingly and  
6 intentionally makes physical contact of an insulting or provoking  
7 nature with a government representative, health care worker or  
8 emergency service personnel acting in his or her official capacity,  
9 or unlawfully and intentionally causes physical harm to that person  
10 acting in such capacity, is guilty of a misdemeanor and, upon  
11 conviction thereof, shall be fined not more than \$500 or confined  
12 in jail not less than one month nor more than twelve months or both  
13 fined and confined. If ~~any~~ a person commits a second such offense,  
14 he or she is guilty of a felony and, upon conviction thereof, shall  
15 be fined not more than \$1,000 or imprisoned in a state correctional  
16 facility not less than one year nor more than three years, or both  
17 fined and imprisoned. ~~Any~~ A person who commits a third violation  
18 of this subsection is guilty of a felony and, upon conviction  
19 thereof, shall be fined not more than \$2,000 or imprisoned in a  
20 state correctional facility not less than two years nor more than  
21 five years, or both fined and imprisoned.

22 (e) Assault. ~~Any~~ A person who unlawfully attempts to commit a  
23 violent injury to the person of a government representative, health  
24 care worker or emergency service personnel acting in his or her  
25 official capacity or unlawfully commits an act which places that  
26 person acting in his or her official capacity in reasonable

1 apprehension of immediately receiving a violent injury, is guilty  
2 of a misdemeanor and, upon conviction thereof, shall be confined in  
3 jail for not less than twenty-four hours nor more than six months,  
4 fined not more than \$200, or both fined and confined.

5 (f) Mental Health Patient. A person who commits a felony or  
6 misdemeanor as defined in this section while a patient in a mental  
7 health facility shall be immediately discharged from that facility  
8 without further action by the court that committed him or her to  
9 the facility and be transported to the custody of the regional jail  
10 in the area in which the offense was committed.

NOTE: The purpose of this bill is to authorize the transfer of a person committed to a state facility to a regional jail following the commission of an unlawful act as defined in this section.

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