

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3018

BY DELEGATES ISNER, CANESTRARO, SOBONYA,
SUMMERS, BOGGS, FAST, KESSINGER, MILLER, R.,
CAPITO, ROBINSON AND LOVEJOY

[Introduced March 14, 2017; 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 crimes against the person; adding the definition of correctional employee; including
3 correctional employees as a group to which the criminal penalties of malicious assault,
4 unlawful assault, battery and assault in this section apply; providing that any person
5 convicted of any crime in this section who is incarcerated at a facility operated by the West
6 Virginia Division of Corrections or the West Virginia Regional Jail Authority at the time the
7 offense was committed and whose victim is a correctional employee may not be
8 sentenced in a manner that the sentence would run concurrently with any other sentence
9 being served at the time of sentencing, but shall run consecutively to the current sentence.

Be it enacted by the Legislature of West Virginia:

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

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 or the West Virginia Regional Jail Authority.

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

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

33 (d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical
34 contact of an insulting or provoking nature with a government representative, health care worker
35 , utility worker, emergency service personnel, correctional employee or law-enforcement officer

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

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

58 (f) Any person convicted of any crime set forth in this section who is incarcerated in a
59 facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail
60 Authority, at the time of committing the offense and whose victim is a correctional employee, may
61 not be sentenced in a manner by which the sentence would run concurrent with any other

- 62 sentence being served at the time of sentencing, but shall run consecutively to the current
- 63 sentence.

NOTE: The purpose of this bill is add the definition of correctional employee to the list of persons against whom an assault is a felony. The bill also provides that a person incarcerated in the state who commits a crime against one of persons defined in this statute serve consecutive sentences.

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