

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4392

BY DELEGATE ROHRBACH, LINVILLE, MAYNARD AND

LOVEJOY

[Introduced January 16, 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 penalties for exposure of governmental representatives, including
 3 emergency medical service personnel, to fentanyl or any other harmful drug or chemical
 4 agent.

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~~ and exposure of
 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, 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~~ imprisoned
27 in a 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 in
31 his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and
32 the person committing the unlawful assault knows or has reason to know that the victim is acting
33 in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be ~~confined~~
34 imprisoned in a correctional facility for not less than two nor more than five years.

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

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

60 (f) *Misdemeanor Exposure.* – Any person who unlawfully and intentionally possesses
61 fentanyl or any other harmful drug or chemical agent and exposes a government representative,
62 health care worker, utility worker, emergency service personnel, correctional employee or law-
63 enforcement officer acting in his or her official capacity to such drug or agent is guilty of a
64 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail
65 not less than one month nor more than 12 months or both fined and confined.

66 (g) *Felony Exposure.* – Any person who unlawfully and intentionally possesses fentanyl
67 or any other harmful drug or chemical agent and exposes a government representative, health
68 care worker, utility worker, emergency service personnel, correctional employee or law-

69 enforcement officer acting in his or her official capacity to such drug or agent that causes physical
70 harm as a result of exposure to or contact with such a drug or agent is guilty of a felony and, upon
71 conviction thereof, shall be fined not more than \$2,000 or imprisoned in a state correctional facility
72 not less than two years nor more than five years, or both fined and imprisoned.

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

NOTE: The purpose of this bill is to increase the criminal penalties for exposure of governmental representatives, including emergency medical service personnel, to fentanyl or any other harmful drug or chemical agent.

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