

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 128

BY SENATORS CLINE AND HAMILTON

[Introduced January 8, 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 malicious assault, unlawful assault, and assault on
 3 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 ~~W.Va. Code §30-29-1~~ that section.

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.* — (1) Any person who maliciously shoots, stabs, cuts or wounds or
22 by 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 or 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 (2) Any person who maliciously shoots, stabs, cuts or wounds or by any means causes
29 bodily injury with intent to maim, disfigure, disable or kill a law-enforcement officer acting in his or
30 her official capacity, and the person committing the malicious assault knows or has reason to
31 know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction
32 thereof, shall be confined in a correctional facility for not less than five nor more than 20 years.

33 (c) *Unlawful assault.* — (1) Any person who unlawfully but not maliciously shoots, stabs,
34 cuts or wounds or by any means causes a government representative, health care worker, utility
35 worker, emergency service personnel or correctional employee ~~or law-enforcement officer acting~~
36 ~~in his or her official capacity~~ bodily injury with intent to maim, disfigure, disable or kill him or her
37 and the person committing the unlawful assault knows or has reason to know that the victim is
38 acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be
39 confined in a correctional facility for not less than two nor more than five years.

40 (2) Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any
41 means causes bodily injury with intent to maim, disfigure, disable or kill a law-enforcement officer
42 acting in his or her official capacity, and the person committing the malicious assault knows or
43 has reason to know that the victim is acting in his or her official capacity is guilty of a felony and,

44 upon conviction thereof, shall be confined in a correctional facility for not less than three nor more
45 than 10 years.

46 (d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical
47 contact of an insulting or provoking nature with a government representative, health care worker,
48 utility worker, emergency service personnel, correctional employee or law-enforcement officer
49 acting in his or her official capacity and the person committing the battery knows or has reason to
50 know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes
51 physical harm to that person acting in such capacity and the person committing the battery knows
52 or has reason to know that the victim is acting in his or her official capacity, is guilty of a
53 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail
54 not less than one month nor more than 12 months or both fined and confined. If any person
55 commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall
56 be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year
57 nor more than three years, or both fined and imprisoned. Any person who commits a third violation
58 of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than
59 \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five
60 years, or both fined and imprisoned.

61 (e) *Assault.* — (1) Any person who unlawfully attempts to commit a violent injury to the
62 person of a government representative, health care worker, utility worker, emergency service
63 personnel or correctional employee ~~or law-enforcement officer, acting in his or her official capacity~~
64 and the person committing the battery knows or has reason to know that the victim is acting in his
65 or her official capacity, or unlawfully commits an act which places that person acting in his or her
66 official capacity in reasonable apprehension of immediately receiving a violent injury and the
67 person committing the battery knows or has reason to know that the victim is acting in his or her
68 official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail
69 for not less than 24 hours nor more than six months, fined not more than \$200, or both fined and

70 confined.

71 (2) Any person who unlawfully attempts to commit a violent injury to the person of a law-
72 enforcement officer acting in his or her official capacity, and the person committing the battery
73 knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully
74 commits an act which places that person acting in his or her official capacity in reasonable
75 apprehension of immediately receiving a violent injury and the person committing the battery
76 knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a
77 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week
78 nor more than one year, fined not more than \$1,000, or both fined and confined.

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

NOTE: The purpose of this bill is to increase criminal penalties for malicious assault, unlawful assault and assault on 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.