WEST VIRGINIA LEGISLATURE

**FISCAL NOTE**

2023 REGULAR SESSION

Introduced

House Bill 2763

By Delegates Steele, Burkhammer, Foster, Smith, Mazzocchi, Butler, Heckert and Brooks

[Introduced January 18, 2023; Referred to the Committee on the Judiciary]

A BILL to amend and reenact §61-2-1 of the Code of West Virginia, 1931, as amended, relating to crimes against the person and updating the definition of murder in the first degree when the intended victim is engaged in the course of performing his or her official duties as a law enforcement officer or employee in designated classifications of law enforcement employees; whether federal or state; including specifically identified intended victims who are employees engaged in the course of performing his or her official duties as employees of the Division of Juvenile services; including specifically identified intended victims who are employees engaged in the course of performing his or her official duties and defined as employees as first responders; including specifically identified intended victims who are employees engaged in the course of performing his or her official duties as employees of a state correctional facility, federal correctional facility, regional jail, county operated jail or holding facility or other such facilities; including when the intended victim is actively engaged in the course of performing his or her official duties as a Justice of the West Virginia Supreme Court of Appeals, Judge with the West Virginia Intermediate Court of Appeals, Circuit Judge, Family Court Judge, or Magistrate; or when the intended victim is actively engaged in the course of performing his or her official duties as a Child Protective Services worker employed by the West Virginia Department of Health and Human Resources, or individuals employed or contracted to provide social services for the West Virginia Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-1. First and second degree murder defined; allegations in indictment for homicide.

(a) Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in §60A-4-1 *et seq*. of this code, is murder of the first degree.

(b) A person is guilty of murder in the first degree when an individual feloniously, intentionally, deliberately, willfully, and unlawfully kills an individual; and

(1) The intended victim was a federal, state, county or municipal law-enforcement officer, parole officer, probation officer, or day report officer who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the intended victim was a federal, state, county or municipal law-enforcement officer, parole officer, probation officer, or day report officer; or

(2) The intended victim was an employee of the Division of Juvenile Services of who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the intended victim was an officer, parole officer, probation officer, correctional officer, social worker, or other employee of the Division of Juvenile Services; or

(3) The intended victim was a firefighter, emergency medical technician, ambulance driver, paramedic, physician or nurse involved in a first response team, or any other individual who, in the course of official duties, performs emergency response activities and was engaged in those activities at the time of killing and the defendant knew or reasonably should have known that the intended victim was a firefighter, emergency medical technician, ambulance driver, paramedic, physician, nurse, or other individual who, in the course of official duties, was performing emergency response activities and was engaged in those activities;  or

(4) The intended victim was an employee of a state correctional facility, federal correctional facility, regional jail, county operated jail or holding facility, or was an employee of a locally operated correctional facility, or privately operated correctional facility who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the intended victim was an employee of a state correctional facility, federal correctional facility, regional jail, county operated jail or holding facility, or was an employee of a locally operated correctional facility, or privately operated correctional facility;  or

(5) The intended victim was an actively employed Justice of the West Virginia Supreme Court of Appeals, Judge with the West Virginia Intermediate Court of Appeals, Circuit Judge, Family Court Judge, or Magistrate and the defendant killed the victim because the victim was, at the time of the killing, a Justice of the West Virginia Supreme Court of Appeals, Judge with the West Virginia Intermediate Court of Appeals, Circuit Judge, Family Court Judge, or Magistrate; or

(6) The intended victim was a Child Protective Services worker employed by the West Virginia Department of Health and Human Resources, or individuals employed or contracted to provide social services for the West Virginia Department of Health and Human Resources, who was at the time of the killing engaged in the course of performing his or her official or contractual duties, and the defendant knew or reasonably should have known that the intended victim was employed as a child protective services worker for the West Virginia Department of Health and Human Resources, or was an individual contracted to provide social services for the West Virginia Department of Health and Human Resources.

(c) All other murder is murder of the second degree.

(d) In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately, and unlawfully slay, kill, and murder the deceased.

NOTE: The purpose of this bill is to update the definition of murder in the first degree when the intended victim is engaged in the course of performing certain specific types of employment in law enforcement, employees of the correctional systems; employees of first responder services, the members of the state judiciary system, and employees of various social services provided by the state.

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