

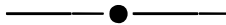
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4364**

(By Delegates Stemple, Shaver and Perry)



Passed March 12, 2004

In Effect Ninety Days from Passage

FILED

2004 APR -5 A 11:49

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4364

(BY DELEGATES STEMPLER, SHAVER AND PERRY)

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[Passed March 12, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §61-2-10b of the code of West Virginia, 1931, as amended, relating to including division of forestry employees in the assault and battery statute with similar state personnel.

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

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

### ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel,**

**firefighters, fire marshal, division of forestry employees and county or state correctional employees; penalties.**

1       (a) *Malicious assault.* — Any person who maliciously  
2 shoots, stabs, cuts or wounds or by any means causes bodily  
3 injury with intent to maim, disfigure, disable or kill a police  
4 officer, probation officer, conservation officer, humane officer,  
5 emergency medical service personnel, firefighter, state fire  
6 marshal or employee, division of forestry employee, county  
7 correctional employee or state correctional employee, employee  
8 of an urban mass transportation system acting in his or her  
9 official capacity and the person committing the malicious  
10 assault knows or has reason to know that the victim is a police  
11 officer, probation officer, conservation officer, humane officer,  
12 emergency medical service personnel, firefighter, state fire  
13 marshal or employee, division of forestry employee, county  
14 correctional employee, state correctional employee, employee  
15 of an urban mass transportation system acting in his or her  
16 official capacity, is guilty of a felony and, upon conviction  
17 thereof, shall be confined in a correctional facility for not less  
18 than three nor more than fifteen years.

19       (b) *Unlawful assault.* — Any person who unlawfully but  
20 not maliciously shoots, stabs, cuts or wounds or by any means  
21 causes a police officer, probation officer, conservation officer,  
22 humane officer, emergency medical service personnel,  
23 firefighter, state fire marshal or employee, division of forestry  
24 employee, county correctional employee or state correctional  
25 employee, employee of an urban mass transportation system  
26 acting in his or her official capacity, bodily injury with intent to  
27 maim, disfigure, disable or kill him or her and the person  
28 committing the unlawful assault knows or has reason to know  
29 that the victim is a police officer, probation officer, conserva-  
30 tion officer, humane officer, emergency medical service  
31 personnel, firefighter, state fire marshal or employee, division

32 of forestry employee, county correctional employee, state  
33 correctional employee, employee of an urban mass transporta-  
34 tion system acting in his or her official capacity, is guilty of a  
35 felony and, upon conviction thereof, shall be confined in a  
36 correctional facility for not less than two nor more than five  
37 years.

38 (c) *Battery*. — Any person who unlawfully, knowingly and  
39 intentionally makes physical contact of an insulting or provok-  
40 ing nature with a police officer, probation officer, conservation  
41 officer, humane officer, emergency medical service personnel,  
42 firefighter, state fire marshal or employee, division of forestry  
43 employee, county correctional employee, state correctional  
44 employee, employee of a mass transportation system acting in  
45 his or her official capacity, or unlawfully and intentionally  
46 causes physical harm to a police officer, probation officer,  
47 conservation officer, humane officer, emergency medical  
48 service personnel, firefighter, state fire marshal or employee,  
49 division of forestry employee, county correctional employee,  
50 state correctional employee, employee of an urban mass  
51 transportation system acting in such capacity, is guilty of a  
52 misdemeanor and, upon conviction thereof, shall be confined in  
53 the county or regional jail for not less than one month nor more  
54 than twelve months, fined the sum of five hundred dollars, or  
55 both. If any person commits a second such offense, he or she is  
56 guilty of a felony and, upon conviction thereof, shall be  
57 confined in a correctional facility for not less than one year nor  
58 more than three years or fined the sum of one thousand dollars  
59 or both fined and confined. Any person who commits a third  
60 violation of this subsection is guilty of a felony and, upon  
61 conviction thereof, shall be confined in a correctional facility  
62 not less than two years nor more than five years or fined not  
63 more than two thousand dollars or both fined and confined.

64 (d) *Assault*. — Any person who unlawfully attempts to  
65 commit a violent injury to the person of a police officer,

66 probation officer, conservation officer, humane officer,  
67 emergency medical service personnel, firefighter, state fire  
68 marshal or employee, division of forestry employee, county  
69 correctional employee, state correctional employee, employee  
70 of a mass transportation system acting in his or her official  
71 capacity, or unlawfully commits an act which places a police  
72 officer, probation officer, conservation officer, humane officer,  
73 emergency medical service personnel, firefighter, division of  
74 forestry employee, county correctional employee or state  
75 correctional employee, employee of a mass transportation  
76 system acting in his or her official capacity in reasonable  
77 apprehension of immediately receiving a violent injury, is  
78 guilty of a misdemeanor and, upon conviction thereof, shall be  
79 confined in the county or regional jail for not less than  
80 twenty-four hours nor more than six months, fined not more  
81 than two hundred dollars, or both fined and confined.

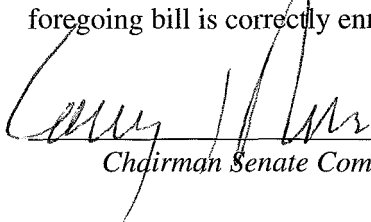
82 (e) For purposes of this section:

83 (1) "Police officer" means any person employed by the  
84 state police, any person employed by the state to perform law-  
85 enforcement duties, any person employed by a political  
86 subdivision of this state who is responsible for the prevention  
87 or detection of crime and the enforcement of the penal, traffic  
88 or highway laws of this state or employed as a special police  
89 officer as defined in section forty-one, article three of this  
90 chapter.

91 (2) "Employee of an urban mass transportation system"  
92 means any person employed by an urban mass transportation  
93 system as such is defined in section three, article twenty-seven,  
94 chapter eight of this code or by a system that receives federal  
95 transit administration funding under 49 U.S.C. §5307 or 5311.

96 (3) "Division of forestry employee" means an officer,  
97 agent, employee, or servant, whether full-time or not, of the  
98 division of forestry.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

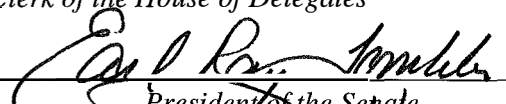
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

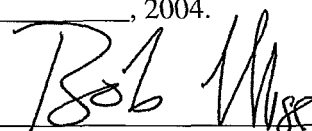
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 5th  
day of April, 2004.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

DATE 3/31/04

TIME 10:15am