WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED
Committee Substitute for
SENATE BILL NO. 371

(By Senator Redd, et al)

PASSED March 9, 2000
In Effect ninety days from Passage
AN ACT to amend and reenact section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections ten and seventeen, article five of said chapter, all relating to the treatment of parole officers; making certain criminal provisions concerning malicious assault, unlawful assault, battery, assault, obstructing, escaping and fleeing from specified law-enforcement personnel and their criminal penalties apply to those actions involving probation officers; and penalties.

Be it enacted by the Legislature of West Virginia:
That section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections ten and seventeen, article five of said chapter be amended and reenacted, all 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 and county or state correctional employees; penalties.

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

(b) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee or state correctional em-
ployee, employee of an urban mass transportation system acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(c) Battery. — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of a mass transportation system acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in such capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one month nor more than twelve months, fined the sum of five hundred dollars, or both. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than three years or fined the sum of one thousand dollars or both fined and confined. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a correctional
facility not less than two years nor more than five years or
fined not more than two thousand dollars or both fined
and confined.

(d) Assault. – Any person who unlawfully attempts to
commit a violent injury to the person of a police officer,
probation officer, conservation officer, humane officer,
emergency medical service personnel, firefighter, state fire
marshal or employee, county correctional employee, state
correctional employee, employee of a mass transportation
system acting in his or her official capacity, or unlawfully
commits an act which places a police officer, probation
officer, conservation officer, humane officer, emergency
medical service personnel, firefighter, county correctional
employee or state correctional employee, employee of a
mass transportation system acting in his or her official
capacity in reasonable apprehension of immediately
receiving a violent injury, is guilty of a misdemeanor and,
upon conviction thereof, shall be confined in the county or
regional jail for not less than twenty-four hours nor more
than six months, fined not more than two hundred dollars,
or both fined and confined.

(e) For purposes of this section:

(1) “Police officer” means any person employed by the
state police, any person employed by the state to perform
law-enforcement duties, any person employed by a politi-
cal subdivision of this state who is responsible for the
prevention or detection of crime and the enforcement of
the penal, traffic or highway laws of this state or employed
as a special police officer as defined in section forty-one,
this chapter.

(2) “Employee of an urban mass transportation system”
means any person employed by an urban mass transporta-
tion system as such is defined in section three, article
twenty-seven, chapter eight of this code or by a system
that receives federal transit administration funding under
49 U.S.C. §5307 or 5311.
ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-10. Persons in custody of institutions or officers.

Whoever escapes or attempts to escape by any means from the custody of a county sheriff, the director of the regional jail authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the division of corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not more than five years; and if the custody or confinement is by virtue of a charge or conviction for a misdemeanor, is guilty of a misdemeanor and, upon conviction thereof, he or she shall be confined in a county or regional jail for not more than one year.

§61-5-17. Obstructing officer; fleeing from officer; fleeing from officer in a vehicle; penalties; definitions.

(a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer, probation officer or parole officer acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be confined in the county or regional jail not more than one year.

(b) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more
then five hundred dollars, and may, in the discretion of the
court, be confined in the county or regional jail not more
than one year.

(c) Any person who intentionally flees or attempts to flee
in a vehicle from any law-enforcement officer, probation
officer or parole officer acting in his or her official capac-
ity, after the officer has given a clear visual or audible
signal directing the person to stop, is guilty of a misde-
meanor and, upon conviction thereof, shall be fined not
less than five hundred nor more than one thousand dollars,
and shall be confined in the county or regional jail not
more than one year.

(d) Any person who intentionally flees or attempts to flee
in a vehicle from any law-enforcement officer, probation
officer or parole officer acting in his or her official capac-
ity, after the officer has given a clear visual or audible
signal directing the person to stop, and who causes damage
to the real or personal property of any person during or
resulting from his or her flight, is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than
one thousand nor more than three thousand dollars, and
shall be confined in the county or regional jail for not less
than six months nor more than one year.

(e) Any person who intentionally flees or attempts to flee
in a vehicle from any law-enforcement officer, probation
officer or parole officer acting in his or her official capac-
ity, after the officer has given a clear visual or audible
signal directing the person to stop, and who causes bodily
injury to any person during or resulting from his or her
flight, is guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility not less
than one nor more than five years.

(f) Any person who intentionally flees or attempts to flee
in a vehicle from any law-enforcement officer, probation
officer or parole officer acting in his or her official capac-
ity, after the officer has given a clear visual or audible
signal directing the person to stop, and who causes death
to any person during or resulting from his or her flight, is
guilty of a felony and, upon conviction thereof, shall be
punished by a definite term of imprisonment in a state
correctional facility which is not less than three nor more
than fifteen years. A person imprisoned pursuant to the
provisions of this subsection is not eligible for parole prior
to having served a minimum of three years of his or her
sentence or the minimum period required by the provisions
of section thirteen, article twelve, chapter sixty-two of this
code, whichever is greater.

(g) Any person who intentionally flees or attempts to flee
in a vehicle from any law-enforcement officer, probation
officer or parole officer acting in his or her official capac-
ity, after the officer has given a clear visual or audible
signal directing the person to stop, and who is under the
influence of alcohol, controlled substances or drugs at the
time, is guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility not less
than one nor more than five years.

(h) For purposes of this section, the term “vehicle”
includes any motor vehicle, motorcycle, motorboat, all-
terrain vehicle or snowmobile, as those terms are defined
in section one, article one, chapter seventeen-a of this
code, whether or not it is being operated on a public
highway at the time and whether or not it is licensed by
the state.

(i) For purposes of this section, the terms “flee”, “flee-
ing” and “flight” do not include any person’s reasonable
attempt to travel to a safe place, allowing the pursuing
law-enforcement officer to maintain appropriate surveil-
lance, for the purpose of complying with the officer’s
direction to stop.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 2nd
Day of March, 2004

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/18/50
Time: 12:00