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SENATE

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

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 371

(SENATORS REDD, MITCHELL, UNGER, KESSLER, DAWSON,
MCCABE, HUNTER, BALL AND SHARPE, *original sponsors*)

[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.

1 (a) *Malicious assault.* – Any person who maliciously
2 shoots, stabs, cuts or wounds or by any means causes
3 bodily injury with intent to maim, disfigure, disable or kill
4 a police officer, probation officer, conservation officer,
5 humane officer, emergency medical service personnel,
6 firefighter, state fire marshal or employee, county correc-
7 tional 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
11 police officer, probation officer, conservation officer,
12 humane officer, emergency medical service personnel,
13 firefighter, state fire marshal or employee, county correc-
14 tional employee, state correctional employee, employee of
15 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
18 less 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
21 means causes a police officer, probation officer, conserva-
22 tion officer, humane officer, emergency medical service
23 personnel, firefighter, state fire marshal or employee,
24 county correctional employee or state correctional em-

25 ployee, employee of an urban mass transportation system
26 acting in his or her official capacity, bodily injury with
27 intent to maim, disfigure, disable or kill him or her and the
28 person committing the unlawful assault knows or has
29 reason to know that the victim is a police officer, proba-
30 tion officer, conservation officer, humane officer, emer-
31 gency medical service personnel, firefighter, state fire
32 marshal or employee, county correctional employee, state
33 correctional employee, employee of an urban mass trans-
34 portation system acting in his or her official capacity, is
35 guilty of a felony and, upon conviction thereof, shall be
36 confined in a correctional facility for not less than two nor
37 more than five years.

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

63 facility not less than two years nor more than five years or
64 fined not more than two thousand dollars or both fined
65 and confined.

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

84 (e) For purposes of this section:

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

93 (2) “Employee of an urban mass transportation system”
94 means any person employed by an urban mass transporta-
95 tion system as such is defined in section three, article
96 twenty-seven, chapter eight of this code or by a system
97 that receives federal transit administration funding under
98 49 U.S.C. §5307 or 5311.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

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

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

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

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

10 (b) Any person who intentionally flees or attempts to flee
11 by any means other than the use of a vehicle from any law-
12 enforcement officer, probation officer or parole officer
13 acting in his or her official capacity who is attempting to
14 make a lawful arrest of the person, and who knows or
15 reasonably believes that the officer is attempting to arrest
16 him or her, is guilty of a misdemeanor and, upon conviction
17 thereof, shall be fined not less than fifty nor more

18 than five hundred dollars, and may, in the discretion of the
19 court, be confined in the county or regional jail not more
20 than one year.

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

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

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

50 (f) Any person who intentionally flees or attempts to flee
51 in a vehicle from any law-enforcement officer, probation
52 officer or parole officer acting in his or her official capac-
53 ity, after the officer has given a clear visual or audible

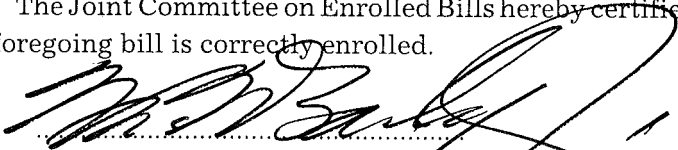
54 signal directing the person to stop, and who causes death
55 to any person during or resulting from his or her flight, is
56 guilty of a felony and, upon conviction thereof, shall be
57 punished by a definite term of imprisonment in a state
58 correctional facility which is not less than three nor more
59 than fifteen years. A person imprisoned pursuant to the
60 provisions of this subsection is not eligible for parole prior
61 to having served a minimum of three years of his or her
62 sentence or the minimum period required by the provisions
63 of section thirteen, article twelve, chapter sixty-two of this
64 code, whichever is greater.

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

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

81 (i) For purposes of this section, the terms "flee", "flee-
82 ing" and "flight" do not include any person's reasonable
83 attempt to travel to a safe place, allowing the pursuing
84 law-enforcement officer to maintain appropriate surveil-
85 lance, for the purpose of complying with the officer's
86 direction to stop.

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



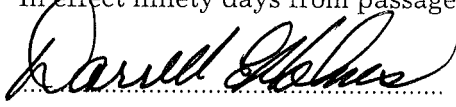
Chairman Senate Committee



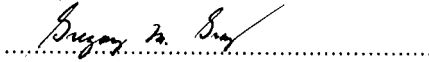
Chairman House Committee

Originating in the Senate.

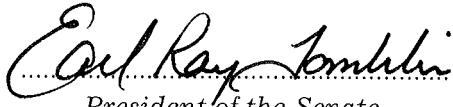
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



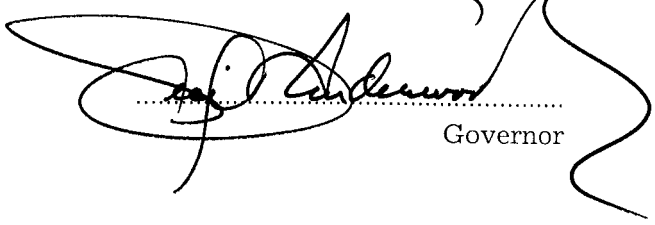
President of the Senate



Speaker House of Delegates

The within..... *approved* this the *2nd*

Day of *March*, 2000



Governor

PRESENTED TO THE

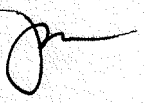
GOVERNOR

Date

3/18/00

Time

12:00

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