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
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.

(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, division of forestry 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, division of forestry 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, division of forestry employee, county correctional employee or state correctional employee, 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, division
of forestry 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, division of forestry 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, division of forestry 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, division of forestry 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, division of forestry employee, 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 political 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, article three of this chapter.

(2) "Employee of an urban mass transportation system" means any person employed by an urban mass transportation 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.

(3) "Division of forestry employee" means an officer, agent, employee, or servant, whether full-time or not, of the division of forestry.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
DATE 3/31/64
TIME 10:13 AM