

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

Committee Substitute for
SENATE BILL NO. 548

(By Senator Love, et al)

PASSED April 7, 2005

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 548

(SENATORS LOVE, SHARPE, MINARD, BAILEY, WHITE, JENKINS
AND DEMPSEY, *original sponsors*)

[Passed April 7, 2005; 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 the crimes of assault and battery upon law-enforcement officers; and adding Public Service Commission motor carrier inspectors to the list of law-enforcement officers.

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
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, Division of
7 Forestry employee, county correctional employee or state
8 correctional employee, employee of an urban mass trans-
9 portation system or Public Service Commission motor
10 carrier inspector acting in his or her official capacity and
11 the person committing the malicious assault knows or has
12 reason to know that the victim is a police officer, proba-
13 tion officer, conservation officer, humane officer, emer-
14 gency medical service personnel, firefighter, State Fire
15 Marshal or employee, Division of Forestry employee,
16 county correctional employee, state correctional employee,
17 employee of an urban mass transportation system or
18 Public Service Commission motor carrier inspector acting
19 in his or her official capacity is guilty of a felony and,
20 upon conviction thereof, shall be confined in a correctional
21 facility for not less than three nor more than fifteen years.

22 (b) *Unlawful assault.* – Any person who unlawfully but
23 not maliciously shoots, stabs, cuts or wounds or by any
24 means causes a police officer, probation officer, conserva-
25 tion officer, humane officer, emergency medical service
26 personnel, firefighter, State Fire Marshal or employee,
27 Division of Forestry employee, county correctional em-
28 ployee or state correctional employee, employee of an
29 urban mass transportation system or Public Service
30 Commission motor carrier inspector acting in his or her
31 official capacity bodily injury with intent to maim,
32 disfigure, disable or kill him or her and the person com-
33 mitting the unlawful assault knows or has reason to know
34 that the victim is a police officer, probation officer,
35 conservation officer, humane officer, emergency medical
36 service personnel, firefighter, State Fire Marshal or
37 employee, Division of Forestry employee, county correc-
38 tional employee, state correctional employee, employee of

39 an urban mass transportation system or Public Service
40 Commission motor carrier inspector acting in his or her
41 official capacity is guilty of a felony and, upon conviction
42 thereof, shall be confined in a correctional facility for not
43 less than two nor more than five years.

44 (c) *Battery*. – Any person who unlawfully, knowingly
45 and intentionally makes physical contact of an insulting or
46 provoking nature with a police officer, probation officer,
47 conservation officer, humane officer, emergency medical
48 service personnel, firefighter, State Fire Marshal or
49 employee, Division of Forestry employee, county correc-
50 tional employee, state correctional employee, employee of
51 a mass transportation system or Public Service Commis-
52 sion motor carrier inspector acting in his or her official
53 capacity, or unlawfully and intentionally causes physical
54 harm to a police officer, probation officer, conservation
55 officer, humane officer, emergency medical service person-
56 nel, firefighter, State Fire Marshal or employee, Division
57 of Forestry employee, county correctional employee, state
58 correctional employee, employee of an urban mass trans-
59 portation system or a Public Service Commission motor
60 carrier inspector acting in such capacity, is guilty of a
61 misdemeanor and, upon conviction thereof, shall be
62 confined in jail for not less than one month nor more than
63 twelve months, fined the sum of five hundred dollars, or
64 both. If any person commits a second such offense, he or
65 she is guilty of a felony and, upon conviction thereof, shall
66 be confined in a correctional facility for not less than one
67 year nor more than three years or fined the sum of one
68 thousand dollars or both fined and confined. Any person
69 who commits a third violation of this subsection is guilty
70 of a felony and, upon conviction thereof, shall be confined
71 in a correctional facility not less than two years nor more
72 than five years or fined not more than two thousand
73 dollars or both fined and confined.

74 (d) *Assault*. – Any person who unlawfully attempts to
75 commit a violent injury to the person of a police officer,

76 probation officer, conservation officer, humane officer,
77 emergency medical service personnel, firefighter, State
78 Fire Marshal or employee, Division of Forestry employee,
79 county correctional employee, state correctional employee,
80 employee of a mass transportation system or Public
81 Service Commission motor carrier inspector acting in his
82 or her official capacity, or unlawfully commits an act
83 which places a police officer, probation officer, conserva-
84 tion officer, humane officer, emergency medical service
85 personnel, firefighter, Division of Forestry employee,
86 county correctional employee or state correctional em-
87 ployee, employee of a mass transportation system or
88 Public Service Commission motor carrier inspector acting
89 in his or her official capacity in reasonable apprehension
90 of immediately receiving a violent injury, is guilty of a
91 misdemeanor and, upon conviction thereof, shall be
92 confined in jail for not less than twenty-four hours nor
93 more than six months, fined not more than two hundred
94 dollars, or both fined and confined.

95 (e) For purposes of this section:

96 (1) "Police officer" means any person employed by the
97 State Police, any person employed by the state to perform
98 law-enforcement duties, any person employed by a politi-
99 cal subdivision of this state who is responsible for the
100 prevention or detection of crime and the enforcement of
101 the penal, traffic or highway laws of this state or employed
102 as a special police officer as defined in section forty-one,
103 article three of this chapter.

104 (2) "Employee of an urban mass transportation system"
105 means any person employed by an urban mass transporta-
106 tion system as such is defined in section three, article
107 twenty-seven, chapter eight of this code or by a system
108 that receives federal transit administration funding under
109 49 U. S. C. §5307 or §5311.

110 (3) "Division of Forestry employee" means an officer,
111 agent, employee or servant, whether full-time or not, of the
112 Division of Forestry.

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

Clancy White
.....
Chairman Senate Committee

Phelan Brown
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Narrell Holmes
.....
Clerk of the Senate

Gregg M. Boy
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert J. Ross
.....
Speaker House of Delegates

The within *is approved* this the *21st*

Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time 12:20 pm.