WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED
Committee substitute for
Senate Bill No. 641

(Senators Boley and Love, original sponsors)

[Passed March 6, 2007; in effect ninety days from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 641

(SENATORS BOLEY AND LOVE, original sponsors)

[Passed March 6, 2007; 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 malicious assault, unlawful assault, battery and recidivism of battery on a police officer; including malicious assault, unlawful assault, battery and recidivism of battery on a Public Service Commission weight enforcement officer as a crime; and providing criminal penalties.

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, Public Service Commission motor carrier inspectors, Public Service Commission weight enforcement officers, employees of an urban mass transportation system 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a state 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
3 Marshal or employee, Division of Forestry employee, county correctional employee or state correctional employee, employee of an urban mass transportation system, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a state 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer acting in such capacity is guilty of a misdemeanor and, upon conviction thereof, shall be confined in 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 state 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 state 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer 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, Public Service Commission motor carrier inspector or Public Service Commission weight enforcement officer 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 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.

The 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

Originated in the Senate.

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 House of Delegates

The within is approved this the Day of , 2007.

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Governor