

Senate Bill No. 193

(By Senators Foster, Kessler (Acting President), Chafin, Hall,
Jenkins, Laird, Minard, Palumbo, Snyder, Williams, Unger and
Plymale)

[Introduced January 18, 2011; referred to the Committee on the
Judiciary.]

**Interim
Bill**

A BILL to amend and reenact §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-11, all relating to law-enforcement certification generally; expanding the responsibilities of the law-enforcement training subcommittee and renaming it the law-enforcement professional standards subcommittee; clarifying the authority to decertify law-enforcement officers; establishing a database of law-enforcement officers disciplined for certain types of misconduct; requesting the proposal of legislative rules to set standards for law-enforcement agencies to report certain types of misconduct by officers to the database; and requiring that law-enforcement agencies check the database prior to hiring an officer.

Be it enacted by the Legislature of West Virginia:

That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of

1 West Virginia, 1931, as amended, be amended and reenacted; and that
2 said code be amended by adding thereto a new section, designated
3 §30-29-11, all to read as follows:

4 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

5 **§30-29-1. Definitions.**

6 For the purposes of this article, unless a different meaning
7 clearly appears in the context:

8 (1) "Approved law-enforcement training academy" means any
9 training facility which is approved and authorized to conduct law-
10 enforcement training as provided in this article;

11 (2) "Chief executive" means the superintendent of the State
12 Police; the chief natural resources police officer of the Division
13 of Natural Resources; the sheriff of any West Virginia county;
14 any administrative deputy appointed by the chief natural resources
15 police officer of the Division of Natural Resources; or the chief
16 of any West Virginia municipal law-enforcement agency;

17 (3) "County" means the fifty-five major political subdivisions
18 of the state;

19 (4) "Exempt rank" means any noncommissioned or commissioned
20 rank of sergeant or above;

21 (5) "Governor's committee on crime, delinquency and
22 correction" or "Governor's committee" means the Governor's
23 committee on crime, delinquency and correction established as a
24 state planning agency pursuant to section one, article nine,
25 chapter fifteen of this code;

1 (6) "Law-enforcement officer" means any duly authorized
2 member of a law-enforcement agency who is authorized to maintain
3 public peace and order, prevent and detect crime, make arrests and
4 enforce the laws of the state or any county or municipality
5 thereof, other than parking ordinances, and includes those persons
6 employed as campus police officers at state institutions of higher
7 education in accordance with the provisions of section five,
8 article four, chapter eighteen-b of this code, and persons employed
9 by the Public Service Commission as motor carrier inspectors and
10 weight enforcement officers charged with enforcing commercial motor
11 vehicle safety and weight restriction laws although those
12 institutions and agencies may not be considered law-enforcement
13 agencies. The term also includes those persons employed as rangers
14 by the Hatfield-McCoy Regional Recreation Authority in accordance
15 with the provisions of section six, article fourteen, chapter
16 twenty of this code, although the authority may not be considered
17 a law-enforcement agency: *Provided*, That the subject rangers shall
18 pay the tuition and costs of training. As used in this article,
19 the term "law-enforcement officer" does not apply to the chief
20 executive of any West Virginia law-enforcement agency or any
21 watchman or special natural resources police officer;

22 (7) "Law-enforcement official" means the duly appointed chief
23 administrator of a designated law-enforcement agency or a duly
24 authorized designee;

25 (8) "Municipality" means any incorporated town or city whose

1 boundaries lie within the geographic boundaries of the state;

2 (9) "Subcommittee" or "law-enforcement ~~training~~ professional
3 standards subcommittee" means the subcommittee of the Governor's
4 committee on crime, delinquency and correction created by section
5 two of this article; and

6 (10) "West Virginia law-enforcement agency" means any duly
7 authorized state, county or municipal organization employing one or
8 more persons whose responsibility is the enforcement of laws of the
9 state or any county or municipality thereof: *Provided, That*
10 neither the Hatfield-McCoy Regional Recreation Authority, the
11 Public Service Commission nor any state institution of higher
12 education is a law-enforcement agency.

13 **§30-29-2. Law-enforcement professional standards subcommittee.**

14 (a) ~~A~~ The law-enforcement training subcommittee of the
15 Governor's committee on crime, delinquency and corrections is
16 ~~hereby created~~ continued and renamed the Law-Enforcement
17 Professional Standards Subcommittee. The subcommittee has the
18 following responsibilities:

19 (1) Review and ~~administration of~~ administer programs for
20 qualification, training and certification of law-enforcement
21 officers in the state; and

22 (2) Receive and review misconduct reports filed as required by
23 section eleven of this article from law-enforcement entities of
24 this state by the process created pursuant to subsection (1) of
25 section three of this article. The subcommittee may recommend to

1 the Governor's committee de-certification of any law-enforcement
2 officer whose misconduct reports would make them ineligible to
3 become a new officer under section five of this article.

4 (b) The subcommittee has subpoena power to compel the
5 attendance of witnesses and the production of books, records or
6 documents anywhere in the state from law-enforcement agencies of
7 this state as needed to carry out the duties of the subcommittee.

8 (c) The subcommittee shall be comprised of ten members of the
9 Governor's committee including one representative of each of the
10 following:

11 (1) ~~The department of public safety,~~ West Virginia State
12 Police;

13 (2) The law-enforcement Division of the Department of Natural
14 Resources;

15 (3) ~~the~~ West Virginia Sheriffs Association;

16 (4) ~~the~~ West Virginia Association of Chiefs of Police;

17 (5) ~~the~~ West Virginia Deputy Sheriffs Association;

18 (6) ~~the~~ West Virginia fraternal order of police lodge;

19 (7) ~~the~~ West Virginia Municipal League;

20 (8) ~~the~~ West Virginia Association of county officials;

21 (9) ~~the~~ Human Rights Commission; and

22 (10) The public at large.

23 ~~(b)~~ (d) The subcommittee shall elect a chairperson and a vice
24 chairperson. Special meetings may be held upon the call of the
25 chairperson, vice chairperson or a majority of the members of the

1 subcommittee. A majority of the members of the subcommittee
2 constitutes a quorum.

3 **§30-29-3. Duties of the Governor's committee and the subcommittee.**

4 Upon recommendation of the subcommittee, the Governor's
5 committee shall, by or pursuant to rules proposed for legislative
6 approval in accordance with article three, chapter twenty-nine-a of
7 this code:

8 (a) Provide funding for the establishment and support of law-
9 enforcement training academies in the state;

10 (b) Establish standards governing the establishment and
11 operation of the law-enforcement training academies, including
12 regional locations throughout the state, in order to provide access
13 to each law-enforcement agency in the state in accordance with
14 available funds;

15 (c) Establish minimum law-enforcement instructor
16 qualifications;

17 (d) Certify qualified law-enforcement instructors;

18 (e) Maintain a list of approved law-enforcement instructors;

19 (f) Promulgate standards governing the qualification of law-
20 enforcement officers and the entry-level law-enforcement training
21 curricula. These standards shall require satisfactory completion
22 of a minimum of four hundred classroom hours, shall provide for
23 credit to be given for relevant classroom hours earned pursuant to
24 training other than training at an established law-enforcement
25 training academy if earned within five years immediately preceding

1 the date of application for certification, and shall provide that
2 the required classroom hours can be accumulated on the basis of a
3 part-time curricula spanning no more than twelve months, or a full-
4 time curricula;

5 (g) Establish standards governing in-service law-enforcement
6 officer training curricula and in-service supervisory level
7 training curricula;

8 (h) Certify organized criminal enterprise investigation
9 techniques with a qualified anti-racial profiling training course
10 or module;

11 (i) Establish standards governing mandatory training to
12 effectively investigate organized criminal enterprises as defined
13 in article thirteen, chapter sixty-one of this code, while
14 preventing racial profiling, as defined in section ten of this
15 article, for entry level training curricula and for law-enforcement
16 officers who have not received such training as certified by the
17 Governor's committee as required in this section;

18 (j) Establish, no later than July 1, 2011, procedures for
19 implementation of a course in investigation of organized criminal
20 enterprises which includes an anti-racial training module to be
21 available on the Internet or otherwise to all law-enforcement
22 officers. The procedures shall include the frequency with which a
23 law-enforcement officer shall receive training in investigation of
24 organized criminal enterprises and anti-racial profiling, and a
25 time frame for which all law-enforcement officers must receive such

1 training: *Provided*, That all law-enforcement officers in this
2 state shall receive such training no later than July 1, 2012. In
3 order to implement and carry out the intent of this section, the
4 Governor's committee may promulgate emergency rules pursuant to
5 section fifteen, article three, chapter twenty-nine-a of this code;

6 (k) Certify or de-certify law-enforcement officers, as
7 provided in section five of this article;

8 (l) Establish standards and procedures for the reporting of
9 complaints and certain disciplinary matters concerning law-
10 enforcement officers, and for reviewing the certification of law-
11 enforcement officers who receive complaints or disciplinary
12 matters. These standards and procedures shall provide for
13 preservation of records and access to records by law-enforcement
14 agencies and conditions as to how the information in those records
15 is to be used regarding an officer's law-enforcement employment by
16 another law enforcement agency;

17 (1) The subcommittee shall establish and manage a database
18 that is available to all law-enforcement agencies in the state
19 concerning internal and external complaints, disciplinary matters,
20 investigations or actions taken by the agency and actions taken by
21 an officer or agency in lieu of disciplinary action pursuant to the
22 reporting requirements set by rule.

23 (2) The information in the database which contains personnel
24 or personal information not resulting in a criminal charge or
25 conviction are not subject to the provisions of chapter twenty-

1 nine-b of this code.

2 ~~(l)~~ (m) Seek supplemental funding for law-enforcement training
3 academies from sources other than the fees collected pursuant to
4 section four of this article;

5 ~~(m)~~ (n) Any responsibilities and duties as the Legislature
6 may, from time to time, see fit to direct to the committee; and

7 ~~(n)~~ (o) Submit, on or before September 30 of each year, to the
8 Governor, and upon request to individual members of the
9 Legislature, a report on its activities during the previous year
10 and an accounting of funds paid into and disbursed from the special
11 revenue account ~~establish~~ established pursuant to section four of
12 this article.

13 **§30-29-5. Certification requirements and power to de-certify.**

14 (a) Except as provided in subsections (b) and (g) below, ~~no~~ a
15 person may not be employed as a law-enforcement officer by any West
16 Virginia law-enforcement agency or by any state institution of
17 higher education or by the Public Service Commission of West
18 Virginia on or after the effective date of this article unless the
19 person is certified, or is certifiable in one of the manners
20 specified in subsections (c) through (e) below, by the Governor's
21 committee as having met the minimum entry level law-enforcement
22 qualification and training program requirements promulgated
23 pursuant to this article: *Provided*, That the provisions of this
24 section ~~shall~~ do not apply to persons hired by the Public Service
25 Commission as motor carrier inspectors and weight enforcement

1 officers ~~prior to the~~ before July 1, 2007.

2 (b) Except as provided in subsection (g) below, a person who
3 is not certified, or certifiable in one of the manners specified in
4 subsections (c) through (e) below, may be conditionally employed as
5 a law-enforcement officer until certified: *Provided*, That within
6 ninety calendar days of the commencement of employment or the
7 effective date of this article if the person is already employed on
8 the effective date, he or she makes a written application to attend
9 an approved law-enforcement training academy. The person's
10 employer shall provide notice, in writing, of the ninety-day
11 deadline to file a written application to the academy within thirty
12 calendar days of that person's commencement of employment. The
13 employer shall provide full disclosure as to the consequences of
14 failing to file a timely written application. The academy shall
15 notify the applicant in writing of the receipt of the application
16 and of the tentative date of the applicant's enrollment. Any
17 applicant who, as the result of extenuating circumstances
18 acceptable to his or her law-enforcement official, is unable to
19 attend the scheduled training program to which he or she was
20 admitted may reapply and shall be admitted to the next regularly
21 scheduled training program. An applicant who satisfactorily
22 completes the program shall, within thirty days of completion, make
23 written application to the Governor's committee requesting
24 certification as having met the minimum entry level law-enforcement
25 qualification and training program requirements. Upon determining

1 that an applicant has met the requirements for certification, the
2 Governor's committee shall forward to the applicant documentation
3 of certification. An applicant who fails to complete the training
4 program to which he or she is first admitted, or was admitted upon
5 reapplication, may not be certified by the Governor's committee:
6 *Provided, however,* That an applicant who has completed the minimum
7 training required by the Governor's committee may be certified as
8 a law-enforcement officer, notwithstanding the applicant's failure
9 to complete additional training hours required in the training
10 program to which he or she originally applied.

11 (c) Any person who is employed as a law-enforcement officer on
12 the effective date of this article and is a graduate of the West
13 Virginia basic police training course, the West Virginia State
14 Police cadet training program, or other approved law-enforcement
15 training academy, is certifiable as having met the minimum entry
16 level law-enforcement training program requirements and is exempt
17 from the requirement of attending a law-enforcement training
18 academy. To receive certification, the person shall make written
19 application within ninety calendar days of the effective date of
20 this article to the Governor's committee requesting certification.
21 The Governor's committee shall review the applicant's relevant
22 scholastic records and, upon determining that the applicant has met
23 the requirements for certification, shall forward to the applicant
24 documentation of certification.

25 (d) Any person who is employed as a law-enforcement officer on

1 the effective date of this article and is not a graduate of the
2 West Virginia basic police training course, the West Virginia State
3 Police Cadet Training Program, or other approved law-enforcement
4 training academy, is certifiable as having met the minimum entry
5 level law-enforcement training program requirements and is exempt
6 from the requirement of attending a law-enforcement training
7 academy if the person has been employed as a law-enforcement
8 officer for a period of not less than five consecutive years
9 immediately preceding the date of application for certification.
10 To receive certification, the person shall make written application
11 within ninety calendar days following the effective date of this
12 article to the Governor's committee requesting certification. The
13 application shall include notarized statements as to the
14 applicant's years of employment as a law-enforcement officer. The
15 Governor's committee shall review the application and, upon
16 determining that the applicant has met the requirements for
17 certification, shall forward to the applicant documentation of
18 certification.

19 (e) Any person who begins employment on or after the effective
20 date of this article as a law-enforcement officer is certifiable as
21 having met the minimum entry level law-enforcement training program
22 requirements and is exempt from attending a law-enforcement
23 training academy if the person has satisfactorily completed a
24 course of instruction in law enforcement equivalent to or exceeding
25 the minimum applicable law-enforcement training curricula

1 promulgated by the Governor's committee. To receive certification,
2 the person shall make written application within ninety calendar
3 days following the commencement of employment to the Governor's
4 committee requesting certification. The application shall include
5 a notarized statement of the applicant's satisfactory completion of
6 the course of instruction in law enforcement, a notarized
7 transcript of the applicant's relevant scholastic records, and a
8 notarized copy of the curriculum of the completed course of
9 instruction. The Governor's committee shall review the application
10 and, if it finds the applicant has met the requirements for
11 certification shall forward to the applicant documentation of
12 certification.

13 (f) Any person who is employed as a law-enforcement officer on
14 or after the effective date of this article and fails to be
15 certified shall be automatically terminated and no further
16 emoluments shall be paid to such officer by his or her employer.
17 Any person terminated shall be entitled to reapply, as a private
18 citizen, to the subcommittee for training and certification, and
19 upon being certified may again be employed as a law-enforcement
20 officer in this state: *Provided*, That if a person is terminated
21 under this subsection because an application was not timely filed
22 to the academy, and the person's employer failed to provide notice
23 or disclosure to that person as set forth in subsection (b) of this
24 section, the employer shall pay the full cost of attending the
25 academy if the person's application to the subcommittee as a

1 private citizen is subsequently approved.

2 (g) Nothing in this article may be construed as prohibiting
3 any governing body, Civil Service Commission or chief executive of
4 any West Virginia law-enforcement agency from requiring their law-
5 enforcement officers to meet qualifications and satisfactorily
6 complete a course of law-enforcement instruction which exceeds the
7 minimum entry level law-enforcement qualification and training
8 curricula promulgated by the Governor's committee.

9 (h) The Governor's committee may de-certify law-enforcement
10 officers upon recommendation of the subcommittee pursuant to the
11 process contained in this article and legislative rules.

12 ~~(h)~~ (i) The requirement of this section for qualification,
13 training and certification of law-enforcement officers shall not be
14 mandatory during the two years next succeeding ~~the effective date~~
15 ~~of this article~~ July 9, 1981 for the law-enforcement officers of a
16 law-enforcement agency which employs a civil service system for its
17 law-enforcement personnel, nor shall such provisions be mandatory
18 during the five years next succeeding ~~the effective date of this~~
19 ~~article~~ July 9, 1981 for law-enforcement officers of a law-
20 enforcement agency which does not employ a civil service system for
21 its law-enforcement personnel: *Provided, That ~~such~~ these*
22 ~~requirements shall be~~ are mandatory for all such law-enforcement
23 officers until their law-enforcement officials apply for their
24 exemption by submitting a written plan to the Governor's committee
25 which will reasonably assure compliance of all law-enforcement

1 officers of their agencies within the applicable two or five-year
2 period of exemption.

3 ~~(i)~~ (j) Any person aggrieved by a decision of the Governor's
4 committee made pursuant to this article may contest ~~such~~ the
5 decision in accordance with the provisions of article five, chapter
6 twenty-nine-a of this code.

7 ~~(j)~~ (k) Any person terminated from employment for not filing
8 an application to the law-enforcement training academy within
9 ninety days after commencing employment as a law-enforcement
10 officer may appeal the termination to the Governor's committee for
11 reconsideration on an individual basis.

12 ~~(k)~~ (l) Beginning July 1, 2002 until June 13, 2003, any
13 applicant who has been conditionally employed as a law-enforcement
14 officer who failed to submit a timely application pursuant to the
15 provisions of this section, may be conditionally employed as a law-
16 enforcement officer and may resubmit an application pursuant to
17 subsection (b) of this section to an approved law-enforcement
18 training academy. If the applicant is accepted, the employer shall
19 pay compensation to the employee for attendance at the law-
20 enforcement training academy at the rate provided in section eight
21 of this article.

22 **§30-29-11. Required reporting by law-enforcement agencies of**
23 **certain disciplinary information; Legislative**
24 **rules; Requirement that database be consulted**

1 **prior to the hiring of law-enforcement officers.**

2 (a) Law-enforcement agencies in this state shall report to the
3 subcommittee the name of, and all pertinent facts regarding, any
4 law-enforcement officer charged with or for which there has been a
5 judicial or administrative finding of probable cause to believe
6 that:

7 (1) He or she has committed a felony or a misdemeanor crime of
8 violence, moral turpitude or controlled substance offence; or

9 (2) He or she has been administratively charged with a
10 violation of any agency, rule, or policy which, if proven, would
11 result in discharge, demotion or suspension and he or she has
12 resigned prior to a final determination.

13 (b) Commencing on July 1, 2011, the subcommittee shall
14 recommend legislative rules to the Governor's committee relating to
15 the reporting of certain criminal and administrative violations by
16 law-enforcement officers, the process by which all reports are
17 investigated and recorded and the process by which all law-
18 enforcement agencies can access the records of the subcommittee.
19 These rules shall include:

20 (1) The violations of agency rules, regulations or policies
21 that will result in a mandatory report to the subcommittee in
22 addition to the statutorily mandated reports pursuant to subsection
23 (a) of this section;

24 (2) A process by which the subcommittee can receive, review
25 and investigate all reported actions; and

1 (3) Guidelines for the establishment and use of a database of
2 all reported actions that is accessible by law-enforcement agencies
3 of this state.

4 (c) Prior to hiring a law-enforcement officer, the head of a
5 law-enforcement agency of this state or a entity or agency of this
6 state or any political subdivision thereof authorized to employ or
7 hire a law-enforcement officer shall determine whether the database
8 authorized by the provisions of section three of this article
9 contains information regarding said prospective employee.

NOTE: This bill was recommended for introduction and passage
by the Joint Committee on the Judiciary.

The purpose of this bill is to expand the responsibilities of
the law-enforcement training subcommittee and rename it the law-
enforcement professional standards subcommittee; to clarify the
authority to de-certify law-enforcement officers; to establish a
database of law-enforcement officers disciplined for certain types
of misconduct; to request the proposal of legislative rules to set
standards for law-enforcement agencies to report certain types of
misconduct by officers to the database; and to require that law-
enforcement agencies check the database prior to hiring any
officer.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.

§30-29-11 is new; therefore, strike-throughs and underscoring
have been omitted.