

1 **Senate Bill No. 421**

2 (By Senators Nohe, Boley, Carmichael and Walters)

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4 [Introduced March 4, 2013; referred to the Committee on  
5 Education; and then to the Committee on the Judiciary.]

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10 A BILL to amend and reenact §61-7-11a of the Code of West Virginia,  
11 1931, as amended, relating to providing an exemption for the  
12 official mascot of Parkersburg South High School, commonly  
13 known as The Patriot, which would allow the mascot to carry a  
14 musket on school grounds when the mascot is acting in his or  
15 her official capacity.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §61-7-11a of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

19 **ARTICLE 7. DANGEROUS WEAPONS.**

20 **§61-7-11a. Possessing deadly weapons on premises of educational**  
21 **facilities; reports by school principals; suspension**  
22 **of driver license; possessing deadly weapons on**

1                   **premises housing courts of law and in offices of**  
2                   **family law master.**

3           (a) The Legislature hereby finds that the safety and welfare  
4 of the citizens of this state are inextricably dependent upon  
5 assurances of safety for children attending and ~~the~~ persons  
6 employed by schools in this state and for ~~those~~ persons employed  
7 ~~with~~ by the judicial department of this state. It is for the  
8 purpose of providing ~~such~~ assurances of safety ~~therefore,~~ that  
9 subsections (b), (g) and (h) of this section are enacted as a  
10 reasonable regulation of the manner in which citizens may exercise  
11 ~~those~~ the rights accorded to them pursuant to section twenty-two,  
12 article three of the Constitution of the State of West Virginia.

13           (b) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess  
14 ~~any~~ a firearm or ~~any~~ other deadly weapon on ~~any~~ a school bus as  
15 defined in section one, article one, chapter seventeen-a of this  
16 code, or in or on ~~any~~ a public or private primary or secondary  
17 education building, structure, facility or grounds ~~thereof,~~  
18 including ~~any~~ a vocational education building, structure, facility  
19 or grounds ~~thereof~~ where secondary vocational education programs  
20 are conducted or at ~~any~~ a school-sponsored function.

21           (2) This subsection ~~shall~~ does not apply to:

22           (A) A law-enforcement officer acting in his or her official  
23 capacity;

1 (B) A person specifically authorized by the board of education  
2 of the county or principal of the school where the property is  
3 located to conduct programs with valid educational purposes;

4 (C) A person who, as otherwise permitted by the provisions of  
5 this article, possesses an unloaded firearm or deadly weapon in a  
6 motor vehicle or leaves an unloaded firearm or deadly weapon in a  
7 locked motor vehicle;

8 (D) Programs or raffles conducted with the approval of the  
9 county board of education or school which include the display of  
10 unloaded firearms; ~~or~~

11 (E) The official mascot of West Virginia University, commonly  
12 known as "The Mountaineer," acting in his or her official capacity;  
13 or

14 (F) The official mascot of Parkersburg South High School,  
15 commonly known as "The Patriot," acting in his or her official  
16 capacity.

17 (3) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
18 of a felony and, upon conviction thereof, shall be imprisoned in  
19 ~~the penitentiary of this state~~ a state correctional facility for a  
20 definite term of years of not less than two years nor more than ten  
21 years, or fined not more than \$5,000, or both.

22 (c) It ~~shall be~~ is the duty of the principal of each school  
23 subject to the authority of the State Board of Education to report

1 ~~any~~ a violation of subsection (b) of this section discovered by  
2 ~~such~~ the principal to the State Superintendent of Schools within  
3 seventy-two hours after ~~such~~ the violation occurs. The State Board  
4 of Education shall keep and maintain ~~such~~ these reports and may  
5 prescribe rules establishing policy and procedures for the making  
6 and delivery of ~~the same~~ the reports as required by this  
7 subsection. In addition, it ~~shall be~~ is the duty of the principal  
8 of each school subject to the authority of the State Board of  
9 Education to report ~~any~~ a violation of subsection (b) of this  
10 section discovered by ~~such~~ the principal to the appropriate local  
11 office of the Division of Public Safety within seventy-two hours  
12 after ~~such~~ the violation occurs.

13 (d) In addition to the methods of disposition provided by  
14 article five, chapter forty-nine of this code, ~~any~~ a court which  
15 adjudicates a person who is fourteen years of age or older as  
16 delinquent for a violation of subsection (b) of this section may,  
17 in its discretion, order the Division of Motor Vehicles to suspend  
18 ~~any~~ a driver's license or instruction permit issued to ~~such~~ the  
19 person for ~~such~~ a period of time as the court ~~may deem~~ considers  
20 appropriate, ~~such suspension, however,~~ not to extend beyond ~~such~~  
21 the person's nineteenth birthday. ~~or, Where such~~ Where the person  
22 has not been issued a driver's license or instruction permit by  
23 this state, a court may order the Division of Motor Vehicles to

1 deny ~~such~~ the person's application for ~~the same for such~~ a license  
2 or permit for a period of time as the court ~~may deem~~ considers

3 appropriate, ~~such denial, however,~~ not to extend beyond ~~such~~ the  
4 person's nineteenth birthday. ~~Any~~ A suspension ordered by the  
5 court pursuant to this subsection ~~shall be~~ is effective upon the  
6 date of entry of ~~such~~ the order. Where the court orders the  
7 suspension of a driver's license or instruction permit pursuant to  
8 this subsection, the court shall confiscate any driver's license or  
9 instruction permit in the adjudicated person's possession and  
10 forward ~~the same~~ to the Division of Motor Vehicles.

11 (e) (1) If a person eighteen years of age or older is  
12 convicted of violating subsection (b) of this section, and if ~~such~~  
13 the person does not act to appeal ~~such~~ the conviction within the  
14 time periods described in subdivision (2) of this subsection, ~~such~~  
15 the person's license or privilege to operate a motor vehicle in  
16 this state shall be revoked in accordance with the provisions of  
17 this section.

18 (2) The clerk of the court in which the person is convicted as  
19 described in subdivision (1) of this subsection shall forward to  
20 the commissioner a transcript of the judgment of conviction. If  
21 the conviction is the judgment of a magistrate court, the  
22 magistrate court clerk shall forward ~~such~~ the transcript when the  
23 person convicted has not requested an appeal within twenty days of

1 the sentencing for ~~such~~ the conviction. If the conviction is the  
2 judgment of a circuit court, the circuit clerk shall forward ~~such~~  
3 ~~transcript~~ a transcript of the judgment of conviction when the  
4 person convicted has not filed a notice of intent to file a  
5 petition for appeal or writ of error within thirty days after the  
6 judgment was entered.

7 (3) If, upon examination of the transcript of the judgment of  
8 conviction, the commissioner ~~shall determine~~ determines that the  
9 person was convicted as described in subdivision (1) of this  
10 subsection, the commissioner shall make and enter an order revoking  
11 ~~such~~ the person's license or privilege to operate a motor vehicle  
12 in this state for a period of one year or, in the event the person  
13 is a student enrolled in a secondary school, for a period of one  
14 year or until the person's twentieth birthday, whichever is the  
15 greater period. The order shall contain the reasons for the  
16 revocation and the revocation period. The order of suspension  
17 shall advise the person that because of the receipt of the court's  
18 transcript, a presumption exists that the person named in the order  
19 of suspension is the same person named in the transcript. The  
20 commissioner may grant an administrative hearing which  
21 substantially complies with the requirements of the provisions of  
22 section two, article five-a, chapter seventeen-c of this code upon  
23 a preliminary showing that a possibility exists that the person

1 named in the notice of conviction is not the same person whose  
2 license is being suspended. ~~Such~~ The request for hearing shall be  
3 made within ten days after receipt of a copy of the order of  
4 suspension. The sole purpose of this hearing ~~shall be~~ is for the  
5 person requesting the hearing to present evidence that he or she is  
6 not the person named in the notice. ~~In the event~~ If the  
7 commissioner grants an administrative hearing, the commissioner  
8 shall stay the license suspension pending the commissioner's order  
9 resulting from the hearing.

10 (4) For the purposes of this subsection, a person is convicted  
11 when such person enters a plea of guilty or is found guilty by a  
12 court or jury.

13 (f) (1) It ~~shall be~~ is unlawful for ~~any~~ a parent(s),  
14 guardian(s) or custodian(s) of a person less than eighteen years of  
15 age who knows that ~~said the~~ the person is in violation of subsection  
16 (b) of this section or ~~who~~ has reasonable cause to believe that  
17 ~~said the~~ the person's violation of ~~said~~ subsection (b) is imminent, to  
18 fail to immediately report ~~such~~ his or her knowledge or belief to  
19 the appropriate school or law-enforcement officials.

20 (2) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
21 of a misdemeanor and, upon conviction thereof, shall be fined not  
22 more than \$1,000, or shall be confined in jail not more than one  
23 year, or both.

1 (g) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess  
2 ~~any a~~ a firearm or ~~any~~ other deadly weapon on ~~any premises which~~  
3 ~~houses~~ premises of a court of law or ~~in the offices of a family law~~  
4 ~~master.~~ including family courts.

5 (2) This subsection ~~shall~~ does not apply to:

6 (A) A law-enforcement officer acting in his or her official  
7 capacity; and

8 (B) A person exempted from the provisions of this subsection  
9 by order of record entered by a court with jurisdiction over ~~such~~  
10 the premises or offices.

11 (3) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
12 of a misdemeanor and, upon conviction thereof, shall be fined not  
13 more than \$1,000, or shall be confined in jail not more than one  
14 year, or both.

15 (h) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess  
16 ~~any a~~ a firearm or ~~any~~ other deadly weapon on ~~any premises which~~  
17 ~~houses a court of law or in the offices of a family law master~~ the  
18 premises of a court of law, including family courts, with the  
19 intent to commit a crime.

20 (2) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
21 of a felony and, upon conviction thereof, shall be imprisoned in  
22 ~~the penitentiary of this state~~ a state correctional facility for a  
23 definite term of years of not less than two years nor more than ten



1 years, or fined not more than \$5,000, or both.

2 (i) Nothing in this section ~~may be construed to be~~ is in  
3 conflict with the provisions of federal law.

NOTE: The purpose of this bill is to provide an exemption for the official mascot of Parkersburg South High School, commonly known as "The Patriot," which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity. This is the same exemption that is granted to the West Virginia University Mountaineer.

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