

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4436

BY DELEGATES HICKS, PERDUE, MARCUM, REYNOLDS,

SHAFFER, DEEM, MCGEEHANN, FOLK, MOFFATT AND J.

NELSON

[Introduced February 8, 2016; Referred
to the Committee on Education then the Judiciary.]

1 A BILL to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating
2 to permitting probation officers to carry deadly weapons on school buses and property.

Be it enacted by the Legislature of West Virginia:

1 That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows.

ARTICLE 7. DANGEROUS WEAPONS.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by
school principals; suspension of driver's license; possessing deadly weapons on
premises housing courts of law and family law courts.**

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

8 (b)(1) It is unlawful for a person to possess a firearm or other deadly weapon on a school
9 bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public
10 or private primary or secondary education building, structure, facility or grounds including a
11 vocational education building, structure, facility or grounds where secondary vocational education
12 programs are conducted or at a school-sponsored function.

13 (2) This subsection does not apply to:

14 (A) A law-enforcement officer employed by a federal, state, county or municipal law-
15 enforcement agency;

16 (B) A retired law-enforcement officer who:

17 (i) Is employed by a state, county or municipal law-enforcement agency;

- 18 (ii) Is covered for liability purposes by his or her employer;
- 19 (iii) Is authorized by a county board of education and the school principal to serve as
20 security for a school;
- 21 (iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement
22 officer under the Law Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C.
23 §926C(c); and
- 24 (v) Meets all of the requirements for handling and using a firearm established by his or her
25 employer, and has qualified with his or her firearm to those requirements;
- 26 (C) A probation officer who has been appointed by a circuit court in accordance with
27 section five, article twelve, chapter sixty-two of this code.
- 28 ~~(C)~~ (D) A person specifically authorized by the board of education of the county or principal
29 of the school where the property is located to conduct programs with valid educational purposes;
- 30 ~~(D)~~ (E) A person who, as otherwise permitted by the provisions of this article, possesses
31 an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
32 weapon in a locked motor vehicle;
- 33 ~~(E)~~ (F) Programs or raffles conducted with the approval of the county board of education
34 or school which include the display of unloaded firearms;
- 35 ~~(F)~~ (G) The official mascot of West Virginia University, commonly known as the
36 Mountaineer, acting in his or her official capacity; or
- 37 ~~(G)~~ (H) The official mascot of Parkersburg South High School, commonly known as the
38 Patriot, acting in his or her official capacity.
- 39 (3) A person violating this subsection is guilty of a felony and, upon conviction thereof,
40 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
41 years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.
- 42 (c) A school principal subject to the authority of the State Board of Education who
43 discovers a violation of subsection (b) of this section shall report the violation as soon as possible

44 to:

45 (1) The State Superintendent of Schools. The State Board of Education shall keep and
46 maintain these reports and may prescribe rules establishing policy and procedures for making
47 and delivering the reports as required by this subsection; and

48 (2) The appropriate local office of the Division of Public Safety, county sheriff or municipal
49 police agency.

50 (d) In addition to the methods of disposition provided by article five, chapter forty-nine of
51 this code, a court which adjudicates a person who is fourteen years of age or older as delinquent
52 for a violation of subsection (b) of this section may order the Division of Motor Vehicles to suspend
53 a driver's license or instruction permit issued to the person for a period of time as the court
54 considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has
55 not been issued a driver's license or instruction permit by this state, a court may order the Division
56 of Motor Vehicles to deny the person's application for a license or permit for a period of time as
57 the court considers appropriate, not to extend beyond the person's nineteenth birthday. A
58 suspension ordered by the court pursuant to this subsection is effective upon the date of entry of
59 the order. Where the court orders the suspension of a driver's license or instruction permit
60 pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in
61 the adjudicated person's possession and forward to the Division of Motor Vehicles.

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

66 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
67 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If
68 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
69 transcript when the person convicted has not requested an appeal within twenty days of the

70 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
71 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
72 notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was
73 entered.

74 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
75 determines that the person was convicted as described in subdivision (1) of this subsection, the
76 commissioner shall make and enter an order revoking the person's license or privilege to operate
77 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
78 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever
79 is the greater period. The order shall contain the reasons for the revocation and the revocation
80 period. The order of suspension shall advise the person that because of the receipt of the court's
81 transcript, a presumption exists that the person named in the order of suspension is the same
82 person named in the transcript. The commissioner may grant an administrative hearing which
83 substantially complies with the requirements of the provisions of section two, article five-a, chapter
84 seventeen-c of this code upon a preliminary showing that a possibility exists that the person
85 named in the notice of conviction is not the same person whose license is being suspended. The
86 request for hearing shall be made within ten days after receipt of a copy of the order of
87 suspension. The sole purpose of this hearing is for the person requesting the hearing to present
88 evidence that he or she is not the person named in the notice. If the commissioner grants an
89 administrative hearing, the commissioner shall stay the license suspension pending the
90 commissioner's order resulting from the hearing.

91 (4) For the purposes of this subsection, a person is convicted when he or she enters a
92 plea of guilty or is found guilty by a court or jury.

93 (f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years
94 of age who knows that the person is in violation of subsection (b) of this section or has reasonable
95 cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately

96 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

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

100 (g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
101 premises of a court of law, including family courts.

102 (2) This subsection does not apply to:

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

104 (B) A person exempted from the provisions of this subsection by order of record entered
105 by a court with jurisdiction over the premises or offices.

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

109 (h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
110 premises of a court of law, including family courts, with the intent to commit a crime.

111 (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,
112 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
113 years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

114 (i) Nothing in this section may be construed to be in conflict with the provisions of federal
115 law.

NOTE: The purpose of this bill is to permit probation officers to carry deadly weapons on school buses and property.

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