

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 388

BY SENATORS SYPOLT, AZINGER, BOSO, CLINE, FERNS,
KARNES, MAYNARD, OJEDA, RUCKER, SMITH, TAKUBO,
TRUMP AND MARONEY

[Originating in the Committee on the Judiciary;
reported on March 22, 2017]

1 A BILL to amend and reenact §61-7-11a and §61-7-14 of the Code of West Virginia, 1931, as
2 amended, all relating generally to dangerous weapons; exempting persons other than
3 provisional concealed handgun permittees who are lawfully authorized to carry a
4 concealed handgun to possess firearms on school parking lots, driveways and other areas
5 of vehicular ingress or egress; creating safety storage requirements on such possession;
6 clarifying persons who may possess a firearm on property where such is otherwise
7 prohibited when acting in an official capacity; and correcting internal statutory references.

Be it enacted by the Legislature of West Virginia:

1 That §61-7-11a and §61-7-14 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, all 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 and
5 paragraph (l), subdivision (2), subsection (b) of this section are enacted as a reasonable
6 regulation of the manner in which citizens may exercise the rights accorded to them pursuant to
7 section twenty-two, article three of the Constitution of the State of 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 primary or secondary education building, structure, facility or grounds including a vocational
11 education building, structure, facility or grounds where secondary vocational education programs
12 are conducted or at a school-sponsored function, or in or on a private primary or secondary

13 education building, structure or facility: *Provided*, That it shall not be unlawful to possess a firearm
14 or other deadly weapon on or in a private primary or secondary education building, structure or
15 facility when such institution has adopted written policies allowing for possession of firearms on
16 or in the institution's buildings, structures or facilities.

17 (2) This subsection does not apply to:

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

20 (B) Any probation officer appointed pursuant to section five, article twelve, chapter sixty-
21 two or chapter forty-nine of this code in the performance of his or her duties;

22 (C) A retired law-enforcement officer who:

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

24 (ii) Is covered for liability purposes by his or her employer;

25 (iii) Is authorized by a county board of education and the school principal to serve as
26 security for a school;

27 (iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement
28 officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S.
29 C. §926C(c); and

30 (v) Meets all of the requirements for handling and using a firearm established by his or her
31 employer and has qualified with his or her firearm to those requirements;

32 (D) A person specifically authorized by the Board of Education of the county or principal
33 of the school where the property is located to conduct programs with valid educational purposes;

34 (E) A person who, as otherwise permitted by the provisions of this article, possesses an
35 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
36 weapon in a locked motor vehicle;

37 (F) Programs or raffles conducted with the approval of the county board of education or
38 school which include the display of unloaded firearms;

39 (G) The official mascot of West Virginia University, commonly known as the Mountaineer,
40 acting in his or her official capacity; ~~or~~

41 (H) The official mascot of Parkersburg South High School, commonly known as the Patriot,
42 acting in his or her official capacity; or

43 (I) Except for persons authorized to possess a concealed handgun pursuant to a
44 provisional handgun permit, any person who may lawfully possess a firearm may possess a
45 concealed handgun while in a motor vehicle in a parking lot, traffic circle or other areas of vehicular
46 ingress or egress to the school: *Provided*, That the person stores the handgun out of view from
47 persons outside the vehicle when he or she is occupying the vehicle and stores the handgun out
48 of view from persons outside the vehicle, the vehicle is locked and the handgun is in a locked
49 trunk, glove box or other interior compartment, or in a locked container securely fixed to the
50 vehicle when he or she is not occupying the vehicle.

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

54 (c) A school principal subject to the authority of the State Board of Education who
55 discovers a violation of subsection (b) of this section shall report the violation as soon as possible
56 to:

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

60 (2) The appropriate local office of the State Police, county sheriff or municipal police
61 agency.

62 (d) In addition to the methods of disposition provided by article five, chapter forty-nine of
63 this code, a court which adjudicates a person who is fourteen years of age or older as delinquent
64 for a violation of subsection (b) of this section may order the Division of Motor Vehicles to suspend

65 a driver's license or instruction permit issued to the person for a period of time as the court
66 considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has
67 not been issued a driver's license or instruction permit by this state, a court may order the Division
68 of Motor Vehicles to deny the person's application for a license or permit for a period of time as
69 the court considers appropriate, not to extend beyond the person's nineteenth birthday. A
70 suspension ordered by the court pursuant to this subsection is effective upon the date of entry of
71 the order. Where the court orders the suspension of a driver's license or instruction permit
72 pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in
73 the adjudicated person's possession and forward to the Division of Motor Vehicles.

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

78 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
79 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If
80 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
81 transcript when the person convicted has not requested an appeal within twenty days of the
82 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
83 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
84 notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was
85 entered.

86 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
87 determines that the person was convicted as described in subdivision (1) of this subsection, the
88 commissioner shall make and enter an order revoking the person's license or privilege to operate
89 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
90 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever

91 is the greater period. The order shall contain the reasons for the revocation and the revocation
92 period. The order of suspension shall advise the person that because of the receipt of the court's
93 transcript, a presumption exists that the person named in the order of suspension is the same
94 person named in the transcript. The commissioner may grant an administrative hearing which
95 substantially complies with the requirements of the provisions of section two, article five-a, chapter
96 seventeen-c of this code upon a preliminary showing that a possibility exists that the person
97 named in the notice of conviction is not the same person whose license is being suspended. The
98 request for hearing shall be made within ten days after receipt of a copy of the order of
99 suspension. The sole purpose of this hearing is for the person requesting the hearing to present
100 evidence that he or she is not the person named in the notice. If the commissioner grants an
101 administrative hearing, the commissioner shall stay the license suspension pending the
102 commissioner's order resulting from the hearing.

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

105 (f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years
106 of age who knows that the person is in violation of subsection (b) of this section or has reasonable
107 cause to believe that the person's violation of subsection (b) is imminent to fail to immediately
108 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

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

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

114 (2) This subsection does not apply to:

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

116 (B) A person exempted from the provisions of this subsection by order of record entered

117 by a court with jurisdiction over the premises or offices.

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

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

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

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

§61-7-14. Right of certain persons to limit possession of firearms on premises.

1 Notwithstanding the provisions of this article, any owner, lessee or other person charged
2 with the care, custody and control of real property may prohibit the carrying openly or ~~concealed~~
3 concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That
4 for purposes of this section "person" means an individual or any entity which may acquire title to
5 real property.

6 Any person carrying or possessing a firearm or other deadly weapon on the property of
7 another who refuses to temporarily relinquish possession of ~~such the~~ the firearm or other deadly
8 weapon, upon being requested to do so, or to leave ~~such the~~ the premises, while in possession of
9 ~~such the~~ the firearm or other deadly weapon, ~~shall be~~ is guilty of a misdemeanor and, upon conviction
10 thereof, shall be fined not more than \$1,000 or confined in ~~the county~~ jail not more than six
11 months, or both: *Provided*, That the provisions of this section ~~shall do~~ do not apply to ~~those persons~~
12 a person as set forth in subsections (3) through (6) of section six of this code subdivisions (3)
13 through (7), inclusive, subsection (a), section six of this article while such persons are the person
14 is acting in an official capacity; and to a person as set forth in subdivisions (1) through (8),

15 inclusive, subsection (b) of said section, while the person is acting in his or her official capacity:
16 *Provided, however,* That under no circumstances, except as provided for by the provisions of
17 paragraph (1), subdivision (2), subsection (b), section eleven-a of this article, may any person
18 possess or carry or cause the possession or carrying of any firearm or other deadly weapon on
19 the premises of any primary or secondary educational facility in this state unless ~~such~~ the person
20 is a law-enforcement officer or he or she has the express written permission of the county school
21 superintendent.

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