

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 338**

BY SENATORS RUCKER, BOSO, CLINE, MAYNARD, SMITH,  
SYPOLT, TARR, UNGER, JEFFRIES, WOELFEL, STOLLINGS,  
AZINGER, SWOPE, ROBERTS, MARONEY, AND LINDSAY

[Introduced January 17, 2019; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-7-2 of the Code of West Virginia, 1931, as amended, relating  
2 to dangerous weapons; defining “pepper spray”; exempting pepper spray from definition  
3 of “deadly weapons”; and providing that persons over 16 years of age may carry pepper  
4 spray for the purpose of self-defense.

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

## **ARTICLE 7. DANGEROUS WEAPONS.**

### **§61-7-2. Definitions.**

1 As used in this article, unless the context otherwise requires:

2 (1) “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece  
3 of lead or some other heavy substance and, at the handle end, a strap or springy shaft which  
4 increases the force of impact when a person or object is struck. The term “blackjack” shall include,  
5 but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

6 (2) “Gravity knife” means any knife that has a blade released from the handle by the force  
7 of gravity or the application of centrifugal force and when so released is locked in place by means  
8 of a button, spring, lever or other locking or catching device.

9 (3) “Knife” means an instrument, intended to be used or readily adaptable to be used as  
10 a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to  
11 a handle which is capable of inflicting cutting, stabbing or tearing wounds. The term “knife” shall  
12 include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-  
13 half inches in length, any switchblade knife or gravity knife and any other instrument capable of  
14 inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches  
15 or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational  
16 uses or a knife designed for use as a tool or household implement shall not be included within the  
17 term “knife” as defined herein unless such knife is knowingly used or intended to be used to  
18 produce serious bodily injury or death.

19 (4) “Switchblade knife” means any knife having a spring-operated blade which opens

20 automatically upon pressure being applied to a button, catch or other releasing device in its  
21 handle.

22 (5) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected  
23 by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner  
24 as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the  
25 other rigid part may be used as the striking end.

26 (6) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece  
27 to be worn over the front of the hand for use as a weapon and constructed in such a manner that,  
28 when striking another person with the fist or closed hand, considerable physical damage may be  
29 inflicted upon the person struck. The terms "metallic or false knuckles" shall include any such  
30 instrument without reference to the metal or other substance or substances from which the  
31 metallic or false knuckles are made.

32 (7) "Pistol" means a short firearm having a chamber which is integral with the barrel,  
33 designed to be aimed and fired by the use of a single hand.

34 (8) "Revolver" means a short firearm having a cylinder of several chambers that are  
35 brought successively into line with the barrel to be discharged, designed to be aimed and fired by  
36 the use of a single hand.

37 (9) "Deadly weapon" means an instrument which is designed to be used to produce  
38 serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" shall  
39 include, but not be limited to, the instruments defined in subdivisions (1) through (8), inclusive, of  
40 this section or other deadly weapons of like kind or character which may be easily concealed on  
41 or about the person. For the purposes of section one-a, article five, chapter eighteen-a of this  
42 code and section eleven-a, article seven of this chapter, in addition to the definition of "knife" set  
43 forth in subdivision (3) of this section, the term "deadly weapon" also includes any instrument  
44 included within the definition of "knife" with a blade of three and one-half inches or less in length.  
45 Additionally, for the purposes of section one-a, article five, chapter eighteen-a of this code and

46 section eleven-a, article seven of this chapter, the term “deadly weapon” includes explosive,  
47 chemical, biological and radiological materials. Notwithstanding any other provision of this  
48 section, the term “deadly weapon” does not include any item or material owned by the school or  
49 county board, intended for curricular use, and used by the student at the time of the alleged  
50 offense solely for curricular purposes, nor does the term “deadly weapon” include any material  
51 defined as pepper spray, which is a temporarily disabling aerosol that is composed partly of  
52 capsicum oleoresin and causes irritation and blinding of the eyes and inflammation of the nose,  
53 throat, and skin, intended for self-defense use, and used by any person over the age of 16 solely  
54 for self-defense purposes.

55 (10) “Concealed” means hidden from ordinary observation so as to prevent disclosure or  
56 recognition. A deadly weapon is concealed when it is carried on or about the person in such a  
57 manner that another person in the ordinary course of events would not be placed on notice that  
58 the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee  
59 shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the  
60 firearm is located in a storage area in or on the motor vehicle.

61 (11) “Firearm” means any weapon which will expel a projectile by action of an explosion.

62 (12) “Controlled substance” has the same meaning as is ascribed to that term in §60A-1-  
63 101(d) of this code.

64 (13) “Drug” has the same meaning as is ascribed to that term in §60A-1-101(1) of this  
65 code.

NOTE: The purpose of this bill is to define pepper spray and to exclude pepper spray, used by persons over the age of 16 years solely for self-defense, from the defined class of deadly weapons.

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