

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 339**

BY SENATORS RUCKER, AZINGER, BOSO, CLINE,  
MAYNARD, SYPOLT, TARR, SWOPE, AND ROBERTS

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

1 A BILL to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §61-7-2 of said code, all relating to defining “pepper spray”; exempting  
 3 pepper spray from definition of “deadly weapons”; providing that persons over 16 years of  
 4 age may carry pepper spray for the purpose of self-defense; and providing that such  
 5 persons may carry pepper spray in the State Capitol Complex.

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

## **ARTICLE 6. CRIMES AGAINST THE PEACE.**

### **§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.**

1 (a) If any person willfully interrupts or molests the orderly and peaceful process of any  
 2 department, division, agency or branch of state government or of its political subdivisions, he or  
 3 she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100,  
 4 or confined in jail not more than six months, or both fined and confined: *Provided*, That any  
 5 assembly in a peaceable, lawful and orderly manner for a redress of grievances ~~shall not be~~ is  
 6 not a violation of this section.

7 (b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as  
 8 defined in §61-2-7 of code: *Provided*, That a person who holds a valid, current concealed weapons  
 9 permit issued by a sheriff of this state or the appropriate authority of another jurisdiction may keep  
 10 a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and  
 11 the weapon is out of normal view. It is unlawful for any person to willfully deface any trees, wall,  
 12 floor, stairs, ceiling, column, statue, monument, structure, surface, artwork or adornment in the  
 13 State Capitol Complex: *Provided, however, That a person over the age of 16 years may carry*  
 14 *pepper spray, used solely for self-defense, in the State Capitol Complex.* It is unlawful for any  
 15 person or persons to willfully block or otherwise willfully obstruct any public access, stair or  
 16 elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his  
 17 or her official capacity to desist: *Provided*, That, in order to preserve the constitutional right of the

18 people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group  
19 or crowd if the persons move to the side or part to allow other persons to pass by the group or  
20 crowd to gain ingress or egress: *Provided, however,* That this subsection does not apply to a law-  
21 enforcement officer acting in his or her official capacity.

22 Any person who violates this subsection is guilty of a misdemeanor and, upon conviction  
23 thereof, shall be fined not less than \$100 or confined in jail not more than six months, or both  
24 fined and confined.

## **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 includes, but is not be limited to, the instruments defined in subdivisions (1) through (8), inclusive,  
40 of this section or other deadly weapons of like kind or character which may be easily concealed  
41 on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code,

42 in addition to the definition of “knife” set forth in subdivision (3) of this section, the term “deadly  
43 weapon” also includes any instrument included within the definition of “knife” with a blade of three  
44 and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and  
45 §61-7-11a of this code, the term “deadly weapon” includes explosive, chemical, biological and  
46 radiological materials. Notwithstanding any other provision of this section, the term “deadly  
47 weapon” does not include any item or material owned by the school or county board, intended for  
48 curricular use, and used by the student at the time of the alleged offense solely for curricular  
49 purposes, nor does the term “deadly weapon” include any material defined as pepper spray, which  
50 is a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes  
51 irritation and blinding of the eyes and inflammation of the nose, throat, and skin, intended for self-  
52 defense use, and used by any person over the age of 16 solely for self-defense purposes.

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

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

60 (12) “Controlled substance” has the same meaning as is ascribed to that term in §61A-1-  
61 101(d) of this code.

62 (13) “Drug” has the same meaning as is ascribed to that term in §61A-1-101(1) of this  
63 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. The bill also provides that such persons may carry pepper spray in the State Capitol Complex.

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