

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 797

SENATORS TAKUBO, CLINE, AND STOLLINGS, *original*

sponsors

[Passed March 7, 2020; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-5B-19; to amend and reenact §17C-1-6 of said code; and to amend and
3 reenact §30-29-1, §30-29-5, and §30-29-8 of said code, all relating generally to law-
4 enforcement officers; authorization by governing boards of public and private hospitals to
5 appoint and employ hospital police officers; providing for the qualifications, training,
6 authority, compensation, and removal of hospital police officers; providing for training and
7 examinations of law-enforcement officers; providing for the assistance of local law-
8 enforcement agencies upon request; and providing limitations on liability of hospital police
9 officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

**§16-5B-19. Hospital police departments; appointment of hospital police officers;
qualifications; authority; compensation and removal; law-enforcement grants;
limitations on liability.**

1 (a) The governing board of a hospital licensed under §16-5B-2 of this code may establish
2 a hospital police department and appoint qualified individuals to serve as hospital police officers
3 upon any premises owned or leased by the hospital and under the jurisdiction of the governing
4 board, subject to the conditions and restrictions established in this section.

5 (1) A person who fulfills the certification requirements for law-enforcement officers under
6 §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

7 (2) A retired police officer may qualify for appointment as a hospital police officer if he or
8 she meets the certification requirements under §30-29-5 of this code.

9 (3) Before performing duties as a hospital police officer in any county, a person shall
10 qualify as is required of county police officers by:

11 (A) Taking and filing an oath of office as required by §6-1-1 *et seq.* of this code; and

12 (B) Posting an official bond as required by §6-2-1 *et seq.* of this code.

13 (b) A hospital police officer may carry a gun and any other dangerous weapon while on
14 duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5
15 of this code.

16 (c) It is the duty of a hospital police officer to preserve law and order:

17 (1) On the premises under the jurisdiction of the governing board and its affiliated
18 properties; and

19 (2) On any street, road, or thoroughfare, except controlled access highways, immediately
20 adjacent to or passing through the premises under the jurisdiction of the governing board, to which
21 the officer is assigned by the chief executive officer or his or her designee: *Provided*, That a
22 hospital police officer may only enforce the provisions of §17C-1-1 *et seq.* of this code upon
23 request of a local law-enforcement agency.

24 (A) For the purposes of this subdivision, the hospital police officer is a law-enforcement
25 officer pursuant to the provisions of §30-29-1 *et seq.* of this code;

26 (B) The hospital police officer has and may exercise all the powers and authority of a law-
27 enforcement officer as to offenses committed within the area assigned;

28 (C) The hospital police officer is subject to all the requirements and responsibilities of a
29 law-enforcement officer;

30 (D) Authority assigned pursuant to this subdivision does not supersede in any way the
31 authority or duty of other law-enforcement officers to preserve law and order on such hospital
32 premises;

33 (E) Hospital police officers may assist a local law-enforcement agency on public highways.
34 The assistance may be provided to control traffic in and around premises owned by the state or
35 political subdivision when:

36 (i) Traffic is generated as a result of activities or events conducted or sponsored by the
37 hospital; and

38 (ii) The assistance has been requested by the local law-enforcement agency;

39 (F) Hospital police officers may assist a local law-enforcement agency in any location
40 under the agency's jurisdiction at the specific request of the agency; and

41 (G) Hospital police officers shall enforce the general policies and procedures of the
42 hospital as established by the chief executive officer or his or her designee.

43 (d) The salary of a hospital police officer is paid by the employing hospital's governing
44 board. The hospital shall furnish each hospital police officer with a firearm and an official uniform
45 to be worn while on duty. The hospital shall furnish, and require each officer while on duty to wear,
46 a shield with the appropriate inscription and to carry credentials certifying the person's identity
47 and authority as a hospital police officer.

48 (e) The governing board of the employing hospital may at its pleasure revoke the authority
49 of any hospital police officer and such officers serve at the will and pleasure of the governing
50 board. The chief executive officer of the hospital or his or her designee shall report the termination
51 of employment of a hospital police officer by filing a notice to that effect in the office of the clerk
52 of each county in which the hospital police officer's oath of office was filed.

53 (f) For the purpose of hospital police officers appointed and established in this section, the
54 civil service provisions of §8-14-1 *et seq.* of this code and the investigation and interrogation
55 provisions of §8-14A-1 *et seq.* of this code shall not apply.

56 (g) A hospital police officer shall not be subject to civil or criminal liability unless one of the
57 following applies:

58 (1) His or her acts or omissions were manifestly outside the scope of employment or official
59 responsibilities;

60 (2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton
61 or reckless manner; or

62 (3) Liability is expressly imposed upon the hospital police officer by any other provision of
63 this code.

64 (h) A hospital police officer shall be trained in crisis de-escalation techniques consistent
65 with the goals and objectives of this section: *Provided*, That within 180 days of beginning work as
66 a hospital police officer, the employing hospital shall provide crisis management training to a
67 hospital police officer through a program approved by the Law-Enforcement Professional
68 Standards Subcommittee established by §30-29-2 of this code.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-6. Authorized emergency vehicle.

1 "Authorized emergency vehicle" means vehicles of a fire department, duly chartered
2 rescue squad, police department, ambulance service, hospital police department, state, county,
3 or municipal agency, and such privately owned ambulances, tow trucks, wreckers, flag car
4 services, vehicles providing road service to disabled vehicles, service vehicles of a public service
5 corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters,
6 Class A vehicles of members of ambulance services, and Class A vehicles of members of duly
7 chartered rescue squads, and all other emergency vehicles as are designated by the agency
8 responsible for the operation and control of these persons or organizations. Class A vehicles are
9 as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are
10 provided in §17C-15-26 of this code. Agencies responsible for issuing authorization for
11 emergency vehicle permits may promulgate such regulations that are necessary for the issuance
12 of permits for emergency vehicles.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning clearly appears in the context:

2 (1) "Approved law-enforcement training academy" means any training facility which is
3 approved and authorized to conduct law-enforcement training as provided in this article;

4 (2) "Chief executive" means the Superintendent of the State Police; the chief Natural
5 Resources police officer of the Division of Natural Resources; the sheriff of any West Virginia
6 county; any administrative deputy appointed by the chief Natural Resources police officer of the
7 Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement
8 agency;

9 (3) "County" means the 55 major political subdivisions of the state;

10 (4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or
11 above;

12 (5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's
13 committee" means the Governor's Committee on Crime, Delinquency, and Correction established
14 as a state planning agency pursuant to §15-9-1 of this code;

15 (6) "Law-enforcement officer" means any duly authorized member of a law-enforcement
16 agency who is authorized to maintain public peace and order, prevent and detect crime, make
17 arrests, and enforce the laws of the state or any county or municipality thereof, other than parking
18 ordinances, and includes those persons employed as campus police officers at state institutions
19 of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed
20 as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and
21 persons employed by the Public Service Commission as motor carrier inspectors and weight-
22 enforcement officers charged with enforcing commercial motor vehicle safety and weight
23 restriction laws, although those institutions and agencies may not be considered law-enforcement
24 agencies. The term also includes those persons employed as county litter control officers charged
25 with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-
26 enforcement officers and that certification is currently active. The term also includes those
27 persons employed as rangers by resort area districts in accordance with the provisions of §7-25-

28 23 of this code, although no resort area district may be considered a law-enforcement agency:
29 *Provided, however,* That the subject rangers shall pay the tuition and costs of training. As used in
30 this article, the term “law-enforcement officer” does not apply to the chief executive of any West
31 Virginia law-enforcement agency or any watchman or special Natural Resources police officer;

32 (7) “Law-enforcement official” means the duly appointed chief administrator of a
33 designated law-enforcement agency or a duly authorized designee;

34 (8) “Municipality” means any incorporated town or city whose boundaries lie within the
35 geographic boundaries of the state;

36 (9) “Subcommittee” or “law-enforcement professional standards subcommittee” means
37 the subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction created
38 by §30-29-2 of this code; and

39 (10) “West Virginia law-enforcement agency” means any duly authorized state, county, or
40 municipal organization employing one or more persons whose responsibility is the enforcement
41 of laws of the state or any county or municipality thereof: *Provided,* That neither the Public Service
42 Commission nor any state institution of higher education nor any hospital nor any resort area
43 district is a law-enforcement agency.

§30-29-5. Certification requirements and power to decertify or reinstate.

1 (a) Except as provided in subsections (b) and (e) of this section, a person may not be
2 employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any
3 state institution of higher education or by a hospital or by the Public Service Commission of West
4 Virginia on or after the effective date of this article unless the person is certified, or is certifiable
5 in the manner specified in subsection (c) of this section, by the subcommittee as having met the
6 minimum entry level law-enforcement qualification and training program requirements
7 promulgated pursuant to this article: *Provided,* That the provisions of this section do not apply to
8 persons hired by the Public Service Commission as motor carrier inspectors and weight
9 enforcement officers before July 1, 2007.

10 (b) Except as provided in subsection (e) of this section, a person who is not certified, or
11 certifiable in the manner specified in subsection (c) of this section, may be conditionally employed
12 as a law-enforcement officer until certified: *Provided*, That within 90 calendar days of the
13 commencement of employment or the effective date of this article, if the person is already
14 employed on the effective date, he or she makes a written application to attend an approved law-
15 enforcement training academy and that the person satisfactorily completes the approved law-
16 enforcement training academy within 18 consecutive months of the commencement of his or her
17 employment: *Provided, however*, That the subcommittee may grant an extension, one-time only,
18 not to exceed six months, based upon a written request from the person justifying the need for
19 such an extension: *Provided further*, That the subcommittee, in its sole discretion, may grant an
20 additional extension upon demonstration of a hardship warranting it. The person's employer shall
21 provide notice, in writing, of the 90-day deadline to file a written application to the academy within
22 30 calendar days of that person's commencement of employment. The employer shall provide full
23 disclosure as to the consequences of failing to file a timely written application. The academy shall
24 notify the applicant in writing of the receipt of the application and of the tentative date of the
25 applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable
26 to his or her employing law-enforcement official, is unable to attend the scheduled training
27 program to which he or she was admitted may reapply and shall be admitted to the next regularly
28 scheduled training program. One year after the effective date of this section, certification as a
29 law-enforcement officer within this state of persons who are not certifiable as provided in
30 subsection (c) of this section shall, in addition to graduation from an established academy in the
31 state, be based on: Current employment as a sworn law-enforcement officer by any West Virginia
32 law-enforcement agency or any state institution of higher education or the Public Service
33 Commission; and the person's successful completion of an approved entry level law-enforcement
34 examination established by legislative rule of the subcommittee, which shall include, at a
35 minimum, written testing requirements, medical standards, physical standards, and good moral

36 character standards conducted in accordance with such rule. The production of a record of
37 successful passage of the approved entry level law-enforcement examination shall indicate the
38 applicant as qualified under the law-enforcement training and certification standards within this
39 state. An applicant who satisfactorily completes the program and successfully passes the
40 approved entry level law-enforcement examination shall, within 30 days of completion, make
41 written application to the subcommittee requesting certification as having met the minimum entry
42 level law-enforcement qualification and training program requirements. Upon determining that an
43 applicant has met the requirements for certification as set forth in this section, the subcommittee
44 shall forward to the applicant documentation of certification. An applicant who fails to complete
45 the training program to which he or she is first admitted, or was admitted upon reapplication, or
46 who fails to pass the approved entry level law-enforcement examination, may not be certified by
47 the subcommittee: *And provided further*, That an applicant who has completed the minimum
48 training and examination required by the subcommittee may be certified as a law-enforcement
49 officer, notwithstanding the applicant's failure to complete additional training hours required in the
50 training program to which he or she originally applied. If more than 24 months but less than 60
51 months have passed since the applicant for certification has successfully completed the approved
52 entry level law-enforcement examination, the person may be certified but must complete the
53 additional training set forth in legislative rules promulgated by the subcommittee addressing the
54 recertification requirements of certified officers. If more than 60 months have passed since the
55 applicant for certification has successfully completed the approved entry level law-enforcement
56 examination, the person must then attend a subcommittee-approved training program and
57 successfully complete a separate subcommittee entry level law-enforcement examination.

58 (c) Any person who begins employment on or after the effective date of this article as a
59 law-enforcement officer is certifiable as having met the minimum entry level law-enforcement
60 training program requirements and is exempt from attending a law-enforcement training academy
61 if the person has satisfactorily completed a course of instruction in law enforcement equivalent to

62 or exceeding the minimum applicable law-enforcement training curricula promulgated by the
63 subcommittee. To receive certification, the person shall make written application within 90
64 calendar days following the commencement of employment to the subcommittee requesting
65 certification. The application shall include a notarized statement of the applicant's satisfactory
66 completion of the course of instruction in law enforcement, a notarized transcript of the applicant's
67 relevant scholastic records, and a notarized copy of the curriculum of the completed course of
68 instruction. The subcommittee shall review the application and, if it finds the applicant has met
69 the requirements for certification, shall forward to the applicant documentation of certification. The
70 subcommittee may set the standards for required records to be provided by or on behalf of the
71 applicant officer to verify his or her training, status, or certification as a law-enforcement officer.
72 The subcommittee may allow an applicant officer to participate in the approved equivalent
73 certification program to gain certification as a law-enforcement officer in this state.

74 (d) Except as provided in subdivisions (1) through (3), inclusive, of this subsection, any
75 person who is employed as a law-enforcement officer on or after the effective date of this article
76 and fails to be certified shall be automatically terminated and no further emoluments shall be paid
77 to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a
78 private citizen, to the subcommittee for training and certification, and upon being certified may
79 again be employed as a law-enforcement officer in this state: *Provided*, That if a person is
80 terminated under this subsection because an application was not timely filed to the academy, and
81 the person's employer failed to provide notice or disclosure to that person as set forth in
82 subsection (b) of this section, the employer shall pay the full cost of attending the academy if the
83 person's application to the subcommittee as a private citizen is subsequently approved.

84 (1) Any person who is employed as a law-enforcement officer on or after the effective date
85 of this article and fails to be certified as a result of hardship and/or circumstance beyond his or
86 her control may apply to the director of a training academy for reentry to the next available
87 academy.

88 (2) Any person who is employed as a law-enforcement officer on or after the effective date
89 of this article and fails to be certified as a result of voluntary separation from an academy program
90 shall be automatically terminated and no further emoluments may be paid to such officer by his
91 or her employer. Any person terminated as a result of voluntary separation from an academy
92 program may not be conditionally employed as a law-enforcement officer for a period of two years
93 from the date of voluntary separation.

94 (3) Any person who is employed as a law-enforcement officer on or after the effective date
95 of this article and fails to be certified as a result of dismissal from an academy program shall be
96 automatically terminated and no further emoluments may be paid to such officer by his or her
97 employer. Any person terminated as a result of dismissal from an academy program may not be
98 conditionally employed as a law-enforcement officer for a period of five years from the date of
99 dismissal and receiving approval from the subcommittee.

100 (e) Nothing in this article may be construed as prohibiting any governing body, Civil
101 Service Commission, or chief executive of any West Virginia law-enforcement agency from
102 requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course
103 of law-enforcement instruction which exceeds the minimum entry level law-enforcement
104 qualification and training curricula promulgated by the subcommittee.

105 (f) The subcommittee, or its designee, may decertify or reactivate a law-enforcement
106 officer pursuant to the procedure contained in this article and legislative rules promulgated by the
107 subcommittee.

108 (g) Any person aggrieved by a decision of the subcommittee made pursuant to this article
109 may contest the decision in accordance with the provisions of §29A-5-1 *et seq.* of this code.

110 (h) The subcommittee may issue subpoenas for the attendance of witnesses and the
111 production of necessary evidence or documents in any proceeding, review, or investigation
112 relating to certification or hearing before the subcommittee.

§30-29-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

1 (a) A West Virginia law-enforcement agency shall, and a governing board may, pay
2 compensation to employees, including wages, salaries, benefits, tuition, and expenses, for the
3 employees' attendance at a law-enforcement training academy. The compensation paid to the
4 employees for such attendance may not include overtime compensation under the provisions of
5 §21-5C-3 of this code and shall be at the regular rate to which each employee would be entitled
6 for a workweek of 40 hours in regular employment with the employer.

7 (b) In consideration for such compensation, the governing board, hospital, county
8 commission, or municipal government may require each employee to enter into a written
9 agreement in advance of such attendance that obligates the employee to repay the employer if
10 he or she voluntarily discontinues employment within one year immediately following completion
11 of the training curriculum. The amount of repayment shall be a pro rata portion of the total
12 compensation which is equal to the portion of the year which the employee chose not to remain
13 employed.

14 (c) As used in this section, "governing board" has the meaning ascribed in §18B-1-2 of
15 this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2020.

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Governor