

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3023

BY DELEGATE BARRETT

[Introduced February 12, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §30-29-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §61-7-11a of said code, all relating to including home confinement
 3 officers in definition of law-enforcement officers; and authorizing home confinement
 4 officers to carry a concealed firearm in certain facilities limited to other law-enforcement
 5 officers.

Be it enacted by the Legislature of West Virginia:

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, including a home confinement officer, who is authorized to maintain public peace and

17 order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or
18 municipality thereof, other than parking ordinances, and includes those persons employed as
19 campus police officers at state institutions of higher education in accordance with the provisions
20 of §18B-4-5 of this code, and persons employed by the Public Service Commission as motor
21 carrier inspectors and weight-enforcement officers charged with enforcing commercial motor
22 vehicle safety and weight restriction laws, although those institutions and agencies may not be
23 considered law-enforcement agencies. The term also includes those persons employed as county
24 litter control officers charged with enforcing litter laws: *Provided*, That those persons have been
25 trained and certified as law-enforcement officers and that certification is currently active. The term
26 also includes those persons employed as rangers by resort area districts in accordance with the
27 provisions of §7-25-23 of this code, although no resort area district may be considered a law-
28 enforcement agency: *Provided, however*, That the subject rangers shall pay the tuition and costs
29 of training. As used in this article, the term “law-enforcement officer” does not apply to the chief
30 executive of any West Virginia law-enforcement agency or any watchman or special natural
31 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 resort area district is a law-

43 enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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 §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h),
 5 of this code and §61-7-11a(b)(2)(l) of this code are enacted as a reasonable regulation of the
 6 manner in which citizens may exercise the rights accorded to them pursuant to section 22, article
 7 III of the Constitution of the State of West Virginia.

8 (b) (1) It is unlawful to possess a firearm or other deadly weapon:

9 (A) On a school bus as defined in §17A-1-1 of this code;

10 (B) In or on the grounds of any primary or secondary educational facility of any type:
 11 *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the
 12 grounds of any private primary or secondary school, if such institution has adopted a written policy
 13 allowing for possession of firearms or other deadly weapons in the facility or on the grounds
 14 thereof;

15 (C) At a school-sponsored function that is taking place in a specific area that is owned,
 16 rented, or leased by the West Virginia Department of Education, the West Virginia Secondary
 17 Schools Activities Commission, a county school board, or local public school for the actual period
 18 of time the function is occurring.

19 (2) This subsection does not apply to:

20 (A) A law-enforcement officer employed by a federal, state, county, or municipal law-
21 enforcement agency, or home confinement officers;

22 (B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code in the
23 performance of his or her duties;

24 (C) A retired law-enforcement officer who meets all the requirements to carry a firearm as
25 a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004,
26 as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and
27 has on their person official identification in accordance with that act;

28 (D) A person, other than a student of a primary and secondary facility, specifically
29 authorized by the board of education of the county or principal of the school where the property
30 is located to conduct programs with valid educational purposes;

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

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

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

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

40 (I) Any person, 21 years old or older, who has a valid concealed handgun permit may
41 possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas
42 of vehicular ingress or egress to a public school: Provided, That:

43 (i) When he or she is occupying the vehicle the person stores the handgun out of view
44 from persons outside the vehicle; or

45 (ii) When he or she is not occupying the vehicle the person stores the handgun out of view

46 from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other
47 interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

48 (3) A person violating this subsection is guilty of a felony and, upon conviction thereof,
49 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
50 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

51 (c) A school principal subject to the authority of the State Board of Education who
52 discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

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

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

58 (d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a
59 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of
60 §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver's license
61 or instruction permit issued to the person for a period of time as the court considers appropriate,
62 not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's
63 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
64 the person's application for a license or permit for a period of time as the court considers
65 appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the
66 court pursuant to this subsection is effective upon the date of entry of the order. Where the court
67 orders the suspension of a driver's license or instruction permit pursuant to this subsection, the
68 court shall confiscate any driver's license or instruction permit in the adjudicated person's
69 possession and forward to the Division of Motor Vehicles.

70 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this
71 code and if the person does not act to appeal the conviction within the time periods described in

72 §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this
73 state shall be revoked in accordance with the provisions of this section.

74 (2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1)
75 of this code shall forward to the commissioner a transcript of the judgment of conviction. If the
76 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
77 transcript when the person convicted has not requested an appeal within 20 days of the
78 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
79 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
80 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was
81 entered.

82 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
83 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the
84 commissioner shall make and enter an order revoking the person's license or privilege to operate
85 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
86 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever
87 is the greater period. The order shall contain the reasons for the revocation and the revocation
88 period. The order of suspension shall advise the person that because of the receipt of the court's
89 transcript, a presumption exists that the person named in the order of suspension is the same
90 person named in the transcript. The commissioner may grant an administrative hearing which
91 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a
92 preliminary showing that a possibility exists that the person named in the notice of conviction is
93 not the same person whose license is being suspended. The request for hearing shall be made
94 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing
95 is for the person requesting the hearing to present evidence that he or she is not the person
96 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall
97 stay the license suspension pending the commissioner's order resulting from the hearing.

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

100 (f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of
101 age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable
102 cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to
103 immediately report his or her knowledge or belief to the appropriate school or law-enforcement
104 officials.

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

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

110 (2) This subsection does not apply to:

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

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

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

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

119 (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,
120 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
121 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

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

NOTE: The purpose of this bill is to designate home confinement officers as members of law-enforcement and to authorize home confinement officers to carry concealed firearms in certain facilities that are otherwise off limits except to law-enforcement members.

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