

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3000**

BY DELEGATE HOLSTEIN

[Introduced March 09, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, and to  
 2 amend and reenact §61-7-11a of said code, all relating to permitting circuit court judges  
 3 to carry a concealed firearm for self-defense purposes.

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

**CHAPTER 51. COURTS AND THEIR OFFICERS.**

**ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**

**§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.**

1 (a) The state shall be divided into the following judicial circuits with the following number  
 2 of judges:

3 (1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall  
 4 have four judges;

5 (2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall  
 6 have two judges;

7 (3) The counties of Doddridge, Pleasants, and Ritchie shall constitute the third circuit and  
 8 shall have one judge;

9 (4) The counties of Wood and Wirt shall constitute the fourth circuit and shall have three  
 10 judges;

11 (5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit  
 12 and shall have two judges: Provided, That effective January 1, 2017, said circuit court shall have  
 13 three judges; said additional circuit judge to be elected at the regularly scheduled election(s) to  
 14 be held in the year 2016 and every eighth year thereafter;

15 (6) The county of Cabell shall constitute the sixth circuit and shall have four judges;

16 (7) The county of Logan shall constitute the seventh circuit and shall have two judges;

17 (8) The county of McDowell shall constitute the eighth circuit and shall have two judges;

18 (9) The county of Mercer shall constitute the ninth circuit and shall have three judges;

19 (10) The county of Raleigh shall constitute the tenth circuit and shall have three judges:

20 *Provided*, That effective January 1, 2017, said circuit court shall have four judges; said additional  
21 circuit judge to be elected at the regularly scheduled election(s) to be held in the year 2016 and  
22 every eighth year thereafter;

23 (11) The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and  
24 shall have two judges;

25 (12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

26 (13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven  
27 judges;

28 (14) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the fourteenth  
29 circuit and shall have two judges;

30 (15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

31 (16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

32 (17) The county of Monongalia shall constitute the seventeenth circuit and shall have three  
33 judges;

34 (18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

35 (19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall  
36 have one judge: *Provided*, That effective January 1, 2019, said circuit court shall have two judges;  
37 said additional circuit judge to be appointed by the Governor and subsequently elected at the next  
38 scheduled primary election to be held in 2020 for the unexpired term pursuant to §3-10-3 of this  
39 code: *Provided, however*, That said additional circuit judge shall thereafter be elected at the  
40 regularly scheduled election(s) to be held in the year 2024 and every eighth year thereafter;

41 (20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

42 (21) The counties of Grant, Mineral, and Tucker shall constitute the twenty-first circuit and  
43 shall have two judges;

44 (22) The counties of Hampshire, Hardy, and Pendleton shall constitute the twenty-second  
45 circuit and shall have two judges;

46 (23) The counties of Berkeley, Jefferson, and Morgan shall constitute the twenty-third  
47 circuit and shall have five judges: *Provided*, That effective January 1, 2017, said circuit court shall  
48 have six judges; said additional circuit judge to be elected at the regularly scheduled election(s)  
49 to be held in the year 2016 and every eighth year thereafter;

50 (24) The county of Wayne shall constitute the twenty-fourth circuit and shall have two  
51 judges;

52 (25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall  
53 have two judges;

54 (26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall  
55 have one judge: *Provided*, That effective January 1, 2017, said circuit court shall have two judges;  
56 said additional circuit judge to be elected at the regularly scheduled election(s) to be held in the  
57 year 2016 and every eighth year thereafter;

58 (27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one  
59 judge;

60 (28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one  
61 judge;

62 (29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two  
63 judges;

64 (30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

65 (31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall  
66 have one judge.

67 (b) The Kanawha County circuit court shall be a court of concurrent jurisdiction with each  
68 single judge circuit where the sitting judge in the single judge circuit is unavailable by reason of  
69 sickness, vacation, or other reason.

70 (c) Any judge in office on the effective date of the reenactment of this section shall continue  
71 as a judge of the circuit as constituted under prior enactments of this section, unless sooner  
72 removed or retired as provided by law, until December 31, 2016.

73 (d) The term of office of all circuit court judges shall be for eight years. The term of office  
74 for all circuit court judges elected during an election conducted in the year 2016 shall commence  
75 on January 1, 2017, and end on December 31, 2024.

76 (e) For election purposes, in every judicial circuit having two or more judges there shall be  
77 numbered divisions corresponding to the number of circuit judges in each circuit. Each judge shall  
78 be elected at large from the entire circuit. In each numbered division of a judicial circuit, the  
79 candidates for nomination or election shall be voted upon, and the votes cast for the candidates  
80 in each division shall be tallied separately from the votes cast for candidates in other numbered  
81 divisions within the circuit. The candidate receiving the highest number of the votes cast within a  
82 numbered division shall be nominated or elected, as the case may be.

83 (f) Judges serving a judicial circuit comprised of four or more counties with two or more  
84 judges shall not be residents of the same county.

85 (g) The Supreme Court of Appeals shall, by rule, establish the terms of court of circuit  
86 judges.

87 (h) Judges may carry a concealed firearm for self-defense purposes and shall regularly  
88 qualify in the use of a firearm with standards therefor which are equal to or exceed those required  
89 of sheriff's deputies in the county in which the judge was elected or appointed.

## **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;

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; and

114 (C) A circuit court judge, pursuant to §51-2-1 of this code.

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

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

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

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

NOTE: The purpose of this bill is to permit circuit court judges to carry a concealed firearm for self-defense purposes.

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