

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4596

BY DELEGATES BARRETT, HAYNES, FAST, BARNHART,
HOLSTEIN, HANNA, DEAN, PHILLIPS, PAYNTER, BRIDGES,
AND MCGEEHAN

[Introduced February 09, 2022; referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new section,
2 designated as §62-11B-7b ; to amend and reenact §15A-7-5 of said Code; to amend and
3 reenact §30-29-1 of said code; to amend and reenact §49-4-719 of said code; to amend
4 and reenact §61-7-11a of said code; to amend and reenact §62-11B-7a of said code; to
5 amend and reenact §62-12-5, of said code; and to amend and reenact §62-12-6 of said
6 code, all relating generally to additional persons qualifying for the provisions of the Law-
7 Enforcement Officers Safety Act; clarifying that home incarceration supervisors, state
8 adult probation officers, juvenile probation officers, and state parole officers are, by virtue
9 of their duties, qualified law enforcement officers who may carry a concealed firearm
10 nationwide, as authorized by the federal Law-Enforcement Officers Safety Act; exempting
11 certain persons from prohibition for carrying deadly weapons on the premises of
12 educational facilities; providing the statutory authority to give home incarceration
13 supervisors, state probation officers, juvenile probation officers, and parole officers the
14 option to carry firearms pursuant to applicable federal law; requiring annual firearm training
15 pursuant to federal law; removing inconsistent language relating to probation officers;
16 clarifying that supervisory entities retain sole discretion as to authorizing participation of
17 qualified officers in such program; providing for training to enable home incarceration
18 supervisors, state probation officers, juvenile probation officers, and state parole officers
19 to fully qualify as law-enforcement officers if they have not previously done so; setting forth
20 the duties of supervising authorities as to participation of home incarceration supervisors,
21 state probation officers, juvenile probation officers, and state parole officers, and removing
22 a duplicative reference to probation officers in code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-5. Powers and duties of state parole officers.

1 (a) Each state probation and parole officer employed by the Division of Corrections and
2 Rehabilitation shall:

3 (1) Investigate all cases referred to him or her for investigation by the Commissioner of
4 Corrections and Rehabilitation and report in writing on the investigation;

5 (2) Update the standardized risk and needs assessment adopted by the Division of
6 Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom
7 an assessment has not been conducted for parole by a specialized assessment officer;

8 (3) Supervise each parolee according to the assessment and supervision standards
9 determined by the Commissioner of Corrections and Rehabilitation;

10 (4) Furnish to each parolee under his or her supervision a written statement of the
11 conditions of his or her parole together with a copy of the rules prescribed by the Commissioner
12 of Corrections and Rehabilitation for the supervision of parolees;

13 (5) Keep informed concerning the conduct and condition of each parolee under his or her
14 supervision and report on the conduct and condition of each parolee in writing as often as required
15 by the Commissioner of Corrections and Rehabilitation;

16 (6) Use all practicable and suitable methods to aid and encourage a parolee and to bring
17 about improvement in his or her conduct and condition;

18 (7) Keep detailed records of his or her work;

19 (8) Keep accurate and complete accounts of, and give receipts for, all money collected
20 from parolees under his or her supervision, and pay over the money to persons designated by a
21 circuit court or the Commissioner of Corrections and Rehabilitation;

22 (9) Give bond with good security, to be approved by the Commissioner of Corrections and
23 Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the
24 Commissioner of Corrections and Rehabilitation; and

25 (10) Perform any other duties required by the Commissioner of Corrections and
26 Rehabilitation.

27 (b) Each probation and parole officer, as described in this article, may, with or without an
28 order or warrant:

29 (1) Arrest or order confinement of any parolee or probationer under his or her supervision;
30 and

31 (2) search a parolee or probationer, or a parolee or probationer's residence or property,
32 under his or her supervision. A probation and parole officer may apply for a search warrant, and
33 execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities.
34 He or she has all the powers of a notary public, with authority to act anywhere within the state.

35 (c) (1) Notwithstanding any other provision of this section, The the Commissioner of
36 Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has
37 successfully completed the Division of Corrections and Rehabilitation's training program for
38 firearms certification, which is the equivalent of that required of any correctional employee under
39 §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by
40 the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms
41 and concealed weapons. Each state parole officer, authorized by the Commissioner of
42 Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to
43 carry a firearm or concealed weapon bearing the official signature of the Commissioner of
44 Corrections and Rehabilitation.

45 (2) State parole officers, in recognition of the duties in their employment supervising
46 confinement and supervised release and the inherent arrest powers for violation of the same
47 which constitute law enforcement, are determined to be qualified law-enforcement officers as that
48 term is used in 18 U.S.C §926B.

49 (3) Any state parole officer may carry a concealed firearm for self-defense purposes
50 pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

51 (A) The Division of Corrections and Rehabilitation has a written policy authorizing a state
52 parole officer to carry a concealed firearm for self-defense purposes.

53 (B) For those state parole officers wishing to avail themselves of the provisions of this
54 subdivision, there shall be in place in the Division of Corrections and Rehabilitation a requirement
55 that those state parole officers must annually qualify in the use of a firearm with standards which
56 are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional
57 Standards Program; and

58 (C) The Division of Corrections and Rehabilitation issues a photographic identification and
59 certification card which identify the state parole officers who meet the provisions of this
60 subdivision, as law-enforcement employees of the Division of Corrections and Rehabilitation
61 pursuant to the provisions of §30-29-12 of this code.

62 (D) Any policy instituted pursuant to this subsection includes provisions which:

63 (i) Preclude or remove a person from participation in the concealed firearm program;

64 (ii) Preclude from participation persons prohibited by federal or state law from possessing
65 or receiving a firearm and;

66 (iii) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection
67 while in an impaired state as defined in §17C-5-2 of this code.

68 (E) Any state parole officer who participates in a program authorized by the provisions of
69 this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable
70 firearm and ammunition.

71 (F) It is the intent of the Legislature in enacting the amendments to this section during the
72 2022 regular session of the Legislature to authorize those state parole officers wishing to do so
73 to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

74 (G) The privileges authorized by the amendments in this section enacted during the 2022
75 regular session of the Legislature are wholly within the discretion of the Commissioner of
76 Corrections and Rehabilitation.

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~~ nor to any watchman or special Natural Resources police
32 officer;

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

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

37 (9) “Pre-certified law-enforcement officer” means a person employed or offered
38 employment by a West Virginia law-enforcement agency prior to his or her initial certification by
39 the subcommittee. This term does not include a person employed or offered employment by a
40 West Virginia law-enforcement agency whose certification status is inactive, suspended, or has
41 been revoked.

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

45 (11) “West Virginia law-enforcement agency” means any duly authorized state, county, or
46 municipal organization employing one or more persons whose responsibility is the enforcement
47 of laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service

48 Commission nor any state institution of higher education nor any hospital nor any resort area
49 district is a law-enforcement agency.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

1 (a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in
2 accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile
3 probation officers and clerical assistants for the circuit. A probation officer or clerical assistant
4 may not be related by blood or marriage to the appointing judge.

5 (2) The salary for juvenile probation officers and clerical assistants shall be determined
6 and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile
7 probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance
8 with its rules. The county commission of each county shall provide adequate office facilities for
9 juvenile probation officers and their staff. All equipment and supplies required by juvenile
10 probation officers and their staff shall be provided by the Supreme Court of Appeals.

11 ~~(3) A juvenile probation officer may not be considered a law-enforcement official under~~
12 ~~this chapter~~

13 (b) In recognition of the duties in their employment supervising confinement and
14 supervised release and the inherent arrest powers for violation of the same which constitute law
15 enforcement, state juvenile probation officers are determined to be qualified law-enforcement
16 officers as that term is used in 18 U.S.C. §926B.

17 (c) Any state juvenile probation officer may carry a concealed firearm for self-defense
18 purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

19 (1) The Supreme Court of Appeals has a written policy authorizing a state juvenile
20 probation officer to carry a concealed firearm for self-defense purposes;

21 (2) There shall be in place in the Supreme Court of Appeals a requirement that state
22 juvenile probation officers must annually qualify in the use of a firearm with standards which are
23 equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional
24 Standards Program; and

25 (3) The Supreme Court of Appeals issues a photographic identification and certification
26 card which identify the state juvenile probation officers as law-enforcement employees as that
27 term is contemplated by 18 U.S.C. §926B.

28 (d) Any policy instituted pursuant to this subsection includes provisions which:

29 (1) Preclude or remove a person from participation in the concealed firearm program;

30 (2) Preclude from participation persons prohibited by federal or state law from possessing
31 or receiving a firearm and;

32 (3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection
33 while in an impaired state as defined in §17C-5-2 of this code.

34 (e) Any state juvenile probation officer who participates in a program authorized by the
35 provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining
36 a suitable firearm and ammunition.

37 (f) It is the intent of the Legislature in enacting the amendments to this section during the
38 2022 regular session of the Legislature to authorize state juvenile probation officers wishing to do
39 so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C.
40 §926B.

41 (g) The privileges authorized by the amendments to this section enacted during the 2022
42 regular session of the Legislature are wholly within the discretion of the Commissioner of
43 Corrections and Rehabilitation.

44 ~~(b)~~ (h) The clerk of a court shall notify, if practicable, the chief probation officer of the
45 county, or his or her designee, when a juvenile is brought before the court or judge for proceedings
46 under this article. When notified, or if the probation officer otherwise obtains knowledge of such
47 fact, he or she or one of his or her assistants shall:

48 (1) Make investigation of the case; and

49 (2) Furnish information and assistance that the court or judge may require.

50 ~~(e)~~(i) (1) The Supreme Court of Appeals may develop a system of community-based
51 juvenile probation sanctions and incentives to be used by probation officers in response to
52 violations of terms and conditions of probation and to award incentives for positive behavior.

53 (2) The community-based juvenile probation sanctions and incentives may consist of a
54 continuum of responses from the least restrictive to the most restrictive, designed to respond
55 swiftly, proportionally and consistently to violations of the terms and conditions of probation and
56 to reward compliance therewith.

57 (3) The purpose of community-based juvenile probation sanctions and incentives is to
58 reduce the amount of resources and time spent by the court addressing probation violations, to
59 reduce the likelihood of a new status or delinquent act, and to encourage and reward positive
60 behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home
61 placement.

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)(I) 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~~ of the facility; or

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 state juvenile probation officer
23 appointed pursuant to §49-4-719 ~~chapter 49~~ of this code, in the performance of his or her duties;

24 (C) Any home confinement supervisor employed by a county commission pursuant to §61-
25 11B-7a of this code in the performance of his or her duties;

26 (D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in
27 performance of his or her official duties;

28 ~~(G)~~ (E) A retired law-enforcement officer who meets all the requirements to carry a firearm
29 as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of
30 2004, as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner,
31 and has on his or her person official identification in accordance with that act;

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

35 ~~(E)~~ (G) A person who, as otherwise permitted by the provisions of this article, possesses
36 an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
37 weapon in a locked motor vehicle;

38 ~~(F)~~ (H) Programs or raffles conducted with the approval of the county board of education
39 or school which include the display of unloaded firearms;

40 ~~(G)~~ (I) The official mascot of West Virginia University, commonly known as the
41 Mountaineer, acting in his or her official capacity;

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

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

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

49 (ii) When he or she is not occupying the vehicle, the person stores the handgun out of
50 view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or
51 other interior compartment, or in a locked trunk, or in a locked container securely fixed to the
52 vehicle.

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

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

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

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

63 (d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a
64 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of
65 §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license
66 or instruction permit issued to the person for a period of time as the court considers appropriate,
67 not to extend beyond the person's 19th birthday. If the person has not been issued a driver's
68 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
69 the person's application for a license or permit for a period of time as the court considers
70 appropriate, not to extend beyond the person's 19th birthday. A suspension ordered by the court
71 pursuant to this subsection is effective upon the date of entry of the order. Where the court orders
72 the suspension of a driver's license or instruction permit pursuant to this subsection, the court
73 shall confiscate any driver's license or instruction permit in the adjudicated person's possession
74 and forward it to the Division of Motor Vehicles.

75 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this
76 code, and if the person does not act to appeal the conviction within the time periods described in
77 §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this
78 state shall be revoked in accordance with the provisions of this section.

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

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

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

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

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

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

115 (2) This subsection does not apply to:

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

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

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

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

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

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

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-7b. Powers and duties of home incarceration supervisors; home incarceration supervisors deemed qualified law-enforcement officers as that term is used in 18 U.S.C. §926B.

1 (a) Notwithstanding any other provision of this Code, for purposes of this section, it is
2 hereby recognized that home incarceration is a form of confinement as that term is used in 18
3 U.S.C. §926B.

4 (b) In recognition of the duties in their employment supervising confinement and
5 supervised release and the inherent arrest powers for violation of the same which constitute law
6 enforcement, home incarceration supervisors, are determined to be qualified law-enforcement
7 officers as that term is used in 18 U.S.C. §926B.

8 (c) Any home incarceration supervisor may carry a concealed firearm for self-defense
9 purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

10 (1) The home incarceration program has a written policy authorizing home incarceration
11 supervisors to carry a concealed firearm for self-defense purposes.

12 (2) There is in place in the home incarceration program a requirement that the home
13 incarceration supervisors must regularly qualify in the use of a firearm with standards for
14 qualification which are equal to, or exceed those required of sheriff's deputies in the county in
15 which the home incarceration supervisors are employed; and

16 (3) The home incarceration program issues a photographic identification and certification
17 card which identify the home incarceration supervisors as law-enforcement employees of the
18 home incarceration program of §30-29-12 of this code.

19 (4) Any policy instituted pursuant to subsection (b) of this section shall include provisions
20 which:

21 (A) Preclude or remove a person from participation in the concealed firearm program;

22 (B) Preclude from participation persons prohibited by federal or state law from possessing
23 or receiving a firearm and;

24 (C) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection
25 while in an impaired state as defines in §17C-5-2 of this code.

26 (5) Any home incarceration supervisor who participates in a program authorized by the
27 provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining
28 a suitable firearm and ammunition.

29 (6) The privileges authorized by the amendments to this section enacted during the 2022
30 regular session of the Legislature are wholly within the discretion of the supervising authority over
31 the home incarceration supervisors.

32 (7) It is the intent of the Legislature in enacting the amendments to this section during the
33 2021 regular session of the Legislature to authorize home incarceration programs wishing to do
34 so to allow home incarceration supervisors to meet the requirements of the federal Law-
35 Enforcement Officer's Safety Act, 18 U.S.C. §926B.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

1 (a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in
2 accordance with its rules, is authorized to appoint one or more probation officers and clerical
3 assistants.

4 (b) The appointment of probation officers and clerical assistants shall be in writing and
5 entered on the order book of the court by the judge making such appointment and a copy of ~~said~~
6 the order of appointment shall be delivered to the Administrative Director of the Supreme Court
7 of Appeals. The order of appointment shall state the annual salary, fixed by the judge and

8 approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical
9 assistants ~~so appointed~~.

10 (c) The salary of probation officers and clerical assistants shall be paid at least twice per
11 month, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all
12 reasonable and necessary expenses actually incurred in the line of duty in the field. The salary
13 and expenses shall be paid by the state from the judicial accounts thereof. The county commission
14 shall provide adequate office space for the probation officer and his or her assistants to be
15 approved by the appointing court. The equipment and supplies as may be needed by the
16 probation officer and his or her assistants shall be provided by the state and the cost thereof shall
17 be charged against the judicial accounts of the state.

18 (d) ~~No~~ A judge may not appoint any probation officer, assistant probation officer or clerical
19 assistant who is related to him or her either by consanguinity or affinity.

20 (e) Subject to the approval of the Supreme Court of Appeals and in accordance with its
21 rules, a judge of a circuit court whose circuit comprises more than one county may appoint a
22 probation officer and a clerical assistant in each county of the circuit or may appoint the same
23 persons to serve in these respective positions in two or more counties in the circuit.

24 (f) Nothing contained in this section alters, modifies, affects or supersedes the
25 appointment or tenure of any probation officer, medical assistant or psychiatric assistant
26 appointed by any court under any special act of the Legislature heretofore enacted, and the salary
27 or compensation of those persons shall remain as specified in the most recent amendment of any
28 special act until changed by the court, with approval of the Supreme Court of Appeals, by order
29 entered of record, and any such salary or compensation shall be paid out of the State Treasury.

30 (g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code,
31 the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance
32 with the court's procedures, ~~is authorized~~ may ~~to~~ hire multijudicial-circuit probation officers, to be
33 employed through the court's Division of Probation Services. Such officers may also supervise

34 probationers who are on probation for sexual offences with the approval of the administrative
35 director of the Supreme Court of Appeals or his or her designee.

36 (h) In recognition of the duties in their employment supervising confinement and
37 supervised release and the inherent arrest powers for violation of the same which constitute law
38 enforcement, state probation officers are determined to be qualified law-enforcement officers as
39 that term is used in 18 U.S.C. §926B.

40 (i) Any state probation officer may carry a concealed firearm for self-defense purposes
41 pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

42 (1) The Supreme Court of Appeals has a written policy authorizing probation officers to
43 carry a concealed firearm for self-defense purposes.

44 (2) There is in place a requirement that the state probation officers annually qualify in the
45 use of a firearm with standards for qualification which are equal to, or exceed those required of
46 sheriff's deputies by the Law-Enforcement Professional Standards Program;

47 (3) The Supreme Court of Appeals issues a photographic identification and certification
48 card which identify the state probation officers as qualified law-enforcement employees pursuant
49 to the provisions of §30-29-12 of this code.

50 (4) Any policy instituted pursuant to this subsection shall include provisions which:

51 (A) Preclude or remove a person from participation in the concealed firearm program;

52 (B) Preclude from participation persons prohibited by federal or state law from possessing
53 or receiving a firearm and;

54 (C) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection
55 while in an impaired state as defines in §17C-5-2 of this code.

56 (5) Any state juvenile probation officer who participates in a program authorized by the
57 provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining
58 a suitable firearm and ammunition.

59 (6) It is the intent of the Legislature in enacting the amendments to this section during the
60 2022 regular session of the Legislature to authorize state probation officers wishing to do so to
61 meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

62 (7) The privileges authorized by the amendments to this section enacted during the 2022
63 regular session of the Legislature are wholly within the discretion of the Supreme Court of
64 Appeals.

§62-12-6. Powers and duties of probation officers.

1 (a) Each probation officer shall:

2 (1) Investigate all cases which the court refers to the officer for investigation and shall
3 report in writing on each case;

4 (2) Conduct a standardized risk and needs assessment, using the instrument adopted by
5 the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has
6 not been conducted either prior to placement on probation or by a specialized assessment officer.
7 The results of all standardized risk and needs assessments are confidential;

8 (3) Supervise the probationer and enforce probation according to assessment and
9 supervision standards adopted by the Supreme Court of Appeals of West Virginia;

10 (4) Furnish to each person released on probation under the officer's supervision a written
11 statement of the probationer's conditions of probation together with a copy of the rules prescribed
12 by the Supreme Court of Appeals of West Virginia;

13 (5) Stay informed concerning the conduct and condition of each probationer under the
14 officer's supervision and report on the conduct and condition of each probationer in writing as
15 often as the court requires;

16 (6) Use all practicable and suitable methods to aid and encourage the probationer to
17 improve his or her conduct and condition;

18 (7) Perform random drug and alcohol testing on probationers under his or her supervision
19 as directed by the circuit court;

20 (8) Maintain detailed work records; and

21 (9) Perform any other duties the court requires.

22 (b) The probation officer may, with or without an order or warrant, arrest any probationer
23 as provided in section ten of this article, and arrest any person on supervised release when there
24 is reasonable cause to believe that the person on supervised release has violated a condition of
25 release. A person on supervised release who is arrested shall be brought before the court for a
26 prompt and summary hearing.

27 (c) Notwithstanding any provision of this code to the contrary:

28 (1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the
29 course of the officer's official duties after meeting specialized qualifications established by the
30 Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the
31 successful completion of handgun training, which is comparable to the handgun training provided
32 to law-enforcement officers by the West Virginia State Police and includes a minimum of four
33 hours' training in handgun safety.

34 (2) Probation officers may only carry handguns in the course of their official duties after
35 meeting the specialized qualifications set forth in subdivision (1) of this subsection.

36 ~~(3) Nothing in this subsection includes probation officers within the meaning of law-~~
37 ~~enforcement officers as defined in section one, article twenty nine, chapter thirty of this code.~~

38 (d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and
39 needs assessment with risk cut-off scores for use by probation officers, taking into consideration
40 the assessment instrument adopted by the Division of Corrections under subsection (h), section
41 13 of this article and the responsibility of the Division of Justice and Community Services to
42 evaluate the use of the standardized risk and needs assessment. The results of any standardized
43 risk and needs assessment are confidential.

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. The bill clarifies that home confinement supervisors, state adult probation officers, juvenile probation officers, and state parole officers are, by virtue of their duties, qualified law enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act. The bill exempts certain persons from prohibition for carrying deadly weapons on the premises of educational facilities. The bill provides the statutory authority to give home confinement supervisors, state probation officers, juvenile probation officers, and parole officers the option to carry firearms pursuant to applicable federal law. The bill requires annual firearm training pursuant to federal law. The bill removes inconsistent language relating to probation officers. The bill clarifies that supervisory entities retain sole discretion as to authorizing participation of qualified officers in such program. The bill provides for training to enable home confinement supervisors, state probation officers, juvenile probation officers, and state parole officers to fully qualify as law enforcement officers if they have not previously done so. The bill sets forth the duties of supervising authorities as to participation of home confinement supervisors, state probation officers, juvenile probation officers, and state parole officers. Finally, the bill removes a duplicative reference to probation officers in code.

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