

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3369

BY DELEGATES KELLY, HOTT, GARCIA, WORRELL,

WESTFALL, FAST AND KIMBLE

(BY THE REQUEST OF THE DEPARTMENT OF HOMELAND SECURITY)

[Passed March 9, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §15-2D-1, §15-2D-2 and §15-2D-3 of the Code of West Virginia,
2 1931, as amended, relating to creating a School Safety Unit within the Division of
3 Protective Services; making findings, establishing duties and powers of the School Safety
4 Unit; clarifying certain security services of the division; clarifying the confidentiality of
5 certain records; clarifying that certain interagency agreements are discretionary; clarifying
6 mandatory and discretionary duties of the director relating to the School Safety Unit; and
7 correcting references to the Department of Homeland Security.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-1. Legislative findings.

1 The Legislature finds and declares that citizens, state employees and visitors who park,
2 attend functions, conduct business or work at the capitol complex and other state facilities should
3 be safe and secure. The Legislature further finds and declares that it is in the public interest to
4 establish a division within the Department of Homeland Security for the purpose of providing
5 safety and security to individuals who visit, conduct business or work at the capitol complex and
6 other state facilities. The legislature further finds there is a compelling interest in the safety of
7 school facilities throughout the state and that it is in the public interest to dedicate within the West
8 Virginia Department of Homeland Security a law enforcement unit focused on primary and
9 secondary school safety matters.

§15-2D-2. Duties and powers of the director and officers.

1 (a) The state facilities protection division within the Department of Homeland Security shall
2 hereafter be designated the Division of Protective Services. The purpose of the division is to
3 provide safety and security at the capitol complex and other state facilities: *Provided*, That
4 nothing in this section shall be construed as limiting the law-enforcement authority of the division
5 set forth in §15-2d-3 of this code.

6 (b) The Governor shall appoint, with the advice and consent of the Senate, the director of
7 the division whose qualifications shall include at least 10 years of service as a law-enforcement
8 officer with at least three years in a supervisory law-enforcement position, the successful
9 completion of supervisory and management training, and the professional training required for
10 police officers at the West Virginia state police academy or an equivalent professional law-
11 enforcement training at another state, federal or United States Military institution.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and supervision of the division. The director
2 and any officer of the division may carry designated weapons and have the same powers of arrest
3 and law enforcement in Kanawha County as members of the West Virginia State Police as set
4 forth in §15-2-12(b) and §15-2-12(d) of this code. The director and any officer of the division shall
5 also have such powers throughout the State of West Virginia in investigating and performing law-
6 enforcement duties for offenses committed on the Capitol Complex or related to the division's
7 security and protection duties at the Capitol Complex and throughout the state relating to offenses
8 and activities occurring on any property owned, leased, or operated by the State of West Virginia
9 when undertaken at the request of the agency occupying the property: *Provided*, That nothing in
10 this article shall be construed as to obligate the director or the division to provide, or be
11 responsible for providing, security at state facilities outside the Capitol Complex.

12 (b) The director shall establish a School Safety Unit within the Division of Protective
13 Services. Officers shall be assigned to the School Safety Unit at the discretion of the director.
14 The officers assigned to the School Safety Unit shall primarily be charged to make school safety
15 inspections and to make recommendations to appropriate county school superintendents,
16 principals, or other school administrators, regarding school safety. The officers assigned to the
17 School Safety Unit shall also be authorized to respond to and investigate all school safety matters,
18 in consultation with county boards of education: *Provided*, That any officer of the School Safety

19 Unit shall have statewide jurisdiction and powers of general law enforcement and arrest for
20 violations of law committed in their presence.

21 (c) Any officer of the division shall be certified as a law-enforcement officer by the
22 Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed
23 as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this
24 code.

25 (d) The director may:

26 (1) Employ necessary personnel, all of whom shall be classified exempt, assign them the
27 duties necessary for the efficient management and operation of the division, and specify members
28 who may carry, without license, weapons designated by the director;

29 (2) Contract for security and other services;

30 (3) Purchase equipment as necessary to maintain security at the Capitol Complex and
31 other state facilities. The provisions of §5A-3-3 of this code do not apply to purchases made
32 pursuant to this subdivision;

33 (4) Establish and provide standard uniforms, arms, weapons, and other enforcement
34 equipment authorized for use by members of the division and shall provide for the periodic
35 inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property
36 furnished to members of the division by the State of West Virginia is and remains the property of
37 the state;

38 (5) Appoint security officers to provide security on premises owned or leased by the State
39 of West Virginia;

40 (6) Consistent with the provisions in §15-2D-5 of this code, provide security for the
41 Speaker of the House of Delegates, the President of the Senate, the Governor, or a justice of the
42 Supreme Court of Appeals;

43 (7) Gather information from a broad base of employees at and visitors to the Capitol
44 Complex to determine their security needs and develop a comprehensive plan to maintain and
45 improve security at the Capitol Complex based upon those needs;

46 (8) Assess safety and security needs and make recommendations for safety and security
47 at any proposed or existing state facility as determined by the Secretary of the Department of
48 Homeland Security, upon request of the secretary of the department to which the facility is or will
49 be assigned: *Provided*, That records of such assessments, and any other records determined by
50 the Secretary of the Department of Homeland Security to compromise the safety and security at
51 any proposed or existing state facility, including primary and secondary schools, are not public
52 records and are not subject to disclosure in response to a Freedom of Information Act request
53 under §29B-1-1 *et seq.* of this code; and

54 (9) Enter into an interagency agreement with the Secretary of the Department of
55 Homeland Security and the Secretary of the Department of Administration, which delineates their
56 respective rights and authorities under any contracts or subcontracts for security personnel. A
57 copy of the interagency agreement shall be delivered to the Governor, the President of the
58 Senate, and the Speaker of the House of Delegates, and a copy shall be filed in the office of the
59 Secretary of State and shall be a public record.

60 (e) The director shall:

61 (1) Propose legislative rules for promulgation in accordance with the provisions of
62 §29A-3-1 *et seq.* of this code. The rules shall, at a minimum, establish ranks and the duties of
63 officers within the membership of the division.

64 (2) Consistent with subsection (b) of this section, provide services to all public primary and
65 secondary schools in furtherance of the purposes of the School Safety Unit: *Provided*, That the
66 director may provide services to any private primary and secondary schools in the state upon
67 request.

68 (3) Deliver a monthly status report to the Speaker of the House of Delegates and the
69 President of the Senate.

70 (4) Require any service provider whose employees are regularly employed on the
71 grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical
72 information, to have its employees submit to a fingerprint-based state and federal background
73 inquiry through the state repository, and require a new employee who is employed to provide
74 services on the grounds or in the building of the Capitol Complex to submit to an employment
75 eligibility check through E-verify.

76 (i) After the contract for such services has been approved, but before any such employees
77 are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to
78 sensitive or critical information, the service provider shall submit a list of all persons who will be
79 physically present and working at the Capitol Complex for purposes of verifying compliance with
80 this section.

81 (ii) All current service providers shall, within 90 days of the amendment and reenactment
82 of this section by the 80th Legislature, ensure that all of its employees who are providing services
83 on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or
84 critical information submit to a fingerprint-based state and federal background inquiry through the
85 state repository.

86 (iii) Any contract entered into, amended, or renewed by an agency or entity of state
87 government with a service provider shall contain a provision reserving the right to prohibit specific
88 employees thereof from accessing sensitive or critical information or to be present at the Capitol
89 Complex based upon results addressed from a criminal background check.

90 (iv) For purposes of this section, the term "service provider" means any person or company
91 that provides employees to a state agency or entity of state government to work on the grounds
92 or in the buildings that make up the Capitol Complex or who have access to sensitive or critical
93 information.

94 (v) In accordance with the provisions of Public Law 92-544 the criminal background check
95 information will be released to the Director of the Division of Protective Services.

96 (5) Be required to provide his or her approval prior to the installation of any and all
97 electronic security systems purchased by any state agency which are designed to connect to the
98 division's command center.

99 (f) Effective July 1, 2017, the Director of Security and security officers of the Department
100 of Arts, Culture, and History shall be made part of, and be under the supervision and direction of,
101 the Division of Protective Services. Security for all Capitol Complex properties of the Department
102 of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor