

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 327**

4 (By Senator Nohe)

5 _____
6 [Originating in the Committee on Education;
7 reported February 3, 2012.]
8 _____

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10
11 A BILL to amend and reenact §8-12-5 of the Code of West Virginia,
12 1931, as amended; and to amend and reenact §61-7-11a of said
13 code, all relating to providing an exemption for the official
14 mascot of Parkersburg South High School, commonly known as
15 "The Patriot", which would allow the mascot to carry a musket
16 on school grounds when the mascot is acting in his or her
17 official capacity; and limiting the plenary power and
18 authority of municipalities and their governing bodies to
19 arrest, convict and punish any individual for carrying certain
20 weapons.

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

22 That §8-12-5 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §61-7-11a of said code be
24 amended and reenacted, all to read as follows:

25 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

1 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
2 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
3 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

4 **§8-12-5. General powers of every municipality and the governing**
5 **body thereof.**

6 In addition to the powers and authority granted by: (I) The
7 Constitution of this state; (ii) other provisions of this chapter;
8 (iii) other general law; and (iv) any charter, and to the extent
9 not inconsistent or in conflict with any of the foregoing except
10 special legislative charters, every municipality and the governing
11 body thereof shall have plenary power and authority therein by
12 ordinance or resolution, as the case may require, and by
13 appropriate action based thereon:

14 (1) To lay off, establish, construct, open, alter, curb,
15 recurb, pave or repave and keep in good repair, or vacate,
16 discontinue and close, streets, avenues, roads, alleys, ways,
17 sidewalks, drains and gutters, for the use of the public, and to
18 improve and light the same, and have them kept free from
19 obstructions on or over them which have not been authorized
20 pursuant to the succeeding provisions of this subdivision; and,
21 subject to such terms and conditions as the governing body shall
22 prescribe, to permit, without in any way limiting the power and
23 authority granted by the provisions of article sixteen of this
24 chapter, any person to construct and maintain a passageway,
25 building or other structure overhanging or crossing the airspace

1 above a public street, avenue, road, alley, way, sidewalk or
2 crosswalk, but before any permission for any person to construct
3 and maintain a passageway, building or other structure overhanging
4 or crossing any airspace is granted, a public hearing thereon shall
5 be held by the governing body after publication of a notice of the
6 date, time, place and purpose of the public hearing has been
7 published as a Class I legal advertisement in compliance with the
8 provisions of article three, chapter fifty-nine of this code and
9 the publication area for the publication shall be the municipality:
10 *Provided*, That any permit so granted shall automatically cease and
11 terminate in the event of abandonment and nonuse thereof for the
12 purposes intended for a period of ninety days, and all rights
13 therein or thereto shall revert to the municipality for its use and
14 benefit;

15 (2) To provide for the opening and excavation of streets,
16 avenues, roads, alleys, ways, sidewalks, crosswalks and public
17 places belonging to the municipality and regulate the conditions
18 under which any such opening may be made;

19 (3) To prevent by proper penalties the throwing, depositing or
20 permitting to remain on any street, avenue, road, alley, way,
21 sidewalk, square or other public place any glass, scrap iron,
22 nails, tacks, wire, other litter or any offensive matter or
23 anything likely to injure the feet of individuals or animals or the
24 tires of vehicles;

25 (4) To regulate the use of streets, avenues, roads, alleys,
26 ways, sidewalks, crosswalks and public places belonging to the

1 municipality, including the naming or renaming thereof, and to
2 consult with local postal authorities, the Division of Highways and
3 the directors of county emergency communications centers to assure
4 uniform, nonduplicative addressing on a permanent basis;

5 (5) To regulate the width of streets, avenues and roads, and,
6 subject to the provisions of article eighteen of this chapter, to
7 order the sidewalks, footways and crosswalks to be paved, repaved,
8 curbed or recurbed and kept in good order, free and clean, by the
9 owners or occupants thereof or of the real property next adjacent
10 thereto;

11 (6) To establish, construct, alter, operate and maintain, or
12 discontinue, bridges, tunnels and ferries and approaches thereto;

13 (7) To provide for the construction and maintenance of water
14 drains, the drainage of swamps or marshlands and drainage systems;

15 (8) To provide for the construction, maintenance and covering
16 over of watercourses;

17 (9) To control and administer the waterfront and waterways of
18 the municipality and to acquire, establish, construct, operate and
19 maintain and regulate flood control works, wharves and public
20 landings, warehouses and all adjuncts and facilities for navigation
21 and commerce and the utilization of the waterfront and waterways
22 and adjacent property;

23 (10) To prohibit the accumulation and require the disposal of
24 garbage, refuse, debris, wastes, ashes, trash and other similar
25 accumulations whether on private or public property: *Provided,*
26 That, in the event the municipality annexes an area which has been

1 receiving solid waste collection services from a certificated solid
2 waste motor carrier, the municipality and the solid waste motor
3 carrier may negotiate an agreement for continuation of the private
4 solid waste motor carrier services for a period of time, not to
5 exceed three years, during which time the certificated solid waste
6 motor carrier may continue to provide exclusive solid waste
7 collection services in the annexed territory;

8 (11) To construct, establish, acquire, equip, maintain and
9 operate incinerator plants and equipment and all other facilities
10 for the efficient removal and destruction of garbage, refuse,
11 wastes, ashes, trash and other similar matters;

12 (12) To regulate or prohibit the purchase or sale of articles
13 intended for human use or consumption which are unfit for use or
14 consumption, or which may be contaminated or otherwise unsanitary;

15 (13) To prevent injury or annoyance to the public or
16 individuals from anything dangerous, offensive or unwholesome;

17 (14) To regulate the keeping of gunpowder and other
18 combustibles;

19 (15) To make regulations guarding against danger or damage by
20 fire;

21 (16) To arrest, convict and punish any individual for carrying
22 about his or her person any revolver or other pistol, dirk, bowie
23 knife, razor, slingshot, billy, metallic or other false knuckles or
24 any other dangerous or other deadly weapon of like kind or
25 character: Provided, That the plenary power and authority granted
26 pursuant to this subdivision does not include the plenary power and

1 authority to arrest, convict and punish the official mascot of
2 Parkersburg South High School, commonly known as "The Patriot,"
3 acting in his or her official capacity;

4 (17) To arrest, convict and punish any person for importing,
5 printing, publishing, selling or distributing any pornographic
6 publications;

7 (18) To arrest, convict and punish any person for keeping a
8 house of ill fame, or for letting to another person any house or
9 other building for the purpose of being used or kept as a house of
10 ill fame, or for knowingly permitting any house owned by him or her
11 or under his or her control to be kept or used as a house of ill
12 fame, or for loafing, boarding or loitering in a house of ill fame,
13 or frequenting same;

14 (19) To prevent and suppress conduct and practices which are
15 immoral, disorderly, lewd, obscene and indecent;

16 (20) To prevent the illegal sale of intoxicating liquors,
17 drinks, mixtures and preparations;

18 (21) To arrest, convict and punish any individual for driving
19 or operating a motor vehicle while intoxicated or under the
20 influence of liquor, drugs or narcotics;

21 (22) To arrest, convict and punish any person for gambling or
22 keeping any gaming tables, commonly called "A, B, C," or "E, O,"
23 table or faro bank or keno table, or table of like kind, under any
24 denomination, whether the gaming table be played with cards, dice
25 or otherwise, or any person who shall be a partner or concerned in
26 interest, in keeping or exhibiting the table or bank, or keeping or

1 maintaining any gaming house or place, or betting or gambling for
2 money or anything of value;

3 (23) To provide for the elimination of hazards to public
4 health and safety and to abate or cause to be abated anything which
5 in the opinion of a majority of the governing body is a public
6 nuisance;

7 (24) To license, or for good cause to refuse to license in a
8 particular case, or in its discretion to prohibit in all cases, the
9 operation of pool and billiard rooms and the maintaining for hire
10 of pool and billiard tables notwithstanding the general law as to
11 state licenses for any such business and the provisions of section
12 four, article thirteen of this chapter; and when the municipality,
13 in the exercise of its discretion, refuses to grant a license to
14 operate a pool or billiard room, mandamus may not lie to compel the
15 municipality to grant the license unless it shall clearly appear
16 that the refusal of the municipality to grant a license is
17 discriminatory or arbitrary; and in the event that the municipality
18 determines to license any business, the municipality has plenary
19 power and authority and it shall be the duty of its governing body
20 to make and enforce reasonable ordinances regulating the licensing
21 and operation of the businesses;

22 (25) To protect places of divine worship and to preserve peace
23 and order in and about the premises where held;

24 (26) To regulate or prohibit the keeping of animals or fowls
25 and to provide for the impounding, sale or destruction of animals
26 or fowls kept contrary to law or found running at large;

1 (27) To arrest, convict and punish any person for cruelly,
2 unnecessarily or needlessly beating, torturing, mutilating,
3 killing, or overloading or overdriving or willfully depriving of
4 necessary sustenance any domestic animal;

5 (28) To provide for the regular building of houses or other
6 structures, for the making of division fences by the owners of
7 adjacent premises and for the drainage of lots by proper drains and
8 ditches;

9 (29) To provide for the protection and conservation of shade
10 or ornamental trees, whether on public or private property, and for
11 the removal of trees or limbs of trees in a dangerous condition;

12 (30) To prohibit with or without zoning the location of
13 occupied house trailers or mobile homes in certain residential
14 areas;

15 (31) To regulate the location and placing of signs,
16 billboards, posters and similar advertising;

17 (32) To erect, establish, construct, acquire, improve,
18 maintain and operate a gas system, a waterworks system, an electric
19 system or sewer system and sewage treatment and disposal system, or
20 any combination of the foregoing (subject to all of the pertinent
21 provisions of articles nineteen and twenty of this chapter and
22 particularly to the limitations or qualifications on the right of
23 eminent domain set forth in articles nineteen and twenty), within
24 or without the corporate limits of the municipality, except that
25 the municipality may not erect any system partly without the
26 corporate limits of the municipality to serve persons already

1 obtaining service from an existing system of the character proposed
2 and where the system is by the municipality erected, or has
3 heretofore been so erected, partly within and partly without the
4 corporate limits of the municipality, the municipality has the
5 right to lay and collect charges for service rendered to those
6 served within and those served without the corporate limits of the
7 municipality and to prevent injury to the system or the pollution
8 of the water thereof and its maintenance in a healthful condition
9 for public use within the corporate limits of the municipality;

10 (33) To acquire watersheds, water and riparian rights, plant
11 sites, rights-of-way and any and all other property and
12 appurtenances necessary, appropriate, useful, convenient or
13 incidental to any system, waterworks or sewage treatment and
14 disposal works, as aforesaid, subject to all of the pertinent
15 provisions of articles nineteen and twenty of this chapter;

16 (34) To establish, construct, acquire, maintain and operate
17 and regulate markets and prescribe the time of holding the same;

18 (35) To regulate and provide for the weighing of articles sold
19 or for sale;

20 (36) To establish, construct, acquire, maintain and operate
21 public buildings, municipal buildings or city halls, Auditoriums,
22 arenas, jails, juvenile detention centers or homes, motor vehicle
23 parking lots or any other public works;

24 (37) To establish, construct, acquire, provide, equip,
25 maintain and operate recreational parks, playgrounds and other
26 recreational facilities for public use and in this connection also

1 to proceed in accordance with the provisions of article two,
2 chapter ten of this code;

3 (38) To establish, construct, acquire, maintain and operate a
4 public library or museum or both for public use;

5 (39) To provide for the appointment and financial support of
6 a library board in accordance with the provisions of article one,
7 chapter ten of this code;

8 (40) To establish and maintain a public health unit in
9 accordance with the provisions of section two, article two, chapter
10 sixteen of this code, which unit shall exercise its powers and
11 perform its duties subject to the supervision and control of the
12 West Virginia Board of Health and State Bureau for Public Health;

13 (41) To establish, construct, acquire, maintain and operate
14 hospitals, sanitariums and dispensaries;

15 (42) To acquire, by purchase, condemnation or otherwise, land
16 within or near the corporate limits of the municipality for
17 providing and maintaining proper places for the burial of the dead
18 and to maintain and operate the same and regulate interments
19 therein upon terms and conditions as to price and otherwise as may
20 be determined by the governing body and, in order to carry into
21 effect the authority, the governing body may acquire any cemetery
22 or cemeteries already established;

23 (43) To exercise general police jurisdiction over any
24 territory without the corporate limits owned by the municipality or
25 over which it has a right-of-way;

26 (44) To protect and promote the public morals, safety, health,

1 welfare and good order;

2 (45) To adopt rules for the transaction of business and the
3 government and regulation of its governing body;

4 (46) Except as otherwise provided, to require and take bonds
5 from any officers, when considered necessary, payable to the
6 municipality, in its corporate name, with such sureties and in a
7 penalty as the governing body may see fit, conditioned upon the
8 faithful discharge of their duties;

9 (47) To require and take from the employees and contractors
10 such bonds in a penalty, with such sureties and with such
11 conditions, as the governing body may see fit;

12 (48) To investigate and inquire into all matters of concern to
13 the municipality or its inhabitants;

14 (49) To establish, construct, require, maintain and operate
15 such instrumentalities, other than free public schools, for the
16 instruction, enlightenment, improvement, entertainment, recreation
17 and welfare of the municipality's inhabitants as the governing body
18 may consider necessary or appropriate for the public interest;

19 (50) To create, maintain and operate a system for the
20 enumeration, identification and registration, or either, of the
21 inhabitants of the municipality and visitors thereto, or the
22 classes thereof as may be considered advisable;

23 (51) To require owners, residents or occupants of factory-
24 built homes situated in a factory-built rental home community with
25 at least ten factory-built homes, to visibly post the specific
26 numeric portion of the address of each factory-built home on the

1 immediate premises of the factory-built home of sufficient size to
2 be visible from the adjoining street: *Provided*, That in the event
3 no numeric or other specific designation of an address exists for
4 a factory-built home subject to the authorization granted by this
5 subdivision, the municipality has the authority to provide a
6 numeric or other specific designation of an address for the
7 factory-built home and require that it be posted in accordance with
8 the authority otherwise granted by this section.

9 (52) To appropriate and expend not exceeding 25¢ per capita
10 per annum for advertising the municipality and the entertainment of
11 visitors;

12 (53) To conduct programs to improve community relations and
13 public relations generally and to expend municipal revenue for such
14 purposes;

15 (54) To reimburse applicants for employment by the
16 municipality for travel and other reasonable and necessary expenses
17 actually incurred by the applicants in traveling to and from the
18 municipality to be interviewed;

19 (55) To provide revenue for the municipality and appropriate
20 the same to its expenses;

21 (56) To create and maintain an Employee Benefits Fund which
22 may not exceed one tenth of one percent of the annual payroll
23 budget for general employee benefits and which is set up for the
24 purpose of stimulating and encouraging employees to develop and
25 implement cost-saving ideas and programs and to expend moneys from
26 the fund for these purposes;

1 (57) To enter into reciprocal agreements with governmental
2 subdivisions or agencies of any state sharing a common border for
3 the protection of people and property from fire and for emergency
4 medical services and for the reciprocal use of equipment and
5 personnel for these purposes;

6 (58) To provide penalties for the offenses and violations of
7 law mentioned in this section, subject to the provisions of section
8 one, article eleven of this chapter, and such penalties may not
9 exceed any penalties provided in this chapter and chapter sixty-one
10 of this code for like offenses and violations; and

11 (59) To participate in a purchasing card program for local
12 governments authorized and administered by the State Auditor as an
13 alternative payment method.

14 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

15 **ARTICLE 7. DANGEROUS WEAPONS.**

16 **§61-7-11a. Possessing deadly weapons on premises of educational**
17 **facilities; reports by school principals; suspension**
18 **of driver license; possessing deadly weapons on**
19 **premises housing courts of law and in offices of**
20 **family law master.**

21 (a) The Legislature hereby finds that the safety and welfare
22 of the citizens of this state are inextricably dependent upon
23 assurances of safety for children attending, and the persons
24 employed by, schools in this state and for those persons employed
25 with the judicial department of this state. It is for the purpose

1 of providing such assurances of safety, therefore, that subsections
2 (b), (g) and (h) of this section are enacted as a reasonable
3 regulation of the manner in which citizens may exercise those
4 rights accorded to them pursuant to section twenty-two, article
5 three of the Constitution of the State of West Virginia.

6 (b) (1) It shall be unlawful for any person to possess any
7 firearm or any other deadly weapon on any school bus as defined in
8 section one, article one, chapter seventeen-a of this code, or in
9 or on any public or private primary or secondary education
10 building, structure, facility or grounds thereof, including any
11 vocational education building, structure, facility or grounds
12 thereof where secondary vocational education programs are conducted
13 or at any school-sponsored function.

14 (2) This subsection shall not apply to:

15 (A) A law-enforcement officer acting in his or her official
16 capacity;

17 (B) A person specifically authorized by the board of education
18 of the county or principal of the school where the property is
19 located to conduct programs with valid educational purposes;

20 (C) A person who, as otherwise permitted by the provisions of
21 this article, possesses an unloaded firearm or deadly weapon in a
22 motor vehicle, or leaves an unloaded firearm or deadly weapon in a
23 locked motor vehicle;

24 (D) Programs or raffles conducted with the approval of the
25 county board of education or school which include the display of
26 unloaded firearms; ~~or~~

1 (E) The official mascot of West Virginia University, commonly
2 known as "The Mountaineer", acting in his or her official capacity;
3 or

4 (F) The official mascot of Parkersburg South High School,
5 commonly known as "The Patriot," acting in his or her official
6 capacity.

7 (3) Any person violating this subsection shall be guilty of a
8 felony and, upon conviction thereof, shall be imprisoned in ~~the~~
9 ~~penitentiary~~ a correctional facility of this state for a definite
10 term of years of not less than two years nor more than ten years,
11 or fined not more than \$5,000, or both.

12 (c) It shall be the duty of the principal of each school
13 subject to the authority of the State Board of Education to report
14 any violation of subsection (b) of this section discovered by such
15 principal to the State Superintendent of Schools within seventy-two
16 hours after such violation occurs. The State Board of Education
17 shall keep and maintain such reports and may prescribe rules
18 establishing policy and procedures for the making and delivery of
19 the same as required by this subsection. In addition, it shall be
20 the duty of the principal of each school subject to the authority
21 of the State Board of Education to report any violation of
22 subsection (b) of this section discovered by such principal to the
23 appropriate local office of the division of public safety within
24 seventy-two hours after such violation occurs.

25 (d) In addition to the methods of disposition provided by
26 article five, chapter forty-nine of this code, any court which

1 adjudicates a person who is fourteen years of age or older as
2 delinquent for a violation of subsection (b) of this section may,
3 in its discretion, order the Division of Motor Vehicles to suspend
4 any driver's license or instruction permit issued to such person
5 for such period of time as the court may deem appropriate, such
6 suspension, however, not to extend beyond such person's nineteenth
7 birthday; or, where such person has not been issued a driver's
8 license or instruction permit by this state, order the Division of
9 Motor Vehicles to deny such person's application for the same for
10 such period of time as the court may deem appropriate, such denial,
11 however, not to extend beyond such person's nineteenth birthday.
12 Any suspension ordered by the court pursuant to this subsection
13 shall be effective upon the date of entry of such order. Where the
14 court orders the suspension of a driver's license or instruction
15 permit pursuant to this subsection, the court shall confiscate any
16 driver's license or instruction permit in the adjudicated person's
17 possession and forward the same to the Division of Motor Vehicles.

18 (e) (1) If a person eighteen years of age or older is
19 convicted of violating subsection (b) of this section, and if such
20 person does not act to appeal such conviction within the time
21 periods described in subdivision (2) of this subsection, such
22 person's license or privilege to operate a motor vehicle in this
23 state shall be revoked in accordance with the provisions of this
24 section.

25 (2) The clerk of the court in which the person is convicted as
26 described in subdivision (1) of this subsection shall forward to

1 the commissioner a transcript of the judgment of conviction. If
2 the conviction is the judgment of a magistrate court, the
3 magistrate court clerk shall forward such transcript when the
4 person convicted has not requested an appeal within twenty days of
5 the sentencing for such conviction. If the conviction is the
6 judgment of a circuit court, the circuit clerk shall forward such
7 transcript when the person convicted has not filed a notice of
8 intent to file a petition for appeal or writ of error within thirty
9 days after the judgment was entered.

10 (3) If, upon examination of the transcript of the judgment of
11 conviction, the commissioner shall determine that the person was
12 convicted as described in subdivision (1) of this subsection, the
13 commissioner shall make and enter an order revoking such person's
14 license or privilege to operate a motor vehicle in this state for
15 a period of one year, or, in the event the person is a student
16 enrolled in a secondary school, for a period of one year or until
17 the person's twentieth birthday, whichever is the greater period.
18 The order shall contain the reasons for the revocation and the
19 revocation period. The order of suspension shall advise the person
20 that because of the receipt of the court's transcript, a
21 presumption exists that the person named in the order of suspension
22 is the same person named in the transcript. The commissioner may
23 grant an administrative hearing which substantially complies with
24 the requirements of the provisions of section two, article five-a,
25 chapter seventeen-c of this code upon a preliminary showing that a
26 possibility exists that the person named in the notice of

1 conviction is not the same person whose license is being suspended.
2 Such request for hearing shall be made within ten days after
3 receipt of a copy of the order of suspension. The sole purpose of
4 this hearing shall be for the person requesting the hearing to
5 present evidence that he or she is not the person named in the
6 notice. In the event the commissioner grants an administrative
7 hearing, the commissioner shall stay the license suspension pending
8 the commissioner's order resulting from the hearing.

9 (4) For the purposes of this subsection, a person is convicted
10 when such person enters a plea of guilty or is found guilty by a
11 court or jury.

12 (f) (1) It shall be unlawful for any parent(s), guardian(s) or
13 custodian(s) of a person less than eighteen years of age who knows
14 that said person is in violation of subsection (b) of this section,
15 or who has reasonable cause to believe that said person's violation
16 of said subsection is imminent, to fail to immediately report such
17 knowledge or belief to the appropriate school or law-enforcement
18 officials.

19 (2) Any person violating this subsection shall be guilty of a
20 misdemeanor and, upon conviction thereof, shall be fined not more
21 than \$1,000, or shall be confined in jail not more than one year,
22 or both.

23 (g) (1) It shall be unlawful for any person to possess any
24 firearm or any other deadly weapon on any premises which houses a
25 court of law or in the offices of a family law master.

26 (2) This subsection shall not apply to:

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

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

6 (3) Any person violating this subsection shall be guilty of a
7 misdemeanor and, upon conviction thereof, shall be fined not more
8 than \$1,000, or shall be confined in jail not more than one year,
9 or both.

10 (h) (1) It shall be unlawful for any person to possess any
11 firearm or any other deadly weapon on any premises which houses a
12 court of law or in the offices of a family law master with the
13 intent to commit a crime.

14 (2) Any person violating this subsection shall be guilty of a
15 felony and, upon conviction thereof, shall be imprisoned in ~~the~~
16 ~~penitentiary~~ a correctional facility of this state for a definite
17 term of years of not less than two years nor more than ten years,
18 or fined not more than \$5,000, or both.

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