

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 388

BY SENATORS SYPOLT, AZINGER, BOSO, CLINE, FERNS,
KARNES, MAYNARD, OJEDA, RUCKER, SMITH, TAKUBO,
TRUMP AND MARONEY

[Introduced February 22, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-7-6, §61-7-11a and §61-7-14 of the Code of West Virginia,
2 1931, as amended, all relating to dangerous weapons.

Be it enacted by the Legislature of West Virginia:

1 That §61-7-6, §61-7-11a and §61-7-14 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

**§61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons
at least eighteen years of age and fewer than twenty-one years of age; exemptions
from licensing fees.**

1 (a) The provisions in section three of this article do not apply to any person at least
2 eighteen years of age and fewer than twenty-one years of age who is:

3 (1) Carrying a deadly weapon upon his or her own premises;

4 (2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence
5 or place of business or to a place of repair and back to his or her home, residence or place of
6 business; or

7 (3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her
8 home, residence or place of business to a hunting site and returning to his or her home, residence
9 or place of business;

10 (4) A member of a properly organized target-shooting club authorized by law to obtain
11 firearms by purchase or requisition from this state or from the United States for the purpose of
12 target practice from carrying any pistol, as defined in this article, unloaded, from his or her home,
13 residence or place of business to a place of target practice and from any place of target practice
14 back to his or her home, residence or place of business, for using any such weapon at a place of
15 target practice in training and improving his or her skill in the use of the weapons;

16 (5) A law-enforcement officer or law-enforcement official or chief executive as defined in
17 section one, article twenty-nine, chapter thirty of this code;

18 (6) An employee of the West Virginia Division of Corrections duly appointed pursuant to
19 section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;

20 (7) Possessing a firearm in an otherwise lawful manner in a public or private parking area;

21 ~~(7)~~ (8) A member of the United States armed forces, reserve or National Guard;

22 ~~(8)~~ (9) A resident of another state who holds a valid permit or license to possess or carry
23 a handgun issued by a state or a political subdivision subject to the provisions and limitations set
24 forth in section six-a of this article;

25 ~~(9)~~ (10) A federal law-enforcement officer or federal police officer authorized to carry a
26 weapon in the performance of the officer's duty; and

27 ~~(10)~~ (11) A parole officer appointed pursuant to section fourteen, article twelve, chapter
28 sixty-two of this code in the performance of his or her duties.

29 (b) The following judicial officers and prosecutors and staff are exempt from paying any
30 application fees or licensure fees required under this article. However, they shall make application
31 and satisfy all licensure and handgun safety and training requirements to obtain a license as set
32 forth in section four of this article:

33 (1) Any justice of the Supreme Court of Appeals of West Virginia;

34 (2) Any circuit judge;

35 (3) Any retired justice or retired circuit judge designated senior status by the Supreme
36 Court of Appeals of West Virginia;

37 (4) Any family court judge;

38 (5) Any magistrate;

39 (6) Any prosecuting attorney;

40 (7) Any assistant prosecuting attorney; or

41 (8) Any duly appointed investigator employed by a prosecuting attorney.

**§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 subsections (b), (g) and (h) of this section and
5 paragraph (l), of subdivision (2), subsection (b) of this section are enacted as a reasonable
6 regulation of the manner in which citizens may exercise the rights accorded to them pursuant to
7 section twenty-two, article three of the Constitution of the State of West Virginia.

8 (b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school
9 bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public
10 primary or secondary education building, structure, facility or grounds including a vocational
11 education building, structure, facility or grounds where secondary vocational education programs
12 are conducted or at a school-sponsored function, or in or on a private primary or secondary
13 education building, structure or facility: *Provided*, That it shall not be unlawful to possess a
14 firearm or other deadly weapon on or in a private primary or secondary education building,
15 structure or facility when such institution has adopted written policies allowing for possession of
16 firearms on or in the institution's buildings, structures or facilities.

17 (2) This subsection does not apply to:

18 (A) A law-enforcement officer employed by a federal, state, county or municipal law-
19 enforcement agency;

20 (B) Any probation officer appointed pursuant to section five, article twelve, chapter sixty-
21 two or chapter forty-nine of this code in the performance of his or her duties;

22 (C) A retired law-enforcement officer who:

23 (i) Is employed by a state, county or municipal law-enforcement agency;

24 (ii) Is covered for liability purposes by his or her employer;

25 (iii) Is authorized by a county board of education and the school principal to serve as

26 security for a school;

27 (iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement
28 officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S.
29 C. §926C(c); and

30 (v) Meets all of the requirements for handling and using a firearm established by his or her
31 employer, and has qualified with his or her firearm to those requirements;

32 (D) A person specifically authorized by the board of education of the county or principal of
33 the school where the property is located to conduct programs with valid educational purposes;

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

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

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

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

43 (I) A person who has a valid concealed handgun permit and possesses a concealed
44 handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress
45 or egress to the school.

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

49 (c) A school principal subject to the authority of the State Board of Education who
50 discovers a violation of subsection (b) of this section shall report the violation as soon as possible
51 to:

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

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

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

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

73 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
74 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If
75 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
76 transcript when the person convicted has not requested an appeal within twenty days of the
77 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk

78 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
79 notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was
80 entered.

81 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
82 determines that the person was convicted as described in subdivision (1) of this subsection, the
83 commissioner shall make and enter an order revoking the person's license or privilege to operate
84 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
85 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever
86 is the greater period. The order shall contain the reasons for the revocation and the revocation
87 period. The order of suspension shall advise the person that because of the receipt of the court's
88 transcript, a presumption exists that the person named in the order of suspension is the same
89 person named in the transcript. The commissioner may grant an administrative hearing which
90 substantially complies with the requirements of the provisions of section two, article five-a, chapter
91 seventeen-c of this code upon a preliminary showing that a possibility exists that the person
92 named in the notice of conviction is not the same person whose license is being suspended. The
93 request for hearing shall be made within ten days after receipt of a copy of the order of
94 suspension. The sole purpose of this hearing is for the person requesting the hearing to present
95 evidence that he or she is not the person named in the notice. If the commissioner grants an
96 administrative hearing, the commissioner shall stay the license suspension pending the
97 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 eighteen years
101 of age who knows that the person is in violation of subsection (b) of this section or has reasonable
102 cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately
103 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

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

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

109 (2) This subsection does not apply to:

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

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

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

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

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

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

§61-7-14. Right of certain persons to limit possession of firearms on premises.

123 Notwithstanding the provisions of this article, any owner, lessee or other person charged
124 with the care, custody and control of real property may prohibit the carrying openly or concealed
125 of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes
126 of this section "person" means an individual or any entity which may acquire title to real property.

127 Any person carrying or possessing a firearm or other deadly weapon on the property of
128 another who refuses to temporarily relinquish possession of such firearm or other deadly weapon,

129 upon being requested to do so, or to leave such premises, while in possession of such firearm or
130 other deadly weapon, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be
131 fined not more than \$1,000 or confined in the county jail not more than six months, or both:
132 *Provided*, That the provisions of this section shall not apply to those persons set forth in
133 subsections (3) through (6) of section six of this code while such persons are acting in an official
134 capacity: *Provided, however*, That under no circumstances except provided under paragraph (l),
135 of subdivision (2), subsection (b) of section 11a of this code may any person possess or carry or
136 cause the possession or carrying of any firearm or other deadly weapon on the premises of any
137 primary or secondary educational facility in this state unless such person is a law-enforcement
138 officer or he or she has the express written permission of the county school superintendent.

NOTE: The purpose of this bill is to identify additional persons who may possess firearms on school property.

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