

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2770

BY DELEGATES BARRETT AND BROWN

[Introduced February 25, 2021; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §30-29-1 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §61-7-11a of said code; and, to amend and reenact §62-11B-7a of
3 said Code; all relating to the status of home incarceration supervisors; including home
4 incarceration supervisors in definition of law-enforcement officers; authorizing home
5 incarceration supervisors to carry a concealed firearm in certain facilities limited to other
6 law-enforcement officers; authorizing home incarceration supervisors to carry firearms
7 while performing their duties if their county has adopted a concealed firearms training
8 program that complies with federal law enforcement training requirements; and, providing
9 for training to enable home incarceration supervisors to fully qualify as law enforcement
10 officers if they have not previously done so.

Be it enacted by the Legislature of West Virginia:

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 any home incarceration supervisor employed by the county commission
19 authorized pursuant to §62-11B-7a of this code, those persons employed as campus police
20 officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of
21 this code, persons employed as hospital police officers in accordance with the provisions of §16-
22 5B-19 of this code, and persons employed by the Public Service Commission as ~~motor carrier~~
23 ~~inspectors~~ commercial vehicle enforcement officers and weight-enforcement officers charged with
24 enforcing commercial motor vehicle safety and weight restriction laws, although those institutions
25 and agencies may not be considered law-enforcement agencies. The term also includes those
26 persons employed as county litter control officers charged with enforcing litter laws: *Provided,*
27 That those persons have been trained and certified as law-enforcement officers and that
28 certification is currently active. The term also includes those persons employed as rangers by
29 resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort
30 area district may be considered a law-enforcement agency: *Provided, however,* That the subject
31 rangers shall pay the tuition and costs of training. As used in this article, the term "law-
32 enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement
33 agency or any watchman or special Natural Resources police officer;

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

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

38 (9) "Subcommittee" or "law-enforcement professional standards subcommittee" means
39 the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created
40 by §30-29-2 of this code; and

41 (10) "West Virginia law-enforcement agency" means any duly authorized state, county, or
42 municipal organization employing one or more persons whose responsibility is the enforcement
43 of laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service
44 Commission nor any state institution of higher education nor any hospital nor any resort area
45 district is a law-enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

1 (a) The Legislature finds that the safety and welfare of the citizens of this state are
2 inextricably dependent upon assurances of safety for children attending and persons employed
3 by schools in this state and for persons employed by the judicial department of this state. It is for
4 the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h),
5 of this code and §61-7-11a(b)(2)(l) of this code are enacted as a reasonable regulation of the
6 manner in which citizens may exercise the rights accorded to them pursuant to section 22, article
7 III of the Constitution of the State of West Virginia.

8 (b) (1) It is unlawful to possess a firearm or other deadly weapon:

9 (A) On a school bus as defined in §17A-1-1 of this code;

10 (B) In or on the grounds of any primary or secondary educational facility of any type:
11 *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the
12 grounds of any private primary or secondary school, if such institution has adopted a written policy

13 allowing for possession of firearms or other deadly weapons in the facility or on the grounds
14 thereof;

15 (C) At a school-sponsored function that is taking place in a specific area that is owned,
16 rented, or leased by the West Virginia Department of Education, the West Virginia Secondary
17 Schools Activities Commission, a county school board, or local public school for the actual period
18 of time the function is occurring.

19 (2) This subsection does not apply to:

20 (A) A law-enforcement officer employed by a federal, state, county, or municipal law-
21 enforcement agency, including any home incarceration supervisor employed by the county
22 commission authorized pursuant to §62-11B-7a of this code, in the performance of his or her
23 duties;

24 (B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code in the
25 performance of his or her duties;

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a
61 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of
62 §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver's license
63 or instruction permit issued to the person for a period of time as the court considers appropriate,

64 not to extend beyond the person's 19th birthday. If the person has not been issued a driver's
65 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
66 the person's application for a license or permit for a period of time as the court considers
67 appropriate, not to extend beyond the person's 19th birthday. A suspension ordered by the court
68 pursuant to this subsection is effective upon the date of entry of the order. Where the court orders
69 the suspension of a driver's license or instruction permit pursuant to this subsection, the court
70 shall confiscate any driver's license or instruction permit in the adjudicated person's possession
71 and forward to the Division of Motor Vehicles.

72 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this
73 code and if the person does not act to appeal the conviction within the time periods described in
74 §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this
75 state shall be revoked in accordance with the provisions of this section.

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

84 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
85 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the
86 commissioner shall make and enter an order revoking the person's license or privilege to operate
87 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
88 in a secondary school, for a period of one year or until the person's 20th birthday, whichever is
89 the greater period. The order shall contain the reasons for the revocation and the revocation

90 period. The order of suspension shall advise the person that because of the receipt of the court's
91 transcript, a presumption exists that the person named in the order of suspension is the same
92 person named in the transcript. The commissioner may grant an administrative hearing which
93 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a
94 preliminary showing that a possibility exists that the person named in the notice of conviction is
95 not the same person whose license is being suspended. The request for hearing shall be made
96 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing
97 is for the person requesting the hearing to present evidence that he or she is not the person
98 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall
99 stay the license suspension pending the commissioner's order resulting from the hearing.

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

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

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

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

112 (2) This subsection does not apply to:

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

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

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

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

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

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

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.

1 (a) The county commission may employ one or more persons with the approval of the
2 circuit court and who shall be subject to the supervision of the sheriff as a home incarceration
3 supervisor or may designate the county sheriff to supervise offenders ordered to undergo home
4 incarceration and to administer the county's home incarceration program. Any person so
5 supervising shall have authority, equivalent to that granted to a probation officer pursuant to §62-
6 12-10 of this code, to arrest a home incarceration participant when reasonable cause exists to
7 believe that such participant has violated the conditions of his or her home incarceration. Unless
8 otherwise specified, the use of the term "supervisor" in this article shall refer to a home
9 incarceration supervisor.

10 (b) A home incarceration supervisor may carry a concealed firearm in the course of his or
11 her employment, if the following criteria are met:

12 (1) The home incarceration program shall have a written policy authorizing home
13 incarceration supervisors to carry a concealed firearm for self-defense purposes;

14 (2) There shall be in place in the home incarceration program a requirement that the home
15 incarceration supervisors must regularly qualify in the use of a firearm with standards that are
16 equal to or exceed those required of sheriff's deputies in the county in which the home
17 incarceration supervisors are employed;

18 (3) The home incarceration program shall issue a photographic identification and
19 certification card which identify the home incarceration supervisors as law-enforcement
20 employees of the home incarceration program pursuant to the provisions of §30-29-12 of this
21 code.

22 (c) Any policy instituted pursuant to subdivision (1), subsection (b) of this section shall
23 include provisions which:

24 (1) Preclude or remove a person from participation in the concealed firearm program who
25 is subject to any disciplinary or legal action which could result in the loss of the authority to
26 participate in the program;

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

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

31 (d) Any home incarceration supervisor who participates in a program authorized by the
32 provisions of this subsection shall be responsible, at his or her expense, for obtaining and
33 maintaining a suitable firearm and ammunition.

34 (e) The intent of the Legislature in enacting the amendments to this section during the
35 2021 regular session of the Legislature is to authorize home incarceration programs wishing to
36 do so to allow home incarceration supervisors to meet the requirements of the federal Law-
37 Enforcement Officer's Safety Act, 18 U.S.C. §926B: *Provided*, That it is the intent of the

38 Legislature in enacting this section during the 2021 regular session of the Legislature that home
39 incarceration supervisors attend a course conducted by the Law Enforcement Professional
40 Standards Program prior to such certification, in order to give those home incarceration
41 supervisors without prior law enforcement training the needed skills to fully qualify as law
42 enforcement officers; and: *Provided, however,* The provisions of this section enacted in the 2021
43 Legislative session shall become effective July 1, 2022, in order to give all such home
44 incarceration supervisors the opportunity to avail themselves of such training.

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.

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