

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3015

FISCAL
NOTE

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FAST, KEATON, AND LONGANACRE

[Introduced March 09, 2021; Referred to the
Committee on Prevention and Treatment of
Substance Abuse then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
 2 designate §61-8-11a, relating to creating the misdemeanor offense of high in public; and
 3 criminal penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-11a. High in public places; penalties.

1 (a) A person may not:

2 (1) Appear in a public place in a condition described herein as “high”. For the purposes of
 3 this section “high in public” means a person who appears in a public place under the influence of
 4 or intoxicated by a controlled substance or mind controlling substance;

5 (2) Use a controlled substance or mind controlling substance in a public place;

6 (3) Tender a controlled substance or mind controlling substance to another person in a
 7 public place;

8 (b) Any law-enforcement officer may arrest without a warrant and take the following
 9 actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of
 10 this section: (1) If there is some nonintoxicated person who will accept responsibility for the
 11 intoxicated person, the officer may issue the intoxicated person a citation specifying a date for
 12 appearance before a judicial officer and release him or her to the custody of the individual
 13 accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever
 14 feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance
 15 of a citation, transport the individual to the individual’s present residence, or arrange for the
 16 transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1)
 17 and (2) of this subsection are not possible, the officer shall transport or arrange for transportation
 18 to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-
 19 enforcement officer’s judgment, is in need of acute medical attention, that officer shall arrange for
 20 transportation by ambulance or otherwise to a hospital emergency room. The officer shall

21 accompany the individual until he or she is discharged from the emergency room or admitted to
22 the hospital. If the individual is released from the emergency room, the officer may proceed as
23 described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the
24 hospital, the officer shall issue a citation to the individual specifying a date for appearance before
25 a judicial officer.

26 (c) Upon presentment before the proper judicial officer, the law-enforcement officer serves
27 as the chief complaining witness. The judicial officer shall determine if there is probative evidence
28 that the individual may be guilty of the charge of high in public. If such evidence is not presented,
29 the charge shall be dismissed, and the individual released. If sufficient evidence is presented, the
30 judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once
31 a warrant or summons has been issued, the following actions may be taken:

32 (1) If the individual is no longer incapacitated, he or she may be released;

33 (2) If the individual is still incapacitated but a nonintoxicated person is available to accept
34 responsibility for him or her, he or she may be released to the responsible person; or

35 (3) If the individual is still incapacitated and no responsible person is available, the judicial
36 officer shall proceed under §27-5-1 et seq. and §27-6A-1 et seq. of this code.

37 (d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until
38 complaint may be made before a judicial officer and a warrant or summons issued, any person
39 who in the presence of the law-enforcement officer violates any one or more of subdivisions (1)
40 through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use
41 reasonable force to prevent harm to himself or herself, the individual arrested, or others in carrying
42 out the provisions of this section.

43 (e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a
44 misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance
45 with the following options:

46 (1) Upon first offense, a fine of not less than \$5 nor more than \$100. If the individual, prior

47 to conviction, agrees to voluntarily attend a drug education program of not more than six hours'
48 duration at the nearest community mental health center, the judicial officer may delay sentencing
49 until the program is completed and upon completion may dismiss the charges;

50 (2) Upon conviction for a second offense, a fine of not less than \$5 nor more than \$100
51 and not more than 60 days in jail or completion of not less than five hours of alcoholism counseling
52 at the nearest community mental health center;

53 (3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100
54 and not more than 60 days in jail or a fine of not less than \$5 nor more than \$100 and completion
55 of not less than five hours of alcoholism counseling at the nearest community mental health
56 center: *Provided*, That three convictions for public intoxication within the preceding six months is
57 considered evidence of alcoholism. For the educational counseling programs described in this
58 subsection the community mental health center may charge each participant its usual and
59 customary fee and shall certify in writing to the referring judicial officer the completion or failure to
60 complete the prescribed program for each individual.

61 (f) A person charged with a violation of subdivision (1), subsection (a) of this section who
62 is an alcoholic shall be found not guilty by reason of addiction and proper disposition made
63 pursuant to §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this code.

64 (g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a
65 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100;
66 and upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more
67 than \$100, or confined in jail not more than 60 days, or both.

68 (h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a
69 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100,
70 or confined in jail not more than 60 days, or both.

71 (i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of
72 a misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor more

73 than \$500; and upon conviction of second or subsequent offense, he or she is guilty of a felony
74 and, shall be confined in a state correctional facility for a period of not less than one year nor more
75 than three years.

NOTE: The purpose of this bill is to create the misdemeanor offense of high in public; and criminal penalty.

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