

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 419

BY SENATORS SYPOLT AND WOODRUM

[Introduced February 23, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-7-2 of the Code of West Virginia, 1931, as amended, relating
2 to definitions of dangerous weapons; and redefining “firearm” so as not to be more
3 restrictive than the federal definition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece
3 of lead or some other heavy substance and, at the handle end, a strap or springy shaft which
4 increases the force of impact when a person or object is struck. The term “blackjack” includes,
5 but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

6 “Gravity knife” means any knife that has a blade released from the handle by the force of
7 gravity or the application of centrifugal force and when so released is locked in place by means
8 of a button, spring, lever, or other locking or catching device.

9 “Knife” means an instrument, intended to be used or readily adaptable to be used as a
10 weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to
11 a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term “knife”
12 includes, but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and
13 one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable
14 of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half
15 inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other
16 recreational uses, or a knife designed for use as a tool or household implement is not included
17 within the term “knife” as defined in this subsection unless the knife is knowingly used or intended
18 to be used to produce serious bodily injury or death.

19 “Switchblade knife” means any knife having a spring-operated blade which opens
20 automatically upon pressure being applied to a button, catch, or other releasing device in its

21 handle.

22 “Nunchaku” means a flailing instrument consisting of two or more rigid parts, connected
23 by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in such a
24 manner as to allow the rigid parts to swing freely so that one rigid part may be used as a handle
25 and the other rigid part may be used as the striking end.

26 “Metallic or false knuckles” means a set of finger rings attached to a transverse piece to
27 be worn over the front of the hand for use as a weapon and constructed in such a manner that,
28 when striking another person with the fist or closed hand, considerable physical damage may be
29 inflicted upon the person struck. The terms “metallic or false knuckles” includes any such
30 instrument without reference to the metal or other substance or substances from which the
31 metallic or false knuckles are made.

32 “Pistol” means a short firearm having a chamber which is integral with the barrel, designed
33 to be aimed and fired by the use of a single hand.

34 “Revolver” means a short firearm having a cylinder of several chambers that are brought
35 successively into line with the barrel to be discharged, designed to be aimed and fired by the use
36 of a single hand.

37 “Pepper spray” means a temporarily disabling aerosol that is composed partly of capsicum
38 oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin
39 that is intended for self-defense use.

40 “Deadly weapon” means an instrument which is designed to be used to produce serious
41 bodily injury or death or is readily adaptable to such use. The term “deadly weapon” includes, but
42 is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section
43 or other deadly weapons of like kind or character which may be easily concealed on or about the
44 person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in addition to the
45 definition of “knife” set forth in subdivision (3) of this section, the term “deadly weapon” also
46 includes any instrument included within the definition of “knife” with a blade of three and one-half

47 inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and §61-7-11a
48 of this code, the term “deadly weapon” includes explosive, chemical, biological, and radiological
49 materials. Notwithstanding any other provision of this section, the term “deadly weapon” does not
50 include any item or material owned by the school or county board, intended for curricular use, and
51 used by the student at the time of the alleged offense solely for curricular purposes. The term
52 “deadly weapon” does not include pepper spray as defined in ~~subdivision (9)~~ of this section when
53 used by any person over the age of 16 solely for self-defense purposes.

54 “Concealed” means hidden from ordinary observation so as to prevent disclosure or
55 recognition. A deadly weapon is concealed when it is carried on or about the person in such a
56 manner that another person in the ordinary course of events would not be placed on notice that
57 the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee
58 is considered to be carrying on or about his or her person while in or on a motor vehicle if the
59 firearm is located in a storage area in or on the motor vehicle.

60 “Firearm” means any weapon which will expel a projectile by action of an explosion.

61 The term “firearm: does not include:

62 (1) Any “antique firearm,” being a firearm manufactured before 1898; or

63 (2) Any replica of a firearm described in subparagraph (1); or

64 (3) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is
65 designed to use black powder, or a black powder substitute, and which cannot use fixed
66 ammunition.

67 “Controlled substance” has the same meaning as is ascribed to that term in §60A-1-101(e)
68 of this code.

69 “Drug” has the same meaning as is ascribed to that term in §60A-1-101(m) of this code.

NOTE: The purpose of this bill is to define “firearm” not to be more restrictive than the federal definition.

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