WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4596

By Delegates Barrett, Haynes, Fast, Barnhart, Holstein, Hanna, Dean, Phillips, Paynter, Bridges, and McGeehan

[Introduced February 09, 2022; Referred to the Committee on the Judiciary]

A BILL to amend and reenact §15A-7-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-29-1 of said code; to amend and reenact §49-4-719 of said code; to amend and reenact §61-7-11a of said code; to amend and reenact §62-11B-7a of said code; to amend and reenact §62-12-5, of said code; and to amend and reenact §62-12-6 of said code, all relating generally to additional persons qualifying for the provisions of the Law-Enforcement Officers Safety Act; clarifying that home confinement supervisors, state adult probation officers, juvenile probation officers, and state parole officers are, by virtue of their duties, qualified law enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act; exempting certain persons from prohibition for carrying deadly weapons on the premises of educational facilities; providing the statutory authority to give home confinement supervisors, state probation officers, juvenile probation officers, and parole officers the option to carry firearms pursuant to applicable federal law; requiring annual firearm training pursuant to federal law; removing inconsistent language relating to probation officers; clarifying that supervisory entities retain sole discretion as to authorizing participation of qualified officers in such program; providing for training to enable home confinement supervisors, state probation officers, juvenile probation officers, and state parole officers to fully qualify as law-enforcement officers if they have not previously done so; setting forth the duties of supervising authorities as to participation of home confinement supervisors, state probation officers, juvenile probation officers, and state parole officers, and removing a duplicative reference to probation officers in code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than $1,000 nor more than $3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant:

(1) Arrest or order confinement of any parolee or probationer under his or her supervision; and

(2) search a parolee or probationer, or a parolee or probationer’s residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee’s whereabouts, or a parolee’s activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) (1) Notwithstanding any other provision of this section, ~~The~~ the Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation’s training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

(2) State parole officers, in recognition of the duties in their employment supervising confinement and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C §926B.

(3) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(A) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes.

(B) For those state parole officers wishing to avail themselves of the provisions of this subdivision, there shall be in place in the Division of Corrections and Rehabilitation a requirement that those state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff’s deputies by the Law-Enforcement Professional Standards Program; and

(C) The Division of Corrections and Rehabilitation issues a photographic identification and certification card which identify the state parole officers who meet the provisions of this subdivision, as law-enforcement employees of the Division of Corrections and Rehabilitation pursuant to the provisions of §30-29-12 of this code.

(D) Any policy instituted pursuant to this subsection includes provisions which:

(i) Preclude or remove a person from participation in the concealed firearm program;

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

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

(E) Any state parole officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(F) It is the intent of the Legislature in enacting the amendments to this section during the 2022 regular session of the Legislature to authorize those state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer’s Safety Act, 18 U.S.C. §926B.

(G) The privileges authorized by the amendments in this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) “Approved law-enforcement training academy” means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) “Chief executive” means the Superintendent of the State Police; the chief Natural Resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief Natural Resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) “County” means the 55 major political subdivisions of the state;

(4) “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

(5) “Governor’s Committee on Crime, Delinquency, and Correction” or “Governor’s committee” means the Governor’s Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: *Provided*, *however*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency, ~~or~~ nor to any watchman or special Natural Resources police officer;

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

(8) “Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) “Pre-certified law-enforcement officer” means a person employed or offered employment by a West Virginia law-enforcement agency prior to his or her initial certification by the subcommittee. This term does not include a person employed or offered employment by a West Virginia law-enforcement agency whose certification status is inactive, suspended, or has been revoked.

(10) “Subcommittee” or “law-enforcement professional standards subcommittee” means the subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

(a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

~~(3) A juvenile probation officer may not be considered a law-enforcement official under this chapter~~

(b) In recognition of the duties in their employment supervising confinement and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, state juvenile probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C §926B.

(c) Any state juvenile probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing a state juvenile probation officer to carry a concealed firearm for self-defense purposes;

(2) There shall be in place in the Supreme Court of Appeals a requirement that state juvenile probation officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff’s deputies by the Law-Enforcement Professional Standards Program; and

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state juvenile probation officers as law-enforcement employees as that term is contemplated by 18 U.S.C §926B.

(d) Any policy instituted pursuant to this subsection includes provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

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

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

(e) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(f) It is the intent of the Legislature in enacting the amendments to this section during the 2022 regular session of the Legislature to authorize state juvenile probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer’s Safety Act, 18 U.S.C. §926B.

(g) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

~~(b)~~ (h)The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

~~(c)~~(i) (1) The Supreme Court of Appeals may develop a system of community-based juvenile probation sanctions and incentives to be used by probation officers in response to violations of terms and conditions of probation and to award incentives for positive behavior.

(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

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.

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

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

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

(B) In or on the grounds of any primary or secondary educational facility of any type: *Provided,* That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds ~~thereof~~ of the facility; or

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

(2) This subsection does not apply to:

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

(B) Any probation officer appointed pursuant to §62-12-5 or state juvenile probation officer appointed pursuant to §49-4-719 ~~chapter 49~~ of this code, in the performance of his or her duties;

(C) Any home confinement supervisor employed by a county commission pursuant to §61-11B-7a of this code in the performance of his or her duties;

(D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in performance of his or her official duties;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) In addition to the methods of disposition provided by §49-5-1 et seq. of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver’s license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person’s 19th birthday. If the person has not been issued a driver’s license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person’s application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person’s 19th birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver’s license or instruction permit pursuant to this subsection, the court shall confiscate any driver’s license or instruction permit in the adjudicated person’s possession and forward it to the Division of Motor Vehicles.

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

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

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person’s license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person’s twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court’s transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner’s order resulting from the hearing.

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

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

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

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

(2) This subsection does not apply to:

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

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

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

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

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

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

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11B. HOME INCARCERATION ACT.

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

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

(b) In recognition of the duties in their employment supervising confinement and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, home confinement supervisors, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. §926B.

(c) Any home confinement supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The home confinement program has a written policy authorizing home confinement supervisors to carry a concealed firearm for self-defense purposes.

(2) There is in place in the home confinement program a requirement that the home confinement supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff’s deputies in the county in which the home confinement supervisors are employed; and

(3) The home confinement program issues a photographic identification and certification card which identify the home confinement supervisors as law-enforcement employees of the home confinement program of §30-29-12 of this code.

(4) Any policy instituted pursuant to subsection (b) of this section shall include provisions which:

(A) Preclude or remove a person from participation in the concealed firearm program;

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

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

(5) Any home confinement supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the supervising authority over the home confinement supervisors.

(7) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home confinement supervisors to meet the requirements of the federal Law-Enforcement Officer’s Safety Act, 18 U.S.C. §926B.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of ~~said~~ the order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical assistants ~~so appointed~~.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) ~~No~~ A judge may not appoint any probation officer, assistant probation officer or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects or supersedes the appointment or tenure of any probation officer, medical assistant or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court’s procedures, ~~is authorized~~ may ~~to~~ hire multijudicial‑circuit probation officers, to be employed through the court’s Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of the duties in their employment supervising confinement and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, state probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. §926B.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff’s deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to this subsection shall include provisions which:

(A) Preclude or remove a person from participation in the concealed firearm program;

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

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

(5) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2022 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer’s Safety Act, 18 U.S.C. §926B.

(7) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officers supervision a written statement of the probationers conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals of West Virginia;

(5) Stay informed concerning the conduct and condition of each probationer under the officers supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section ten of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.

(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officers official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police and includes a minimum of four hours’ training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

~~(3) Nothing in this subsection includes probation officers within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.~~

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections under subsection (h), section 13 of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.

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. The bill clarifies that home confinement supervisors, state adult probation officers, juvenile probation officers, and state parole officers are, by virtue of their duties, qualified law enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act. The bill exempts certain persons from prohibition for carrying deadly weapons on the premises of educational facilities. The bill provides the statutory authority to give home confinement supervisors, state probation officers, juvenile probation officers, and parole officers the option to carry firearms pursuant to applicable federal law. The bill requires annual firearm training pursuant to federal law. The bill removes inconsistent language relating to probation officers. The bill clarifies that supervisory entities retain sole discretion as to authorizing participation of qualified officers in such program. The bill provides for training to enable home confinement supervisors, state probation officers, juvenile probation officers, and state parole officers to fully qualify as law enforcement officers if they have not previously done so. The bill sets forth the duties of supervising authorities as to participation of home confinement supervisors, state probation officers, juvenile probation officers, and state parole officers. Finally, the bill removes a duplicative reference to probation officers in code.

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