

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2189

By Delegates Horst, Crouse, Dillon, Thorne, Dean,
Hardy, Bridges, Householder, Ridenour, Kimble and
Phillips

[Originating in the Committee on the Judiciary;

Reported on February 20, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §62-1A-12, and to amend said code by adding thereto a new section,
3 designated §62-1A-13, all relating to searches and seizures on open fields; requiring a
4 search warrant or other recognized exception for searches and seizures in open fields;
5 providing a definition; providing for abolishing the common law open fields doctrine;
6 prohibiting surveillance cameras on private property; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-12. Open fields.

1 (a) Notwithstanding any provision of this code to the contrary, the open fields of any person
2 in this state, where indicia would lead a reasonable person to conclude that the area is private or
3 not generally open to the public or public view, are protected by the Fourth Amendment to the
4 Constitution of the United States or Article III, Section 6 of the West Virginia Constitution and may
5 not be searched without a valid search warrant or outside the judicial process, subject only to
6 constitutionally established exceptions permitting warrantless searches of private property.

7 (b) For purposes of this section, "open fields" means the private property of a person
8 beyond the land immediately surrounding and associated with a private dwelling and includes
9 fenced land and wooded areas.

10 (c) The open fields doctrine, as it is known in the common law, is hereby abolished.

§62-1A-13. Prohibitions on surveillance cameras on private property.

1 Notwithstanding any provision of this code to the contrary, no law-enforcement officer shall
2 place any surveillance camera or game camera on private land or open fields, as that term is
3 defined in §62-1A-12 of this code, without first obtaining consent from the owner, lessee, or other
4 person entitled to possession of the private land or a valid search warrant: *Provided*, That nothing
5 in this subsection shall prohibit a law-enforcement officer from placing a camera in an area where

- 5 the law-enforcement officer has a lawful right to be and facing a location on any land that is open to
- 6 public view without first obtaining consent or a search warrant.