

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 282

By Senators Tarr, Chapman, Grady, Deeds, and

Phillips

[Introduced January 18, 2023; referred
to the Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-5-28, relating to safety in public schools; creating the West Virginia
3 Guardian Program; setting out purpose of the program; allowing county school boards to
4 contract for participation in the program; defining terms; setting out the authority of
5 independent contractors participating in the program; providing for requirements for
6 participation; providing exclusions from participation; setting forth a limitation of liability;
7 providing the exemptions from purchasing requirements; and providing for exclusions from
8 state benefit programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-28. Public school West Virginia Guardian program.

1 (a) Purpose – County boards of education may contract with an independent contractor
2 who is an honorably discharged veteran, retired state trooper, or retired deputy sheriff to provide
3 West Virginia Guardian services as that term is defined in this section. The purpose of the contract
4 is to provide public safety and/or security on public school grounds and buildings. Any county
5 board of education may contract with as many independent contractors as the county school
6 board considers necessary.

7 (b) Definitions – For purposes of this section the following words have the following
8 meanings:

9 “Contract” means an agreement between a county board of education and an independent
10 contractor relating to the procurement of public safety or security services.

11 “County school board” means the same as that term is used in §18-5-1 et seq. of this code.

12 “Independent contractor” means the same as that term is used in §21-51-4 of this code.

13 “Public safety or security” means the protection of students, faculty, and staff of a public
14 school from violence, bullying, theft, substance abuse, the sale or use of illegal substances,
15 exposure to weapons, and threats on school grounds.

16 “Retired deputy sheriff” means the same as that term is used in §7-14C-1 of this code but
17 who has retired from service.

18 “Retired state trooper” means a state police officer employed pursuant to the provisions of
19 §15-2-1 et seq. of this code and who has retired pursuant to the provisions of §15-2-27 of this
20 code.

21 “West Virginia Guardian” means an independent contractor under contract to a county
22 school board for the purposes of providing public safety and/or security on school grounds.
23 Persons contracted to provide these services shall include an honorably discharged veteran, a
24 retired state trooper, or a retired deputy sheriff. A West Virginia Guardian is considered an
25 authorized individual for purposes of the Gun-Free School Zones Act of 1990. 18 U.S.C. §921 and
26 §922.

27 (c) Authority - Notwithstanding the provisions of §61-7-11a of this code or any applicable
28 rule, an independent contractor acting as a West Virginia Guardian may carry a concealed
29 weapon upon meeting all of the requirements of this section. A West Virginia Guardian is not law
30 enforcement and may not arrest. They are to provide public safety and/or security to protect life
31 and property as set forth in this section.

32 (d) Requirements for participation - Prior to entering into a contract with a West Virginia
33 guardian, the county school board shall require an applicant to provide proof that he or she:

34 (1) Is a citizen of the United States and the State of West Virginia;

35 (2) Has received a high school diploma or a General Educational Development diploma
36 known as a GED;

37 (3) Has met and passed all of the requirements for a concealed carry permit as set forth in
38 §61-7-4 of this code;

39 (4) Has completed and passed all of the following training courses and/or examinations:

40 (A) The Law Enforcement Professional Standards Program at the West Virginia State
41 Police;

42 (B) A fitness for duty examination that shall include a physical examination, vision
43 examination, a psychiatric examination, and a pre-employment drug screen. The cost of these
44 each shall be paid by the independent contractor; and

45 (C) A firearm and less than lethal use of force course.

46 (5) Has either been honorably discharged from the United States Armed Services or is
47 retired from his or her employment as a state trooper or a deputy sheriff;

48 (6) Is current in any obligation, including taxes, to the State of West Virginia;

49 (7) Any other requirements imposed by the county school board which may include, but are
50 not limited to, a pre-employment written examination and a pre-employment polygraph exam. A
51 county school board may also require an independent contractor to carry appropriate liability
52 insurance at his or her expense.

53 (e) Exclusions from participation – Any of the following shall preclude an independent
54 contractor from participation as a West Virginia Guardian:

55 (1) A dishonorable or less than honorable discharge from the United States Armed
56 Services;

57 (2) Having not retired from service to the State of West Virginia as a state trooper or a
58 deputy sheriff;

59 (3) There is credible evidence of illegal drug use by the independent contractor in the
60 preceding five-year period;

61 (4) A disqualifying criminal offense. These shall include, but are not limited to:

62 (A) Domestic violence as set forth in §61-2-28 of this code;

63 (B) Driving under the influence as set forth in §17C-5-2 of this code;

64 (C) Child abuse as set forth in §61-8D-1 et seq. of this code;

65 (D) Unlawful manufacture, delivery, or possession with intent to deliver any controlled
66 substance as set forth in §60A-4-1 et seq. of this code;

67 (E) Any other misdemeanor or felony conviction deemed exclusionary for contracting with

68 the independent contractor by the county school board.

69 (f) Liability – A county school board may not be held civilly liable or be criminally
70 prosecuted for any action of a West Virginia Guardian acting within the scope of the duties for
71 which their services were contracted unless the county school can be shown to be grossly
72 negligent or committed willful misconduct.

73 (g) Miscellaneous –

74 (1) In contracting for the services set forth in this section, county school boards may not be
75 subject to purchasing requirements set forth in in §5A-3-1 et seq. of this code.

76 (2) Nothing in this section requires a county board of education to contract. Participation
77 by a county of board of education is voluntary and subject to the availability of county funds. Any
78 county board of education that opts to participate shall do so at its own expense. The provisions of
79 this section place no obligation for the state to appropriate money for the purposes set forth in this
80 section.

81 (3) As an independent contractor a West Virginia Guardian is not eligible for participation in
82 the public employee insurance plan, workers' compensation, additional state retirement credited
83 to employment as a West Virginia Guardian, or any other state sponsored or offered state benefit
84 plan.

NOTE: The purpose of this bill is to create the West Virginia Guardian program to provide public safety and/or security on public school grounds and buildings.

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