

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 282

BY SENATORS TARR, CHAPMAN, GRADY, DEEDS, AND

PHILLIPS

[Originating in the Committee on Education; reported
on January 25, 2023]

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, former state trooper, former deputy sheriff, or former
3 federal law enforcement officer to provide West Virginia Guardian services as that term is defined
4 in this section. The purpose of the contract is to provide public safety and/or security on public
5 school grounds and buildings. Any county board of education may contract with as many
6 independent contractors as the county school 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
12 code.

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

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

17 "Former deputy sheriff" means the same as that term is used in §7-14C-1 of this code, but
18 who has retired from service.

19 "Former state trooper" means a state police officer employed pursuant to the provisions
20 of §15-2-1 et seq. of this code, and who has retired pursuant to the provisions of §15-2-27 of this
21 code.

22 "Former federal law enforcement officer" means a federal law enforcement officer
23 employed pursuant to the provisions of §15-10-5(b) of this code, who was classified as an 1811
24 Investigator, and who has retired from service.

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

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

36 (d) Requirements for participation. — Prior to entering into a contract with a West Virginia
37 Guardian, the county school board shall require an applicant to provide proof that he or she:

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

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

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

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

44 (A) The Law Enforcement Professional Standards program at the West Virginia State
45 Police. The cost of this program is to be paid by the independent contractor;

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

49 (C) A firearm and less than lethal use of force course. To maintain firearm proficiency, the
50 independent contractor must complete yearly training in firearm and less than lethal use of force
51 course.

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

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

55 (7) Any other requirements imposed by the county school board which may include, but
56 are not limited to, a pre-employment written examination and a pre-employment polygraph exam.

57 A county school board may also require an independent contractor to carry appropriate liability
58 insurance at his or her expense.

59 (e) Exclusions from participation. — Any of the following shall preclude an independent
60 contractor from participation as a West Virginia Guardian:

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

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

65 (3) Having not retired from service as a federal law enforcement officer;

66 (4) There is credible evidence of illegal drug use by the independent contractor in the
67 preceding five-year period;

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

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

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

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

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

74 (E) Any other misdemeanor or felony conviction deemed exclusionary for contracting with
75 the independent contractor by the county school board.

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

80 (g) Miscellaneous. —

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

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

88 (3) As an independent contractor, a West Virginia Guardian is not eligible for participation
89 in the public employee insurance plan, workers' compensation, additional state retirement

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90 credited to employment as a West Virginia Guardian, or any other state sponsored or offered
91 state benefit plan.