

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 450

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[Reported February 25, 2025, from the Committee on
Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §18-5-52, relating to allowing county boards of education to contract with an
3 independent contractor, known as a West Virginia guardian, who is a former state trooper,
4 former deputy sheriff, former state fire marshal, former Department of Natural Resources
5 police officer, former municipal police officer, or former federal law-enforcement officer to
6 provide to provide public safety and/or security on school grounds to protect life and
7 property; specifying the authority of independent contractors participating in the program
8 and an apparel requirement; requiring the West Virginia guardian to apply for a permit
9 from the county sheriff of the county in which the guardian will provide services; mandating
10 the county sheriff to require an applicant to provide proof of meeting certain requirements;
11 allowing county board to impose additional requirements; requiring permit application fee
12 to be deposited into a guardian program fund; stating that meeting all of certain
13 requirements does not guarantee a contract will be extended to the applicant; specifying
14 instances in which an independent contractor is precluded from participation as a West
15 Virginia guardian; addressing civil and criminal liability; exempting West Virginia guardian
16 contract from certain purchasing requirements; clarifying that county board participation is
17 voluntary and subject to the availability of county funds; and providing for exclusions from
18 state benefit programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-52. Public school West Virginia Guardian Program.

1 (a) Purpose. — County boards of education may contract with an independent contractor
2 who is a former state trooper, former deputy sheriff, former state fire marshal, former Department
3 of Natural Resources police officer, former municipal police officer, or former federal law-
4 enforcement officer to provide West Virginia guardian services as that term is defined in this
5 section. The purpose of the contract is to provide public safety and/or security on public school

grounds and buildings. Any county board may contract with as many independent contractors as the board considers necessary.

(b) Definitions. — For purposes of this section, the following words have the following meanings:

"Contract" means an agreement between a county board and an independent contractor who has been certified by the county sheriff relating to the procurement of public safety or security services.

"County board" means the same as that term is defined in §18-1-1 of this code and used in §18-5-1 et seq. of this code.

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

"Public safety or security" means the protection of students, faculty, and staff of a public school from violence, exposure to weapons, and threats on school grounds.

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

"Former municipal police officer" means the same as that term is used in §8-22A-2 of this code, but who is retired from service.

"Former natural resources police officer" means the same as that term is used in §20-18-2 of this code, but who is retired from service.

"Former state fire marshal" means the same as that term is used in §15A-10-1 et seq. of this code, but who is retired from service.

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

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

"West Virginia guardian" means an independent contractor certified by the county sheriff as meeting the qualifications set forth in this section and who is under contract to a county board for the purposes of providing public safety and/or security on school grounds. Persons contracted to provide these services shall include a retired state trooper, a retired state fire marshal, a retired Department of Natural Resources police officer, a former municipal police officer, a retired federal law-enforcement officer, or a retired deputy sheriff. A West Virginia guardian is considered an authorized individual for purposes of the Gun-Free School Zones Act of 1990, 18 U.S.C. §921 and §922.

(c) Authority. — Notwithstanding the provisions of §61-7-11a of this code or any applicable rule, an independent contractor acting as a West Virginia guardian may carry weapons upon meeting all the requirements of this section. A West Virginia guardian is not law enforcement and has no authority to arrest. They are to provide public safety and/or security to protect life and property as set forth in this section. Guardians shall wear apparel that makes them readily identifiable as a guardian while performing the duties as set forth in in this section.

(d) Requirements for participation. — Prior to entering into a contract with a West Virginia guardian, the guardian shall apply for a permit from the county sheriff of the county in which the guardian will provide services to the county board and, at that time, pay a fee of \$50. The county sheriff shall require an applicant to provide proof that he or she:

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

(2) Has received a high school diploma or a high school equivalency diploma;

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

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

(A) The Law-Enforcement Professional Standards program. The cost of this program is to be paid by the independent contractor;

57 (B) A fitness for duty examination which shall include a physical examination, vision
58 examination, psychiatric examination, and a pre-employment drug screen within one year of
59 beginning a contract with a county board and upon initiating a new contract following
60 the expiration of all contract extension options. The cost of these each shall be paid by the
61 independent contractor;

62 (C) A firearm and less than lethal use of force course. To maintain firearm proficiency, the
63 independent contractor shall complete yearly training in firearm and less than lethal use of force
64 course; and

65 (D) Training on crisis de-escalation techniques, disaster and emergency response, bomb
66 threats, performing their duties in the presence of students with disabilities including, but not
67 limited to, students with autism spectrum disorders, and cardiopulmonary resuscitation.

68 (5) Is retired from his or her employment as a state trooper, a deputy sheriff, a municipal
69 officer, a former Department of Natural Resources police officer, a former state fire marshal, or
70 federal law enforcement;

71 (6) Is current in any obligation, including taxes, to the state of West Virginia; and

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

76 The permit application fee received by the sheriff shall be deposited by the sheriff into a
77 guardian program fund. The fund shall be administered by the sheriff and shall take the form of
78 an interest-bearing account with any interest earned to be compounded to the fund. Any funds
79 deposited in this fund are to be expended by the sheriff to pay the costs associated with issuing
80 guardian permits. Any surplus in the fund on hand at the end of each fiscal year may be expended
81 for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff
82 considers appropriate.

Meeting all of the requirements as set forth in this subsection does not guarantee a contract will be extended to the applicant. The county sheriff may, in his or her reasonable judgment, decline to certify to a county board a person as eligible for participation as a guardian.

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

(1) Having not retired from either service to the state of West Virginia as a state trooper, a municipal police officer, a Department of Natural Resources police officer, a former state fire marshal, or a deputy sheriff or service as a federal law-enforcement officer;

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

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

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

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

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

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

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

(f) Liability. —

(1) A county board may not be held civilly liable or be criminally prosecuted for any action of a West Virginia guardian acting within the scope of the duties for which their services were contracted unless the county board can be shown to be grossly negligent or committed willful misconduct.

(2) A West Virginia guardian acting within the scope of the duties for which their services were contracted may not be held civilly liable or be criminally prosecuted unless the action can

108 be shown to be for a malicious purpose, in bad faith, grossly negligent, or committed by willful
109 misconduct.

110 (3) Monetary damages awarded that arise from the same cause of action, transaction, or
111 occurrence, or series of transactions or occurrences, shall not exceed \$1,000,000 in favor of any
112 one person and shall not exceed \$3,000,000 in the aggregate.

113 (g) Miscellaneous. —

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

116 (2) Nothing in this section requires a county board to enter into a contract for guardian
117 services. Participation by a county board is voluntary and subject to the availability of county
118 funds. Any county board that opts to participate shall do so at its own expense and any additional
119 funds provided by county entities or private donations. The provisions of this section place no
120 obligation for the state to appropriate money for the purposes set forth in this section.

121 (3) As an independent contractor, a West Virginia guardian is not eligible for participation
122 in the public employee insurance plan, workers' compensation, additional state retirement
123 credited to employment as a West Virginia guardian, or any other state-sponsored or -offered
124 state benefit plan.

125 (4) Notwithstanding any other provision of this code or federal law to the contrary, nothing
126 in this section shall be construed to create an employer-and-employee relationship.