

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3369

By Delegates Kelly, Hott, Garcia, Worrell, Westfall,

Fast and Kimble

(By the request of the Department of Homeland

Security)

[Originating in the Committee on the Judiciary;

Reported on February 23, 2023]

1 A BILL to amend and reenact §15-2D-1, §15-2D-2 and §15-2D-3 of the Code of West Virginia,
2 1931, as amended, relating to creating a School Safety Unit within the Division of
3 Protective Services; making findings, establishing duties and powers of the School Safety
4 Unit; clarifying certain security services of the division; clarifying the confidentiality of
5 certain records; clarifying that certain interagency agreements are discretionary; clarifying
6 mandatory and discretionary duties of the director relating to the School Safety Unit; and
7 correcting references to the Department of Homeland Security.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-1. Legislative findings.

1 The Legislature finds and declares that citizens, state employees and visitors who park,
2 attend functions, conduct business or work at the capitol complex and other state facilities should
3 be safe and secure. The Legislature further finds and declares that it is in the public interest to
4 establish a division within the Department of ~~Military Affairs and Public Safety~~ Homeland Security
5 for the purpose of providing safety and security to individuals who visit, conduct business or work
6 at the capitol complex and other state facilities. The legislature further finds there is a compelling
7 interest in the safety of school facilities throughout the state and that it is in the public interest to
8 dedicate within the West Virginia Department of Homeland Security a law enforcement unit
9 focused on primary and secondary school safety matters.

§15-2D-2. Duties and powers of the director and officers.

1 (a) The state facilities protection division within the Department of ~~Military Affairs and~~
2 ~~Public Safety~~ Homeland Security shall hereafter be designated the Division of Protective Services.
3 The purpose of the division is to provide safety and security at the capitol complex and other state
4 facilities: *Provided*, That nothing in this section shall be construed as limiting the law-enforcement
5 authority of the division set forth in §15-2d-3 of this code.

6 (b) The Governor shall appoint, with the advice and consent of the Senate, the director of
7 the division whose qualifications shall include at least 10 years of service as a law-enforcement
8 officer with at least three years in a supervisory law-enforcement position, the successful
9 completion of supervisory and management training, and the professional training required for
10 police officers at the West Virginia state police academy or an equivalent professional law-
11 enforcement training at another state, federal or United States Military institution.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and supervision of the division. The director
2 and any officer of the division ~~specified by the director~~ may carry designated weapons and have
3 the same powers of arrest and law enforcement in Kanawha County as members of the West
4 Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and
5 ~~designated officers~~ any officer of the division shall also have such powers throughout the State of
6 West Virginia in investigating and performing law-enforcement duties for offenses committed on
7 the Capitol Complex or related to the division's security and protection duties at the Capitol
8 Complex and throughout the state relating to offenses and activities occurring on any property
9 owned, leased, or operated by the State of West Virginia when undertaken at the request of the
10 agency occupying the property: *Provided*, That nothing in this article shall be construed as to
11 obligate the director or the division to provide, or be responsible for providing, security at state
12 facilities outside the Capitol Complex.

13 (b) The director shall establish a School Safety Unit within the Division of Protective
14 Services. Officers shall be assigned to the School Safety Unit at the discretion of the director.
15 The officers assigned to the School Safety Unit shall primarily be charged to make school safety
16 inspections and to make recommendations to appropriate county school superintendents,
17 principals, or other school administrators, regarding school safety. The officers assigned to the
18 School Safety Unit shall also be authorized to respond to and investigate all school safety matters,
19 in consultation with county boards of education: *Provided*, That any officer of the School Safety

20 Unit shall have statewide jurisdiction and powers of general law enforcement and arrest for
21 violations of law committed in their presence.

22 (b) ~~(c)~~ Any officer of the division shall be certified as a law-enforcement officer by the
23 Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed
24 as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this
25 code.

26 ~~(e)~~(d) The director may:

27 (1) Employ necessary personnel, all of whom shall be classified exempt, assign them the
28 duties necessary for the efficient management and operation of the division, and specify members
29 who may carry, without license, weapons designated by the director;

30 (2) Contract for security and other services;

31 (3) Purchase equipment as necessary to maintain security at the Capitol Complex and
32 other state facilities. ~~as may be determined by the Secretary of the Department of Military Affairs~~
33 ~~and Public Safety~~ The provisions of §5A-3-3 of this code do not apply to purchases made pursuant
34 to this subdivision;

35 (4) Establish and provide standard uniforms, arms, weapons, and other enforcement
36 equipment authorized for use by members of the division and shall provide for the periodic
37 inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property
38 furnished to members of the division by the State of West Virginia is and remains the property of
39 the state;

40 (5) Appoint security officers to provide security on premises owned or leased by the State
41 of West Virginia;

42 ~~(6) Upon request by the Superintendent of the West Virginia State Police~~ Consistent with
43 the provisions in §15-2D-5 of this code, provide security for the Speaker of the House of
44 Delegates, the President of the Senate, the Governor, or a justice of the Supreme Court of
45 Appeals;

46 (7) Gather information from a broad base of employees at and visitors to the Capitol
47 Complex to determine their security needs and develop a comprehensive plan to maintain and
48 improve security at the Capitol Complex based upon those needs; and

49 (8) Assess safety and security needs and make recommendations for safety and security
50 at any proposed or existing state facility as determined by the Secretary of the Department of
51 ~~Military Affairs and Public Safety~~ Homeland Security, upon request of the secretary of the
52 department to which the facility is or will be assigned: *Provided*, That records of such
53 assessments, and any other records determined by the Secretary of the Department of ~~Military~~
54 ~~Affairs and Public Safety~~ Homeland Security to compromise the safety and security at any
55 proposed or existing state facility, including primary and secondary schools, are not public records
56 and are not subject to disclosure in response to a Freedom of Information Act request under §29B-
57 1-1 *et seq.* of this code; and

58 (9) Enter into an interagency agreement with the Secretary of the Department of Homeland
59 Security and the Secretary of the Department of Administration, which delineates their respective
60 rights and authorities under any contracts or subcontracts for security personnel. A copy of the
61 interagency agreement shall be delivered to the Governor, the President of the Senate, and the
62 Speaker of the House of Delegates, and a copy shall be filed in the office of the Secretary of State
63 and shall be a public record.

64 (d)-(e) The director shall:

65 (1) ~~On or before July 1, 1999, propose~~ Propose legislative rules for promulgation in
66 accordance with the provisions of §29A-3-1 *et seq.* of this code. The rules shall, at a minimum,
67 establish ranks and the duties of officers within the membership of the division.

68 (2) ~~On or before July 1, 1999, enter into an interagency agreement with the Secretary~~
69 ~~of the Department of Military Affairs and Public Safety and the Secretary of the Department of~~
70 ~~Administration, which delineates their respective rights and authorities under any contracts or~~
71 ~~subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the~~

72 ~~Governor, the President of the Senate, and the Speaker of the House of Delegates, and a copy~~
73 ~~shall be filed in the office of the Secretary of State and shall be a public record~~

74 (2) Consistent with subsection (b) of this section, provide services to all public primary and
75 secondary schools in furtherance of the purposes of the School Safety Unit: *Provided*, That the
76 director may provide services to any private primary and secondary schools in the state upon
77 request.

78 (3) Deliver a monthly status report to the Speaker of the House of Delegates and the
79 President of the Senate.

80 (4) Require any service provider whose employees are regularly employed on the
81 grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical
82 information, to have its employees submit to a fingerprint-based state and federal background
83 inquiry through the state repository, and require a new employee who is employed to provide
84 services on the grounds or in the building of the Capitol Complex to submit to an employment
85 eligibility check through E-verify.

86 (i) After the contract for such services has been approved, but before any such employees
87 are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to
88 sensitive or critical information, the service provider shall submit a list of all persons who will be
89 physically present and working at the Capitol Complex for purposes of verifying compliance with
90 this section.

91 (ii) All current service providers shall, within 90 days of the amendment and reenactment
92 of this section by the 80th Legislature, ensure that all of its employees who are providing services
93 on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or
94 critical information submit to a fingerprint-based state and federal background inquiry through the
95 state repository.

96 (iii) Any contract entered into, amended, or renewed by an agency or entity of state
97 government with a service provider shall contain a provision reserving the right to prohibit specific

98 employees thereof from accessing sensitive or critical information or to be present at the Capitol
99 Complex based upon results addressed from a criminal background check.

100 (iv) For purposes of this section, the term "service provider" means any person or company
101 that provides employees to a state agency or entity of state government to work on the grounds or
102 in the buildings that make up the Capitol Complex or who have access to sensitive or critical
103 information.

104 (v) In accordance with the provisions of Public Law 92-544 the criminal background check
105 information will be released to the Director of the Division of Protective Services.

106 (5) Be required to provide his or her approval prior to the installation of any and all
107 electronic security systems purchased by any state agency which are designed to connect to the
108 division's command center.

109 ~~(e)~~(f) Effective July 1, 2017, the Director of Security and security officers of the Department
110 of Arts, Culture, and History shall be made part of, and be under the supervision and direction of,
111 the Division of Protective Services. Security for all Capitol Complex properties of the Department
112 of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.