

**H. B. 2538**

(By Delegates Frazier, Miley, Brown, Caputo,  
Ellem, Hamilton, Longstreth, Moore and Sobonya)

[Introduced January 18, 2011; referred to the  
Committee on the Judiciary.]

**Interim  
Bill**

A BILL to amend and reenact §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-11, all relating to law-enforcement certification generally; expanding the responsibilities of the law-enforcement training subcommittee and renaming it the law-enforcement professional standards subcommittee; clarifying the authority to decertify law-enforcement officers; establishing a database of law-enforcement officers disciplined for certain types of misconduct; requesting the proposal of legislative rules to set standards for law-enforcement agencies to report certain types of misconduct by officers to the database; and requiring that law-enforcement agencies check the database prior to hiring an officer.

*Be it enacted by the Legislature of West Virginia:*

That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of

1 West Virginia, 1931, as amended, be amended and reenacted; and that  
2 said code be amended by adding thereto a new section, designated  
3 §30-29-11, all to read as follows:

4 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

5 **§30-29-1. Definitions.**

6 For the purposes of this article, unless a different meaning  
7 clearly appears in the context:

8 (1) "Approved law-enforcement training academy" means any  
9 training facility which is approved and authorized to conduct law-  
10 enforcement training as provided in this article;

11 (2) "Chief executive" means the superintendent of the State  
12 Police; the chief natural resources police officer of the Division  
13 of Natural Resources; the sheriff of any West Virginia county;  
14 any administrative deputy appointed by the chief natural resources  
15 police officer of the Division of Natural Resources; or the chief  
16 of any West Virginia municipal law-enforcement agency;

17 (3) "County" means the fifty-five major political subdivisions  
18 of the state;

19 (4) "Exempt rank" means any noncommissioned or commissioned  
20 rank of sergeant or above;

21 (5) "Governor's committee on crime, delinquency and  
22 correction" or "Governor's committee" means the Governor's  
23 committee on crime, delinquency and correction established as a  
24 state planning agency pursuant to section one, article nine,

1 chapter fifteen of this code;

2       (6) "Law-enforcement officer" means any duly authorized  
3 member of a law-enforcement agency who is authorized to maintain  
4 public peace and order, prevent and detect crime, make arrests and  
5 enforce the laws of the state or any county or municipality  
6 thereof, other than parking ordinances, and includes those persons  
7 employed as campus police officers at state institutions of higher  
8 education in accordance with the provisions of section five,  
9 article four, chapter eighteen-b of this code, and persons employed  
10 by the Public Service Commission as motor carrier inspectors and  
11 weight enforcement officers charged with enforcing commercial motor  
12 vehicle safety and weight restriction laws although those  
13 institutions and agencies may not be considered law-enforcement  
14 agencies. The term also includes those persons employed as rangers  
15 by the Hatfield-McCoy Regional Recreation Authority in accordance  
16 with the provisions of section six, article fourteen, chapter  
17 twenty of this code, although the authority may not be considered  
18 a law-enforcement agency: *Provided*, That the subject rangers shall  
19 pay the tuition and costs of training. As used in this article,  
20 the term "law-enforcement officer" does not apply to the chief  
21 executive of any West Virginia law-enforcement agency or any  
22 watchman or special natural resources police officer;

23       (7) "Law-enforcement official" means the duly appointed chief  
24 administrator of a designated law-enforcement agency or a duly

1 authorized designee;

2       (8) "Municipality" means any incorporated town or city whose  
3 boundaries lie within the geographic boundaries of the state;

4       (9) "Subcommittee" or "law-enforcement ~~training~~ professional  
5 standards subcommittee" means the subcommittee of the Governor's  
6 committee on crime, delinquency and correction created by section  
7 two of this article; and

8       (10) "West Virginia law-enforcement agency" means any duly  
9 authorized state, county or municipal organization employing one or  
10 more persons whose responsibility is the enforcement of laws of the  
11 state or any county or municipality thereof: *Provided, That*  
12 neither the Hatfield-McCoy Regional Recreation Authority, the  
13 Public Service Commission nor any state institution of higher  
14 education is a law-enforcement agency.

15 **§30-29-2. Law-enforcement professional standards subcommittee.**

16       (a) ~~A~~ The law-enforcement training subcommittee of the  
17 Governor's committee on crime, delinquency and corrections is  
18 ~~hereby created~~ continued and renamed the Law-Enforcement  
19 Professional Standards Subcommittee. The subcommittee has the  
20 following responsibilities:

21       (1) Review and ~~administration of~~ administer programs for  
22 qualification, training and certification of law-enforcement  
23 officers in the state; and

24       (2) Receive and review misconduct reports filed as required by

1 section eleven of this article from law-enforcement entities of  
2 this state by the process created pursuant to subsection (1) of  
3 section three of this article. The subcommittee may recommend to  
4 the Governor's committee de-certification of any law-enforcement  
5 officer whose misconduct reports would make them ineligible to  
6 become a new officer under section five of this article.

7 (b) The subcommittee has subpoena power to compel the  
8 attendance of witnesses and the production of books, records or  
9 documents anywhere in the state from law-enforcement agencies of  
10 this state as needed to carry out the duties of the subcommittee.

11 (c) The subcommittee shall be comprised of ten members of the  
12 Governor's committee including one representative of each of the  
13 following:

14 (1) ~~The department of public safety,~~ West Virginia State  
15 Police;

16 (2) The law-enforcement Division of the Department of Natural  
17 Resources;

18 (3) ~~the~~ West Virginia Sheriffs Association;

19 (4) ~~the~~ West Virginia Association of Chiefs of Police;

20 (5) ~~the~~ West Virginia Deputy Sheriffs Association;

21 (6) ~~the~~ West Virginia fraternal order of police lodge;

22 (7) ~~the~~ West Virginia Municipal League;

23 (8) ~~the~~ West Virginia Association of county officials;

24 (9) ~~the~~ Human Rights Commission; and

1        (10) The public at large.

2        ~~(b)~~ (d) The subcommittee shall elect a chairperson and a vice  
3 chairperson. Special meetings may be held upon the call of the  
4 chairperson, vice chairperson or a majority of the members of the  
5 subcommittee. A majority of the members of the subcommittee  
6 constitutes a quorum.

7 **§30-29-3. Duties of the Governor's committee and the subcommittee.**

8        Upon recommendation of the subcommittee, the Governor's  
9 committee shall, by or pursuant to rules proposed for legislative  
10 approval in accordance with article three, chapter twenty-nine-a of  
11 this code:

12        (a) Provide funding for the establishment and support of law-  
13 enforcement training academies in the state;

14        (b) Establish standards governing the establishment and  
15 operation of the law-enforcement training academies, including  
16 regional locations throughout the state, in order to provide access  
17 to each law-enforcement agency in the state in accordance with  
18 available funds;

19        (c) Establish minimum law-enforcement instructor  
20 qualifications;

21        (d) Certify qualified law-enforcement instructors;

22        (e) Maintain a list of approved law-enforcement instructors;

23        (f) Promulgate standards governing the qualification of law-  
24 enforcement officers and the entry-level law-enforcement training

1 curricula. These standards shall require satisfactory completion  
2 of a minimum of four hundred classroom hours, shall provide for  
3 credit to be given for relevant classroom hours earned pursuant to  
4 training other than training at an established law-enforcement  
5 training academy if earned within five years immediately preceding  
6 the date of application for certification, and shall provide that  
7 the required classroom hours can be accumulated on the basis of a  
8 part-time curricula spanning no more than twelve months, or a full-  
9 time curricula;

10 (g) Establish standards governing in-service law-enforcement  
11 officer training curricula and in-service supervisory level  
12 training curricula;

13 (h) Certify organized criminal enterprise investigation  
14 techniques with a qualified anti-racial profiling training course  
15 or module;

16 (i) Establish standards governing mandatory training to  
17 effectively investigate organized criminal enterprises as defined  
18 in article thirteen, chapter sixty-one of this code, while  
19 preventing racial profiling, as defined in section ten of this  
20 article, for entry level training curricula and for law-enforcement  
21 officers who have not received such training as certified by the  
22 Governor's committee as required in this section;

23 (j) Establish, no later than July 1, 2011, procedures for  
24 implementation of a course in investigation of organized criminal

1 enterprises which includes an anti-racial training module to be  
2 available on the Internet or otherwise to all law-enforcement  
3 officers. The procedures shall include the frequency with which a  
4 law-enforcement officer shall receive training in investigation of  
5 organized criminal enterprises and anti-racial profiling, and a  
6 time frame for which all law-enforcement officers must receive such  
7 training: *Provided*, That all law-enforcement officers in this  
8 state shall receive such training no later than July 1, 2012. In  
9 order to implement and carry out the intent of this section, the  
10 Governor's committee may promulgate emergency rules pursuant to

11 section fifteen, article three, chapter twenty-nine-a of this code;  
12 (k) Certify or de-certify law-enforcement officers, as  
13 provided in section five of this article;

14 (l) Establish standards and procedures for the reporting of  
15 complaints and certain disciplinary matters concerning law-  
16 enforcement officers, and for reviewing the certification of law-  
17 enforcement officers who receive complaints or disciplinary  
18 matters. These standards and procedures shall provide for  
19 preservation of records and access to records by law-enforcement  
20 agencies and conditions as to how the information in those records  
21 is to be used regarding an officer's law-enforcement employment by  
22 another law enforcement agency;

23 (1) The subcommittee shall establish and manage a database  
24 that is available to all law-enforcement agencies in the state

1 concerning internal and external complaints, disciplinary matters,  
 2 investigations or actions taken by the agency and actions taken by  
 3 an officer or agency in lieu of disciplinary action pursuant to the  
 4 reporting requirements set by rule.

5 (2) The information in the database which contains personnel  
 6 or personal information not resulting in a criminal charge or  
 7 conviction are not subject to the provisions of chapter twenty-  
 8 nine-b of this code.

9 ~~(l)~~ (m) Seek supplemental funding for law-enforcement training  
 10 academies from sources other than the fees collected pursuant to  
 11 section four of this article;

12 ~~(m)~~ (n) Any responsibilities and duties as the Legislature  
 13 may, from time to time, see fit to direct to the committee; and

14 ~~(n)~~ (o) Submit, on or before September 30 of each year, to the  
 15 Governor, and upon request to individual members of the  
 16 Legislature, a report on its activities during the previous year  
 17 and an accounting of funds paid into and disbursed from the special  
 18 revenue account ~~establish~~ established pursuant to section four of  
 19 this article.

20 **§30-29-5. Certification requirements and power to de-certify.**

21 (a) Except as provided in subsections (b) and (g) below, ~~no~~ a  
 22 person may not be employed as a law-enforcement officer by any West  
 23 Virginia law-enforcement agency or by any state institution of  
 24 higher education or by the Public Service Commission of West

1 Virginia on or after the effective date of this article unless the  
2 person is certified, or is certifiable in one of the manners  
3 specified in subsections (c) through (e) below, by the Governor's  
4 committee as having met the minimum entry level law-enforcement  
5 qualification and training program requirements promulgated  
6 pursuant to this article: *Provided*, That the provisions of this  
7 section ~~shall~~ do not apply to persons hired by the Public Service  
8 Commission as motor carrier inspectors and weight enforcement  
9 officers ~~prior to the~~ before July 1, 2007.

10 (b) Except as provided in subsection (g) below, a person who  
11 is not certified, or certifiable in one of the manners specified in  
12 subsections (c) through (e) below, may be conditionally employed as  
13 a law-enforcement officer until certified: *Provided*, That within  
14 ninety calendar days of the commencement of employment or the  
15 effective date of this article if the person is already employed on  
16 the effective date, he or she makes a written application to attend  
17 an approved law-enforcement training academy. The person's  
18 employer shall provide notice, in writing, of the ninety-day  
19 deadline to file a written application to the academy within thirty  
20 calendar days of that person's commencement of employment. The  
21 employer shall provide full disclosure as to the consequences of  
22 failing to file a timely written application. The academy shall  
23 notify the applicant in writing of the receipt of the application  
24 and of the tentative date of the applicant's enrollment. Any

1 applicant who, as the result of extenuating circumstances  
2 acceptable to his or her law-enforcement official, is unable to  
3 attend the scheduled training program to which he or she was  
4 admitted may reapply and shall be admitted to the next regularly  
5 scheduled training program. An applicant who satisfactorily  
6 completes the program shall, within thirty days of completion, make  
7 written application to the Governor's committee requesting  
8 certification as having met the minimum entry level law-enforcement  
9 qualification and training program requirements. Upon determining  
10 that an applicant has met the requirements for certification, the  
11 Governor's committee shall forward to the applicant documentation  
12 of certification. An applicant who fails to complete the training  
13 program to which he or she is first admitted, or was admitted upon  
14 reapplication, may not be certified by the Governor's committee:  
15 *Provided, however,* That an applicant who has completed the minimum  
16 training required by the Governor's committee may be certified as  
17 a law-enforcement officer, notwithstanding the applicant's failure  
18 to complete additional training hours required in the training  
19 program to which he or she originally applied.

20 (c) Any person who is employed as a law-enforcement officer on  
21 the effective date of this article and is a graduate of the West  
22 Virginia basic police training course, the West Virginia State  
23 Police cadet training program, or other approved law-enforcement  
24 training academy, is certifiable as having met the minimum entry

1 level law-enforcement training program requirements and is exempt  
2 from the requirement of attending a law-enforcement training  
3 academy. To receive certification, the person shall make written  
4 application within ninety calendar days of the effective date of  
5 this article to the Governor's committee requesting certification.  
6 The Governor's committee shall review the applicant's relevant  
7 scholastic records and, upon determining that the applicant has met  
8 the requirements for certification, shall forward to the applicant  
9 documentation of certification.

10 (d) Any person who is employed as a law-enforcement officer on  
11 the effective date of this article and is not a graduate of the  
12 West Virginia basic police training course, the West Virginia State  
13 Police Cadet Training Program, or other approved law-enforcement  
14 training academy, is certifiable as having met the minimum entry  
15 level law-enforcement training program requirements and is exempt  
16 from the requirement of attending a law-enforcement training  
17 academy if the person has been employed as a law-enforcement  
18 officer for a period of not less than five consecutive years  
19 immediately preceding the date of application for certification.  
20 To receive certification, the person shall make written application  
21 within ninety calendar days following the effective date of this  
22 article to the Governor's committee requesting certification. The  
23 application shall include notarized statements as to the  
24 applicant's years of employment as a law-enforcement officer. The

1 Governor's committee shall review the application and, upon  
2 determining that the applicant has met the requirements for  
3 certification, shall forward to the applicant documentation of  
4 certification.

5       (e) Any person who begins employment on or after the effective  
6 date of this article as a law-enforcement officer is certifiable as  
7 having met the minimum entry level law-enforcement training program  
8 requirements and is exempt from attending a law-enforcement  
9 training academy if the person has satisfactorily completed a  
10 course of instruction in law enforcement equivalent to or exceeding  
11 the minimum applicable law-enforcement training curricula  
12 promulgated by the Governor's committee. To receive certification,  
13 the person shall make written application within ninety calendar  
14 days following the commencement of employment to the Governor's  
15 committee requesting certification. The application shall include  
16 a notarized statement of the applicant's satisfactory completion of  
17 the course of instruction in law enforcement, a notarized  
18 transcript of the applicant's relevant scholastic records, and a  
19 notarized copy of the curriculum of the completed course of  
20 instruction. The Governor's committee shall review the application  
21 and, if it finds the applicant has met the requirements for  
22 certification shall forward to the applicant documentation of  
23 certification.

24       (f) Any person who is employed as a law-enforcement officer on

1 or after the effective date of this article and fails to be  
2 certified shall be automatically terminated and no further  
3 emoluments shall be paid to such officer by his or her employer.  
4 Any person terminated shall be entitled to reapply, as a private  
5 citizen, to the subcommittee for training and certification, and  
6 upon being certified may again be employed as a law-enforcement  
7 officer in this state: *Provided*, That if a person is terminated  
8 under this subsection because an application was not timely filed  
9 to the academy, and the person's employer failed to provide notice  
10 or disclosure to that person as set forth in subsection (b) of this  
11 section, the employer shall pay the full cost of attending the  
12 academy if the person's application to the subcommittee as a  
13 private citizen is subsequently approved.

14 (g) Nothing in this article may be construed as prohibiting  
15 any governing body, Civil Service Commission or chief executive of  
16 any West Virginia law-enforcement agency from requiring their law-  
17 enforcement officers to meet qualifications and satisfactorily  
18 complete a course of law-enforcement instruction which exceeds the  
19 minimum entry level law-enforcement qualification and training  
20 curricula promulgated by the Governor's committee.

21 (h) The Governor's committee may de-certify law-enforcement  
22 officers upon recommendation of the subcommittee pursuant to the  
23 process contained in this article and legislative rules.

24 ~~(h)~~ (i) The requirement of this section for qualification,

1 training and certification of law-enforcement officers shall not be  
2 mandatory during the two years next succeeding ~~the effective date~~  
3 ~~of this article~~ July 9, 1981 for the law-enforcement officers of a  
4 law-enforcement agency which employs a civil service system for its  
5 law-enforcement personnel, nor shall such provisions be mandatory  
6 during the five years next succeeding ~~the effective date of this~~  
7 ~~article~~ July 9, 1981 for law-enforcement officers of a law-  
8 enforcement agency which does not employ a civil service system for  
9 its law-enforcement personnel: *Provided, That ~~such~~ these*  
10 requirements ~~shall be~~ are mandatory for all such law-enforcement  
11 officers until their law-enforcement officials apply for their  
12 exemption by submitting a written plan to the Governor's committee  
13 which will reasonably assure compliance of all law-enforcement  
14 officers of their agencies within the applicable two or five-year  
15 period of exemption.

16 ~~(i)~~ (j) Any person aggrieved by a decision of the Governor's  
17 committee made pursuant to this article may contest ~~such~~ the  
18 decision in accordance with the provisions of article five, chapter  
19 twenty-nine-a of this code.

20 ~~(j)~~ (k) Any person terminated from employment for not filing  
21 an application to the law-enforcement training academy within  
22 ninety days after commencing employment as a law-enforcement  
23 officer may appeal the termination to the Governor's committee for  
24 reconsideration on an individual basis.

1       ~~(k)~~ (l) Beginning July 1, 2002 until June 13, 2003, any  
 2 applicant who has been conditionally employed as a law-enforcement  
 3 officer who failed to submit a timely application pursuant to the  
 4 provisions of this section, may be conditionally employed as a law-  
 5 enforcement officer and may resubmit an application pursuant to  
 6 subsection (b) of this section to an approved law-enforcement  
 7 training academy. If the applicant is accepted, the employer shall  
 8 pay compensation to the employee for attendance at the law-  
 9 enforcement training academy at the rate provided in section eight  
 10 of this article.

11 **§30-29-11. Required reporting by law-enforcement agencies of**  
 12 **certain disciplinary information; Legislative**  
 13 **rules; Requirement that database be consulted**  
 14 **prior to the hiring of law-enforcement officers.**

15       (a) Law-enforcement agencies in this state shall report to the  
 16 subcommittee the name of, and all pertinent facts regarding, any  
 17 law-enforcement officer charged with or for which there has been a  
 18 judicial or administrative finding of probable cause to believe  
 19 that:

20       (1) He or she has committed a felony or a misdemeanor crime of  
 21 violence, moral turpitude or controlled substance offence; or

22       (2) He or she has been administratively charged with a  
 23 violation of any agency, rule, or policy which, if proven, would  
 24 result in discharge, demotion or suspension and he or she has

1 resigned prior to a final determination.

2 (b) Commencing on July 1, 2011, the subcommittee shall  
3 recommend legislative rules to the Governor's committee relating to  
4 the reporting of certain criminal and administrative violations by  
5 law-enforcement officers, the process by which all reports are  
6 investigated and recorded and the process by which all law-  
7 enforcement agencies can access the records of the subcommittee.

8 These rules shall include:

9 (1) The violations of agency rules, regulations or policies  
10 that will result in a mandatory report to the subcommittee in  
11 addition to the statutorily mandated reports pursuant to subsection  
12 (a) of this section;

13 (2) A process by which the subcommittee can receive, review  
14 and investigate all reported actions; and

15 (3) Guidelines for the establishment and use of a database of  
16 all reported actions that is accessible by law-enforcement agencies  
17 of this state.

18 (c) Prior to hiring a law-enforcement officer, the head of a  
19 law-enforcement agency of this state or a entity or agency of this  
20 state or any political subdivision thereof authorized to employ or  
21 hire a law-enforcement officer shall determine whether the database  
22 authorized by the provisions of section three of this article  
23 contains information regarding said prospective employee.

NOTE: This bill was recommended for introduction and passage

by the Joint Committee on the Judiciary.

The purpose of this bill is to expand the responsibilities of the law-enforcement training subcommittee and rename it the law-enforcement professional standards subcommittee; to clarify the authority to de-certify law-enforcement officers; to establish a database of law-enforcement officers disciplined for certain types of misconduct; to request the proposal of legislative rules to set standards for law-enforcement agencies to report certain types of misconduct by officers to the database; and to require that law-enforcement agencies check the database prior to hiring any officer.

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

§30-29-11 is new; therefore, it has been completely underscored.