

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 421**

4 (By Senators Nohe, Boley, Carmichael and Walters)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported March 28, 2013.]
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10
11 A BILL to amend and reenact §61-7-11a of the Code of West Virginia,
12 1931, as amended, relating to providing an exemption for the
13 official mascot of Parkersburg South High School, commonly
14 known as the Patriot, which would allow the mascot to carry a
15 musket on school grounds when the mascot is acting in his or
16 her official capacity.

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

18 That §61-7-11a of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 7. DANGEROUS WEAPONS.**

21 **§61-7-11a. Possessing deadly weapons on premises of educational**
22 **facilities; reports by school principals; suspension**
23 **of driver's license; possessing deadly weapons on**
24 **premises housing courts of law and in offices of**

1 **family law master.**

2 (a) The Legislature hereby finds that the safety and welfare
3 of the citizens of this state are inextricably dependent upon
4 assurances of safety for children attending and ~~the~~ persons
5 employed by schools in this state and for ~~those~~ persons employed
6 ~~with~~ by the judicial department of this state. It is for the
7 purpose of providing ~~such~~ assurances of safety ~~therefore,~~ that
8 subsections (b), (g) and (h) of this section are enacted as a
9 reasonable regulation of the manner in which citizens may exercise
10 ~~those~~ the rights accorded to them pursuant to section twenty-two,
11 article three of the Constitution of the State of West Virginia.

12 (b) (1) It ~~shall be~~ is unlawful for ~~any a~~ a person to possess
13 ~~any a~~ a firearm or ~~any~~ other deadly weapon on ~~any a~~ a school bus as
14 defined in section one, article one, chapter seventeen-a of this
15 code, or in or on ~~any a~~ a public or private primary or secondary
16 education building, structure, facility or grounds ~~thereof,~~
17 including ~~any a~~ a vocational education building, structure, facility
18 or grounds ~~thereof~~ where secondary vocational education programs
19 are conducted or at ~~any a~~ a school-sponsored function.

20 (2) This subsection ~~shall~~ does not apply to:

21 (A) A law-enforcement officer acting in his or her official
22 capacity;

23 (B) A person specifically authorized by the board of education
24 of the county or principal of the school where the property is

1 located to conduct programs with valid educational purposes;

2 (C) A person who, as otherwise permitted by the provisions of
3 this article, possesses an unloaded firearm or deadly weapon in a
4 motor vehicle or leaves an unloaded firearm or deadly weapon in a
5 locked motor vehicle;

6 (D) Programs or raffles conducted with the approval of the
7 county board of education or school which include the display of
8 unloaded firearms; ~~or~~

9 (E) The official mascot of West Virginia University, commonly
10 known as the Mountaineer, acting in his or her official capacity;
11 or

12 (F) The official mascot of Parkersburg South High School,
13 commonly known as the Patriot, acting in his or her official
14 capacity.

15 (3) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty
16 of a felony and, upon conviction thereof, shall be imprisoned in
17 ~~the penitentiary of this state~~ a state correctional facility for a
18 definite term of years of not less than two years nor more than ten
19 years, or fined not more than \$5,000, or both.

20 (c) It ~~shall be~~ is the duty of the principal of each school
21 subject to the authority of the State Board of Education to report
22 ~~any~~ a violation of subsection (b) of this section discovered by
23 ~~such~~ the principal to the State Superintendent of Schools within
24 seventy-two hours after ~~such~~ the violation occurs. The State Board

1 of Education shall keep and maintain ~~such~~ these reports and may
2 prescribe rules establishing policy and procedures for the making
3 and delivery of ~~the same~~ the reports as required by this
4 subsection. In addition, it ~~shall be~~ is the duty of the principal
5 of each school subject to the authority of the State Board of
6 Education to report ~~any a~~ a violation of subsection (b) of this
7 section discovered by ~~such~~ the principal to the appropriate local
8 office of the Division of Public Safety within seventy-two hours
9 after ~~such~~ the violation occurs.

10 (d) In addition to the methods of disposition provided by
11 article five, chapter forty-nine of this code, ~~any a~~ a court which
12 adjudicates a person who is fourteen years of age or older as
13 delinquent for a violation of subsection (b) of this section may,
14 in its discretion, order the Division of Motor Vehicles to suspend
15 ~~any a~~ a driver's license or instruction permit issued to ~~such~~ the
16 person for ~~such a~~ a period of time as the court ~~may deem~~ considers
17 appropriate, ~~such suspension, however,~~ not to extend beyond ~~such~~
18 the person's nineteenth birthday. ~~or, Where such~~ Where the person
19 has not been issued a driver's license or instruction permit by
20 this state, a court may order the Division of Motor Vehicles to
21 deny ~~such the~~ the person's application for ~~the same for such a~~ a license
22 or permit for a period of time as the court ~~may deem~~ considers
23 appropriate, ~~such denial, however,~~ not to extend beyond ~~such~~ the
24 person's nineteenth birthday. ~~Any~~ A suspension ordered by the

1 court pursuant to this subsection ~~shall be~~ is effective upon the
2 date of entry of ~~such~~ the order. Where the court orders the
3 suspension of a driver's license or instruction permit pursuant to
4 this subsection, the court shall confiscate any driver's license or
5 instruction permit in the adjudicated person's possession and
6 forward ~~the same~~ to the Division of Motor Vehicles.

7 (e) (1) If a person eighteen years of age or older is
8 convicted of violating subsection (b) of this section, and if ~~such~~
9 the person does not act to appeal ~~such~~ the conviction within the
10 time periods described in subdivision (2) of this subsection, ~~such~~
11 the person's license or privilege to operate a motor vehicle in
12 this state shall be revoked in accordance with the provisions of
13 this section.

14 (2) The clerk of the court in which the person is convicted as
15 described in subdivision (1) of this subsection shall forward to
16 the commissioner a transcript of the judgment of conviction. If
17 the conviction is the judgment of a magistrate court, the
18 magistrate court clerk shall forward ~~such~~ the transcript when the
19 person convicted has not requested an appeal within twenty days of
20 the sentencing for ~~such~~ the conviction. If the conviction is the
21 judgment of a circuit court, the circuit clerk shall forward ~~such~~
22 ~~transcript~~ a transcript of the judgment of conviction when the
23 person convicted has not filed a notice of intent to file a
24 petition for appeal or writ of error within thirty days after the

1 judgment was entered.

2 (3) If, upon examination of the transcript of the judgment of
3 conviction, the commissioner ~~shall determine~~ determines that the
4 person was convicted as described in subdivision (1) of this
5 subsection, the commissioner shall make and enter an order revoking
6 ~~such~~ the person's license or privilege to operate a motor vehicle
7 in this state for a period of one year or, in the event the person
8 is a student enrolled in a secondary school, for a period of one
9 year or until the person's twentieth birthday, whichever is the
10 greater period. The order shall contain the reasons for the
11 revocation and the revocation period. The order of suspension
12 shall advise the person that because of the receipt of the court's
13 transcript, a presumption exists that the person named in the order
14 of suspension is the same person named in the transcript. The
15 commissioner may grant an administrative hearing which
16 substantially complies with the requirements of the provisions of
17 section two, article five-a, chapter seventeen-c of this code upon
18 a preliminary showing that a possibility exists that the person
19 named in the notice of conviction is not the same person whose
20 license is being suspended. ~~Such~~ The request for hearing shall be
21 made within ten days after receipt of a copy of the order of
22 suspension. The sole purpose of this hearing ~~shall be~~ is for the
23 person requesting the hearing to present evidence that he or she is
24 not the person named in the notice. ~~In the event~~ If the

1 commissioner grants an administrative hearing, the commissioner
2 shall stay the license suspension pending the commissioner's order
3 resulting from the hearing.

4 (4) For the purposes of this subsection, a person is convicted
5 when such person enters a plea of guilty or is found guilty by a
6 court or jury.

7 (f) (1) It ~~shall be~~ is unlawful for ~~any a~~ a parent, guardian or
8 custodian of a person less than eighteen years of age who knows
9 that ~~said the~~ the person is in violation of subsection (b) of this
10 section or ~~who~~ has reasonable cause to believe that ~~said the~~ the
11 person's violation of ~~said~~ subsection (b) is imminent, to fail to
12 immediately report ~~such~~ his or her knowledge or belief to the
13 appropriate school or law-enforcement officials.

14 (2) ~~Any A~~ A person violating this subsection ~~shall be~~ is guilty
15 of a misdemeanor and, upon conviction thereof, shall be fined not
16 more than \$1,000, or shall be confined in jail not more than one
17 year, or both.

18 (g) (1) It ~~shall be~~ is unlawful for ~~any a~~ a person to possess
19 ~~any a~~ a firearm or ~~any~~ other deadly weapon on ~~any premises which~~
20 ~~houses~~ the premises of a court of law, ~~or in the offices of a~~
21 ~~family law master.~~ including family courts.

22 (2) This subsection ~~shall~~ does not apply to:

23 (A) A law-enforcement officer acting in his or her official
24 capacity; and

1 (B) A person exempted from the provisions of this subsection
2 by order of record entered by a court with jurisdiction over ~~such~~
3 the premises or offices.

4 (3) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty
5 of a misdemeanor and, upon conviction thereof, shall be fined not
6 more than \$1,000, or shall be confined in jail not more than one
7 year, or both.

8 (h) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess
9 ~~any~~ a firearm or ~~any~~ other deadly weapon on ~~any premises which~~
10 ~~houses a court of law or in the offices of a family law master~~ the
11 premises of a court of law, including family courts, with the
12 intent to commit a crime.

13 (2) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty
14 of a felony and, upon conviction thereof, shall be imprisoned in
15 ~~the penitentiary of this state~~ a state correctional facility for a
16 definite term of years of not less than two years nor more than ten
17 years, or fined not more than \$5,000, or both.

18 (i) Nothing in this section may be construed to be in conflict
19 with the provisions of federal law.

(NOTE: The purpose of this bill is to provide an exemption for the official mascot of Parkersburg South High School, commonly known as "The Patriot," which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity. This is the same exemption that is granted to

the West Virginia University Mountaineer.

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