

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 427**

4 (By Senator Green)

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

7 reported March 12, 2013.]

8 _____
9
10
11 A BILL to amend and reenact §62-1A-10 of the Code of West Virginia,
12 1931, as amended, relating to clarifying requirements for
13 certain motor vehicle searches.

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

15 That §62-1A-10 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 1A. SEARCH AND SEIZURE.**

18 **§62-1A-10. Motor vehicle searches.**

19 (a) A law-enforcement officer who stops a motor vehicle for an
20 alleged violation of a traffic misdemeanor law or ordinance may not
21 search the vehicle unless he or she:

22 (1) Has probable cause or another lawful basis for the search;

23 (2) Obtains the written consent of the operator of the vehicle

24 on a form that complies with section eleven of this article; or

25 ~~alternatively,~~

1 (3) Obtains the oral consent of the operator of the vehicle
2 and ensures that the oral consent is evidenced by an audio
3 recording that complies with section eleven of this article.

4 (b) Notwithstanding the provisions of subsection (a) of this
5 section, should a form meeting the requirement of section eleven of
6 this article or an audio recording device be unavailable a
7 handwritten consent executed by the vehicle operator and meeting
8 the consent requirements of section eleven of this article will
9 suffice.

10 (c) Notwithstanding the provisions of subsection (a) or (b) of
11 this section, should a court find that the officer had a reasonable
12 suspicion of dangerousness to his or her safety which precluded
13 recordation of the consent the recordation requirements of this
14 section shall be found inapplicable.

15 (d) Failure to comply with the provisions of this section
16 shall not, standing alone, constitute proof that any consent to
17 search was involuntary.

18 (e) A finding by a court that the operator of a motor vehicle
19 voluntarily and verbally consented to a search of the motor vehicle
20 shall make the recordation requirements of this section
21 inapplicable.

22 (f) Nothing contained in this section shall be construed to
23 create a private cause of action.

24 (g) This section takes effect on January 1, 2011.

(NOTE: The purpose of this bill is to clarify the requirements for certain motor vehicle searches.

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