

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 421

(By Senators Nohe, Boley, Carmichael and Walters)

[Originating in the Committee on the Judiciary;
reported March 28, 2013.]

A BILL to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing 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.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

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

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

12 (b) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess
13 ~~any~~ a firearm or ~~any~~ other deadly weapon on ~~any~~ a school

14 bus as defined in section one, article one, chapter seventeen-a
15 of this code, or in or on ~~any~~ a public or private primary or
16 secondary education building, structure, facility or grounds
17 ~~thereof~~, including ~~any~~ a vocational education building,
18 structure, facility or grounds ~~thereof~~ where secondary
19 vocational education programs are conducted or at ~~any~~ a
20 school-sponsored function.

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

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

24 (B) A person specifically authorized by the board of
25 education of the county or principal of the school where the
26 property is located to conduct programs with valid
27 educational purposes;

28 (C) A person who, as otherwise permitted by the
29 provisions of this article, possesses an unloaded firearm or
30 deadly weapon in a motor vehicle or leaves an unloaded
31 firearm or deadly weapon in a locked motor vehicle;

32 (D) Programs or raffles conducted with the approval of
33 the county board of education or school which include the
34 display of unloaded firearms; ~~or~~

35 (E) The official mascot of West Virginia University,
36 commonly known as the Mountaineer, acting in his or her
37 official capacity; or

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

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

47 (c) It ~~shall be~~ is the duty of the principal of each school
48 subject to the authority of the State Board of Education to
49 report ~~any~~ a violation of subsection (b) of this section
50 discovered by ~~such~~ the principal to the State Superintendent

51 of Schools within seventy-two hours after ~~such~~ the violation
52 occurs. The State Board of Education shall keep and
53 maintain ~~such~~ these reports and may prescribe rules
54 establishing policy and procedures for the making and
55 delivery of ~~the same~~ the reports as required by this
56 subsection. In addition, it ~~shall be~~ is the duty of the principal
57 of each school subject to the authority of the State Board of
58 Education to report ~~any~~ a violation of subsection (b) of this
59 section discovered by ~~such~~ the principal to the appropriate
60 local office of the Division of Public Safety within
61 seventy-two hours after ~~such~~ the violation occurs.

62 (d) In addition to the methods of disposition provided by
63 article five, chapter forty-nine of this code, ~~any~~ a court which
64 adjudicates a person who is fourteen years of age or older as
65 delinquent for a violation of subsection (b) of this section
66 may, in its discretion, order the Division of Motor Vehicles
67 to suspend ~~any~~ a driver's license or instruction permit issued
68 to ~~such~~ the person for ~~such~~ a period of time as the court ~~may~~
69 ~~deem~~ considers appropriate, ~~such suspension, however,~~ not

70 to extend beyond ~~such~~ the person's nineteenth birthday. ~~or,~~
71 ~~Where such~~ Where the person has not been issued a driver's
72 license or instruction permit by this state, a court may order
73 the Division of Motor Vehicles to deny ~~such~~ the person's
74 application for ~~the same for such~~ a license or permit for a
75 period of time as the court ~~may deem~~ considers appropriate,
76 ~~such denial, however,~~ not to extend beyond ~~such~~ the person's
77 nineteenth birthday. ~~Any~~ A suspension ordered by the court
78 pursuant to this subsection ~~shall be~~ is effective upon the date
79 of entry of ~~such~~ the order. Where the court orders the
80 suspension of a driver's license or instruction permit pursuant
81 to this subsection, the court shall confiscate any driver's
82 license or instruction permit in the adjudicated person's
83 possession and forward ~~the same~~ to the Division of Motor
84 Vehicles.

85 (e) (1) If a person eighteen years of age or older is
86 convicted of violating subsection (b) of this section, and if
87 ~~such~~ the person does not act to appeal ~~such~~ the conviction
88 within the time periods described in subdivision (2) of this

89 subsection, ~~such~~ the person's license or privilege to operate
90 a motor vehicle in this state shall be revoked in accordance
91 with the provisions of this section.

92 (2) The clerk of the court in which the person is
93 convicted as described in subdivision (1) of this subsection
94 shall forward to the commissioner a transcript of the
95 judgment of conviction. If the conviction is the judgment of
96 a magistrate court, the magistrate court clerk shall forward
97 ~~such~~ the transcript when the person convicted has not
98 requested an appeal within twenty days of the sentencing for
99 ~~such~~ the conviction. If the conviction is the judgment of a
100 circuit court, the circuit clerk shall forward ~~such transcript a~~
101 transcript of the judgment of conviction when the person
102 convicted has not filed a notice of intent to file a petition for
103 appeal or writ of error within thirty days after the judgment
104 was entered.

105 (3) If, upon examination of the transcript of the judgment
106 of conviction, the commissioner ~~shall determine~~ determines
107 that the person was convicted as described in subdivision (1)

108 of this subsection, the commissioner shall make and enter an
109 order revoking ~~such~~ the person's license or privilege to
110 operate a motor vehicle in this state for a period of one year
111 or, in the event the person is a student enrolled in a secondary
112 school, for a period of one year or until the person's twentieth
113 birthday, whichever is the greater period. The order shall
114 contain the reasons for the revocation and the revocation
115 period. The order of suspension shall advise the person that
116 because of the receipt of the court's transcript, a presumption
117 exists that the person named in the order of suspension is the
118 same person named in the transcript. The commissioner may
119 grant an administrative hearing which substantially complies
120 with the requirements of the provisions of section two, article
121 five-a, chapter seventeen-c of this code upon a preliminary
122 showing that a possibility exists that the person named in the
123 notice of conviction is not the same person whose license is
124 being suspended. ~~Such~~ The request for hearing shall be made
125 within ten days after receipt of a copy of the order of
126 suspension. The sole purpose of this hearing ~~shall be~~ is for

127 the person requesting the hearing to present evidence that he
128 or she is not the person named in the notice. ~~In the event~~ If
129 the commissioner grants an administrative hearing, the
130 commissioner shall stay the license suspension pending the
131 commissioner's order resulting from the hearing.

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

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

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

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

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

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

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

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

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

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

171 (i) Nothing in this section may be construed to be in
172 conflict 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.)