

Senate Bill No. 29

(By Senator Green)

[Introduced January 8, 2014; referred to the Committee on the
Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-10. Motor vehicle searches.

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

- (1) Has probable cause or another lawful basis for the search;
- (2) Obtains the written consent of the operator of the vehicle
on a form that complies with section eleven of this article; or

1 ~~alternatively,~~

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

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

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

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

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

23 (f) Nothing contained in this section shall be construed to

1 create a private cause of action.

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

NOTE: The purpose of this bill is to clarify the requirements when a law-enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor law or ordinance may search a motor vehicle.

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