

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 29**

4 (By Senator Green)

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

7 reported January 17, 2014.]

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 or

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

1 on a form that complies with section eleven of this article; or
2 ~~alternatively,~~

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

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

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

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

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

24 (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.