

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 29**

(By Senator Green)

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[Originating in the Committee on the Judiciary;  
reported January 17, 2014.]

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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.**

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

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

6 (2) Obtains the written consent of the operator of the  
7 vehicle on a form that complies with section eleven of this  
8 article; or ~~alternatively,~~

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

12 (b) Notwithstanding the provisions of subsection (a) of  
13 this section, should a form meeting the requirement of section  
14 eleven of this article or an audio recording device be  
15 unavailable a handwritten consent executed by the vehicle  
16 operator and meeting the consent requirements of section  
17 eleven of this article will suffice.

18 (c) Notwithstanding the provisions of subsection (a) or  
19 (b) of this section, should a court find that the officer had a  
20 reasonable suspicion of dangerousness to his or her safety  
21 which precluded recordation of the consent the recordation  
22 requirements of this section shall be found inapplicable.

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

26 (e) A finding by a court that the operator of a motor  
27 vehicle voluntarily and verbally consented to a search of the  
28 motor vehicle shall make the recordation requirements of this  
29 section inapplicable.

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

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