

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2679**

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HIGGINBOTHAM, BUTLER AND FAST

[Introduced February 23, 2017; Referred  
to the Committee on Agriculture and Natural Resources  
then the Judiciary.]



1 A BILL to amend and reenact §7-11-5 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, all relating  
3 to the possession of firearms in parks and park facilities generally; prohibiting county parks  
4 and recreation commissions from promulgating or enforcing rules which prohibit  
5 possession of firearms in parks; providing magistrate courts with concurrent jurisdiction;  
6 altering antiquated language concerning county courts to county commission; prohibitions  
7 on carrying a firearm in state parks, state forests, state wildlife management areas or state  
8 rail trails; and providing exceptions for self-defense.

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

1 That §7-11-5 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §20-2-5 of said code be amended and reenacted, all to read as follows.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

#### **§7-11-5. General powers of commission; ~~rules and regulations~~; misdemeanor offenses; park police authorized.**

1 The commission shall have the necessary powers and authority to manage and control all  
2 public parks and recreational properties and facilities owned by the county or commission and  
3 used as a part of such public parks and recreation system, including the right to promulgate rules  
4 and regulations concerning the management and control of such parks and recreational  
5 properties and facilities and to enforce any such ~~rules and regulations~~ so promulgated: Provided,  
6 That a commission shall not promulgate or enforce rules which prohibit the possession of firearms  
7 in such parks.

8 The commission shall also have plenary power and authority to prepare and submit to the  
9 county ~~court~~ commission for adoption ~~rules and regulations~~ regulating the use of any parks and  
10 recreational properties and facilities under the control of the commission and prohibiting any type

11 of use of or activities in connection with any such properties or facilities, and any such rules, ~~and~~  
12 ~~regulations~~ if so adopted, shall be duly entered of record in the order book of the county  
13 commission. The violation of any such rule and regulation so adopted by the county commission  
14 shall constitute a misdemeanor and, any person convicted of any such violation shall be punished  
15 by a fine of not less than \$5 nor more than \$100, or by imprisonment in jail for a period not  
16 exceeding thirty days, or by both such fine and imprisonment. ~~Justices of the peace~~ The  
17 magistrate court of the county shall have concurrent jurisdiction with the circuit court and other  
18 courts of record (having criminal jurisdiction) of any misdemeanor offenses arising under this  
19 article. The violation of any such rule ~~and regulation~~ which also constitutes the violation of any  
20 state law or municipal ordinance may be prosecuted and punished as a violation of such state  
21 law or municipal ordinance rather than under the provisions of this section. To enforce any such  
22 rules ~~and regulations~~, to protect and preserve all properties and facilities under the control of the  
23 commission and to preserve law and order in connection therewith, the commission shall have  
24 plenary power and authority to provide in its bylaws procedures for the appointment, supervision  
25 and discharge of one or more park police officers. Whenever any such appointment is made, a  
26 copy of the order of appointment shall be filed by the commission with the county ~~court~~  
27 commission.

28 In any area under the jurisdiction and control of the commission, or in connection with any  
29 properties or facilities under the jurisdiction and control of the commission, or in pursuit of one or  
30 more individuals therefrom, any park police officer so appointed shall have all of the power and  
31 authority which a regularly appointed deputy sheriff of such county has in enforcing the criminal  
32 laws of the state. Notwithstanding any provisions of this code to the contrary, park police officers  
33 appointed as aforesaid shall not be required to obtain a state license to carry a weapon, as  
34 required by the provisions of section two, article seven, chapter sixty-one of this code. When any  
35 such commission has purchased one or more policies of public liability insurance providing the  
36 commission and its officers, agents and employees insurance coverage for legal liability of said

37 commission and its officers, agents and employees for bodily injury, personal injury or damage  
38 (including, but not limited to, false arrest and false imprisonment) and property damage, and  
39 affording said commission and its officers, agents and employees insurance coverage against  
40 any and all legal liability arising from, growing out of, by reason of or in any way connected with,  
41 any acts or omissions of said commission, or its officers, agents or employees in the performance  
42 of their official duties, and so long as the coverage aforesaid remains in full force and effect as to  
43 such park police officers, then the bond specified in section five, article seven of said chapter  
44 sixty-one shall not be required as to such park police officers.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

1 Except as authorized by the director or by law, it is unlawful at any time for any person to:

2 (1) Shoot at any wild bird or wild animal unless it is plainly visible;

3 (2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild  
4 animal or wild bird out of its den or place of refuge;

5 (3) Use or attempt to use any artificial light or any night vision technology, including image  
6 intensification, thermal imaging or active illumination while hunting, locating, attracting, taking,  
7 trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote,  
8 fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person  
9 violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each  
10 offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less  
11 than ten days nor more than one hundred days;

12 (4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other  
13 airborne conveyance, a drone or other unmanned aircraft, an automobile or other land  
14 conveyance, or from a motor-driven water conveyance;

15 (5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal,  
16 or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the  
17 purposes of hunting, trapping or killing;

18 (6) Take any beaver or muskrat by any means other than a trap;

19 (7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear,  
20 wild turkey, ruffed grouse, pheasant or quail;

21 (8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in  
22 his or her possession the nest or eggs;

23 (9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state  
24 forests, state wildlife management areas or state rail trails with the following permissible  
25 exceptions:

26 (A) A person in possession of a valid license or permit during open firearms hunting  
27 season for wild animals and nonmigratory wild birds where hunting is lawful;

28 (B) A person hunting or taking unprotected species of wild animals, wild birds and  
29 migratory wild birds during the open season, in the open fields, open water and open marshes of  
30 the state where hunting is lawful;

31 (C) A person carrying a firearm pursuant to sections six and six-a of this article; ~~or~~

32 (D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from  
33 possessing firearms; ~~by section seven, article seven, chapter sixty-one of this code or~~

34 (E) A person carrying a rifle or shotgun for self-defense who is not prohibited from  
35 possessing firearms under state or federal law: *Provided*, That this exception does not apply to  
36 an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities  
37 and marked trails within state park or state forest borders.

38 (10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun  
39 with cartridges that have not been removed or a magazine that has not been detached, in or on  
40 any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun

41 whose magazine readily detaches is considered unloaded if the magazine is detached and no  
42 cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of  
43 day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any  
44 unloaded firearm or crossbow may be carried only when in a case or taken apart and securely  
45 wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements  
46 relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian  
47 to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying  
48 unloaded and uncased firearms are extended for one hour after the post meridian times and one  
49 hour before the ante meridian times established in this subdivision, if a person is transporting or  
50 transferring the firearms to or from a hunting site, campsite, home or other abode;

51 (11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which  
52 wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without  
53 the written consent of the landowner any wild animals or wild birds except when a big game  
54 season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of  
55 wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps  
56 previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday  
57 and the person tending the traps may carry firearms for the purpose of humanely dispatching  
58 trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon  
59 conviction thereof, in addition to any fines that may be imposed by this or other sections of this  
60 code, is subject to a \$100 fine;

61 (12) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a  
62 ferret;

63 (13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

64 (14) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by  
65 rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers,  
66 carp, fallfish and creek chubs is lawful;

67           (15) Employ, hire, induce or persuade, with money, things of value or by any means, any  
68 person to hunt, take, catch or kill any wild animal or wild bird except those species in which there  
69 is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is  
70 protected by rule, or the sale of which is otherwise prohibited;

71           (16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game  
72 or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*,  
73 and its regulations;

74           (17) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any  
75 wild bird other than a game bird including the plumage, skin or body of any protected bird,  
76 irrespective of whether the bird was captured in or out of this state, except the English or European  
77 sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may  
78 be killed at any time;

79           (18) Use dynamite, explosives or any poison in any waters of the state for the purpose of  
80 killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction  
81 thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more  
82 than three years, or both fined and imprisoned;

83           (19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same  
84 time;

85           (20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt  
86 to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

87           (21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is  
88 equipped with a point having at least two sharp cutting edges measuring in excess of three fourths  
89 of an inch wide;

90           (22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft,  
91 a poisoned arrow or an arrow which would affect wildlife by any chemical action;

92           (23) Shoot an arrow across any public highway;



93           (24) Permit any dog owned or under his or her control to chase, pursue or follow the tracks  
94 of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs  
95 may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may  
96 be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or  
97 upon the grounds or lands of another person with his or her written permission, or on public lands  
98 at any time. Nonresidents may not train dogs in this state at any time except during the legal small  
99 game hunting season. A person training dogs may not have firearms or other implements in his  
100 or her possession during the closed season on wild animals and wild birds;

101           (25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water  
102 race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a  
103 trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for  
104 obtaining the permit shall prepare and keep an accurate record of the names and addresses of  
105 all persons participating in the trial and make the records readily available for inspection by any  
106 natural resources police officer upon request;

107           (26) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird  
108 or wild fowl except during open seasons;

109           (27) Hunting on public lands on Sunday after five o'clock ante meridian is prohibited;

110           (28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which  
111 wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian:  
112 *Provided*, That the provisions of this subdivision do not apply in any county until the county  
113 commission of the county holds an election on the question of whether the provisions of this  
114 subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve  
115 the allowance of hunting on Sunday in the county. The election is determined by a vote of the  
116 resident voters of the county in which the hunting on Sunday is proposed to be authorized. The  
117 county commission of the county in which Sunday hunting is proposed shall give notice to the  
118 public of the election by publication of the notice as a Class II-0 legal advertisement in compliance

119 with the provisions of article three, chapter fifty-nine of this code and the publication area for the  
120 publication is the county in which the election is to be held. The date of the last publication of the  
121 notice shall fall on a date within the period of the fourteen consecutive days next preceding the  
122 election.

123 On the local option election ballot shall be printed the following:

124 Shall hunting on Sunday be authorized on private lands only with the consent of the land  
125 owner in \_\_\_\_\_ County?

126  Yes

127  No

128 (Place a cross mark in the square opposite your choice.)

129 Any local option election to approve or disapprove of the proposed authorization of Sunday  
130 hunting within a county shall be in accordance with procedures adopted by the commission. The  
131 local option election may be held in conjunction with a primary or general election or at a special  
132 election. Approval shall be by a majority of the voters casting votes on the question of approval  
133 or disapproval of Sunday hunting at the election.

134 If a majority votes against allowing Sunday hunting, an election on the issue may not be  
135 held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering  
136 the action may not be held for a period of five years. A local option election may thereafter be  
137 held if a written petition of qualified voters residing within the county equal to at least five percent  
138 of the number of persons who were registered to vote in the next preceding general election is  
139 received by the county commission of the county in which Sunday hunting is authorized. The  
140 petition may be in any number of counterparts. The election shall take place at the next primary  
141 or general election scheduled more than ninety days following receipt by the county commission  
142 of the petition required by this subsection: *Provided*, That the issue may not be placed on the  
143 ballot until all statutory notice requirements have been met. No local law or regulation providing  
144 any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and

145 the provisions of this article preempt all regulations, rules, ordinances and laws of any county or  
146 municipality in conflict with this subdivision.

147 Amendments to this subdivision promulgated during the 2015 regular session of the  
148 Legislature shall have no effect upon the results of elections held prior to their enactment; and

149 (29) Hunt or conduct hunts for a fee when the person is not physically present in the same  
150 location as the wildlife being hunted within West Virginia.

NOTE: The purpose of this bill is to prohibit county park commissions from prohibiting firearms in their facilities and to clarify that a firearm may be carried by a person for self defense in state parks, state forests and state recreational areas managed by the Department of Natural Resources, provided that such person is not otherwise prohibited from possessing firearms.

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