

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 230

BY SENATORS TRUMP, BLAIR AND MARONEY

[Originating in the Committee on the Judiciary;

reported on February 14, 2017]

1 A BILL to amend and reenact §7-4-1 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §30-29-12, all relating to
3 authorizing West Virginia prosecuting attorneys and assistant prosecuting attorneys to
4 carry concealed firearms nationwide as authorized by the federal Law-Enforcement
5 Officers Safety Act; providing the statutory authority necessary to give prosecuting
6 attorneys and assistant prosecuting attorneys the option to carry firearms pursuant to
7 federal law upon completion of required training and annual background check; granting
8 prosecuting attorneys and assistant prosecuting attorneys arrest powers under certain
9 circumstances; requiring West Virginia law-enforcement agencies to offer access to
10 training and certification for honorably retired officers of said agencies to be permitted to
11 carry a concealed firearm nationwide as a qualified retired law-enforcement officer as
12 provided in the federal Law-Enforcement Officers Safety Act of 2004 and establishing a
13 fee limit thereof; and authorizing West Virginia law-enforcement agencies to offer training
14 to retired law-enforcement officers of other departments.

Be it enacted by the Legislature of West Virginia:

1 That §7-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
2 and that said code be amended by adding thereto a new section, designated §30-29-12, all to
3 read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY; REWARDS; AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.

1 ~~(a) It shall be the duty of~~ The prosecuting attorney ~~to~~ shall attend to the criminal business
2 of the state in the county in which he or she is elected and qualified and when he ~~he~~ the prosecuting
3 attorney has information of the violation of any penal law committed within ~~such~~ the county, ~~he~~
4 the prosecuting attorney shall institute and prosecute all necessary and proper proceedings

5 against the offender and may, in such case, issue or cause to be issued a summons for any
6 witness ~~he may deem~~ the prosecuting attorney considers material. Every public officer shall give
7 ~~him~~ the prosecuting attorney information regarding the commission of any criminal offense
8 committed within his or her county. ~~It shall also be the duty of~~ The prosecuting attorney ~~to~~ shall
9 also attend to civil suits in ~~such~~ the county in which the state or any department, commission or
10 board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may
11 be, all matters, actions, suits and proceedings in which such county or any county board of
12 education is interested.

13 (b) (1) In furtherance of a prosecuting attorney's duty to investigate and prosecute criminal
14 offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision
15 shall have the authority to arrest any person committing a violation of the criminal laws of the
16 State of West Virginia, the United States or a violation of Rule 42 of the West Virginia Rules of
17 Criminal Procedure which occur in the county courthouse and other buildings where court
18 proceedings are held and in which the prosecutor or assistant prosecutor is appearing before the
19 court in a criminal matter and committed in the presence of the prosecuting attorney or assistant
20 prosecuting attorney.

21 (2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting
22 attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy
23 sheriff within the geographic limitations set forth in said subdivision.

24 (3) Should a prosecuting attorney desire to establish a program authorizing prosecuting
25 attorneys and assistant prosecuting attorneys to carry a concealed firearm for self-defense
26 purposes pursuant to the provisions of 18 U. S. C. §926B, the following criteria must be met:

27 (A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting
28 attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-
29 defense purposes;

30 (B) There shall be in place in the office of the prosecuting attorney a requirement that the

31 prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a
32 firearm with standards therefor which are equal to or exceed those required of sheriff's deputies
33 in the county in which the prosecuting attorney was elected or appointed;

34 (C) The office of the prosecuting attorney shall issue a photographic identification and
35 certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law-
36 enforcement employees of the prosecuting attorney's office pursuant to the provisions of section
37 twelve, article twenty-nine, chapter thirty of this code.

38 (4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall
39 include provisions which: (i) Preclude or remove a person from participation in the concealed
40 firearm program who is subject to any disciplinary or legal action which could result in the loss of
41 the authority to participate in the program; (ii) preclude from participation persons prohibited by
42 federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying
43 a firearm pursuant to the provisions of this subsection while in an impaired state as defined in
44 section two, article five, chapter seventeen-c of this code.

45 (5) Any prosecuting attorney or assistant prosecuting attorney who participates in a
46 program authorized by the provisions of this subsection shall be responsible, at his or her
47 expense, for obtaining and maintaining a suitable firearm and ammunition.

48 (6) It is the intent of the Legislature in enacting the amendments to this section during the
49 2017 regular session of the Legislature to authorize prosecuting attorney's offices wishing to do
50 so to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements
51 of the federal Law-Enforcement Officer's Safety Act, 18 U. S. C. §926B.

52 (c) ~~It shall be the duty of~~ The prosecuting attorney ~~to~~ shall keep his or her office open in

53 the charge of a responsible person during the hours when polls are open during general, primary

54 and special countywide election days, and the prosecuting attorney, or ~~his~~ the prosecuting

55 attorney's assistant, if any, shall be available for the purpose of advising election officials. ~~It shall~~

56 ~~be the further duty of~~ The prosecuting attorney, when requested by the Attorney General, ~~to~~ shall

57 perform or ~~to~~ assist the Attorney General in performing, in the county in which ~~he~~ the prosecuting
58 attorney is elected, any legal duties required to be performed by the Attorney General and which
59 are not inconsistent with the duties of the prosecuting attorney as the legal representative of ~~such~~
60 the county. ~~It shall also be the duty of~~ The prosecuting attorney, when requested by the Attorney
61 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in performing, any legal duties required
62 to be performed by the Attorney General in any county other than that in which ~~such~~ the
63 prosecuting attorney is elected and for the performance of ~~any such~~ these duties in any county
64 other than that in which ~~such~~ the prosecuting attorney is elected, ~~he~~ the prosecuting attorney shall
65 be paid his or her actual expenses.

66 Upon the request of the Attorney General, the prosecuting attorney shall make a written
67 report of the state and condition of the several causes in which the state is a party, pending in his
68 or her county, and upon any matters referred to ~~him~~ the prosecuting attorney by the Attorney
69 General as provided by law.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-12. Law-enforcement officers to receive identification and certification to carry weapons off duty.

1 (a) Every person employed by a West Virginia state, county or municipal agency as a
2 qualified law-enforcement officer within the meaning of 18 U. S. C. §926B, shall receive an
3 appropriate photo identification and certification of training required to carry a concealed firearm
4 under the federal Law-Enforcement Officers Safety Act, 18 U. S. C. §926B. No currently employed
5 officer may be charged a fee for the photo identification and certification. This subsection does
6 not prohibit a law-enforcement agency from controlling the use of any department-owned weapon.

7 (b) When a qualified law-enforcement officer, within the meaning of 18 U. S. C. §926B,
8 retires from, or otherwise honorably ceases employment with, a West Virginia state, county or

9 municipal agency, the agency shall provide, at no charge, an appropriate photo identification to
10 show the former employee's status as an honorably separated or retired qualified retired law-
11 enforcement officer within the meaning of 18 U. S. C. §926C. Every West Virginia state, county
12 or municipal law enforcement agency which conducts firearms qualification for current employees
13 shall offer its honorably retired or separated former employees an opportunity to participate in
14 such firearms qualification on an annual basis. The former employees shall provide, at their own
15 expense, an appropriate firearm and ammunition and may be charged a fee not to exceed \$25
16 for such training. Upon completion of the training and payment of any fee, the law-enforcement
17 agency shall issue a new photo identification and certification which identifies the former
18 employee as a "qualified retired law-enforcement officer" who has satisfied the annual training
19 requirements of 18 U. S. C. §926C.

20 (c) A law-enforcement agency may, in its sole discretion, allow a person who honorably
21 retired or separated from another federal, state, county or municipal law-enforcement agency as
22 a qualified law-enforcement officer within the meaning of 18 U. S. C. §926B, the opportunity to
23 participate in firearms qualification the agency provides its own former employees under
24 subsection (b) of this section. Participants shall provide, at their own expense, an appropriate
25 firearm and ammunition and may be charged a fee not to exceed \$50 for such training. Upon
26 completion of the training and payment of any fee, the law-enforcement agency shall issue a
27 certificate which states that the retiree satisfied the training requirements of 18 U. S. C. §926C.