

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 4618

BY DELEGATES SHOTT AND HANSHAW

[Reported February 19, 2018.]

1 A BILL to amend and reenact §61-6-1, §61-6-1a, §61-6-3, §61-6-4, and §61-6-5 of the Code of
2 West Virginia, 1931, as amended, relating to the authority of the Division of Protective
3 Services to compel dispersal of a riot or unlawful assemblage; to the authority of the
4 Division of Protective Services to control riots and unlawful assemblages; to include
5 officers of the Division of Protective Services among those officers on whom the penalty
6 for failure to exercise power at riots and unlawful assemblages may be imposed; allowing
7 Division of Protective Services officers to summon persons to suppress unlawful
8 assemblages; to hold harmless Division of Protective Services officers from liability for the
9 death of persons in riots and unlawful assemblages; and to make technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1. Suppression of riots and unlawful assemblages.

1 All members of the ~~Department of Public Safety~~ West Virginia State Police, or of the
2 Division of Protective Services, all sheriffs within their respective counties and all mayors within
3 their respective jurisdiction, may suppress riots, routs and unlawful assemblages. It shall be the
4 duty of each of them to go among, or as near as may be with safety, to persons riotously,
5 tumultuously, or unlawfully assembled, and in the name of the law command them to disperse;
6 and if they shall not thereupon immediately and peaceably disperse, such member of the
7 ~~Department of Public Safety~~ West Virginia State Police, or of the Division of Protective Services,
8 sheriff or mayor giving the command, and any other present, shall command the assistance of all
9 persons present, and of all or any part of other law-enforcement personnel available to him or
10 her, as need be, in arresting and securing those so assembled. If any person present, on being
11 required to give his or her assistance, depart, or fail to obey, he or she shall be deemed a rioter.

§61-6-1a. Control of riots and unlawful assemblages.

1 Members of the ~~Department of Public Safety~~ West Virginia State Police, or of the Division
2 of Protective Services, sheriffs and mayors, and those acting under their order, may, when

3 engaged in suppressing a riot, rout or unlawful assemblage, cordon off any area or areas
4 threatened by such riot, rout or unlawful assemblage, and may take all actions which are
5 necessary and reasonable under the emergency to restore law and order, and such actions may
6 be, but are not limited to, the following:

7 (a) Prohibit the sale, offering for sale, dispensing, furnishing or transportation of firearms
8 or other dangerous weapons, ammunition, dynamite or other dangerous explosives in, to or from
9 such areas.

10 (b) Prohibit the sale, offering for sale, dispensing, furnishing or consumption of alcoholic
11 beverages or nonintoxicating beer in a public place in such areas, and prohibit the transportation
12 of alcoholic beverages or nonintoxicating beer in, to or from such areas.

13 (c) Impose curfews, as required, to control movement of persons in, to and from such
14 areas.

15 (d) Enter a private dwelling or other building or other private place in such areas when in
16 fresh pursuit of a rioter, when in search of a sniper who has fired upon a person from such a
17 dwelling or other building or place or when in search of firearms, other dangerous weapons,
18 ammunition, dynamite or other dangerous explosives when there is reason to believe that such
19 items are stored in the said dwelling, building or place and that they will be removed therefrom
20 before a search warrant could be obtained.

21 No person shall willfully fail to obey a lawful order of any mayor, sheriff, deputy sheriff,
22 municipal police officer, member of the ~~Department of Public Safety~~ West Virginia State Police,
23 or of the Division of Protective Services, or other officer, given pursuant to this section.

24 Any person who violates an order given pursuant to the authority of this section shall be
25 guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500, or
26 imprisoned in the county jail not more than six months, or both fined and imprisoned.

**§61-6-3. Failure of member of ~~department of public safety~~ West Virginia State Police officer,
officer of the Division of Protective Services, mayor or sheriff to exercise powers at
riots and unlawful assemblages; penalty.**

1 If any member of the ~~Department of Public Safety~~ West Virginia State Police, or of the
2 Division of Protective Services, sheriff or mayor have notice of a riotous, tumultuous, or unlawful
3 assemblage in his or her respective jurisdiction as provided in section one of this article, and fail
4 to proceed immediately to the place of such assemblage, or as near as he or she may safely go,
5 or fail to exercise his or her authority for suppressing it and arresting the offenders, he or she shall
6 be fined not exceeding \$100.

§61-6-4. Summoning of persons to aid in suppressing riots and unlawful assemblages.

1 If any person engaged in such assemblage, being commanded, as hereinbefore provided,
2 to disperse or to peaceably leave the scene of such assemblage, fail to do so without delay, any
3 such member of the ~~Department of Public Safety~~ West Virginia State Police, or of the Division of
4 Protective Services, sheriff or mayor may require the aid of a sufficient number of persons, in
5 arms or otherwise, and proceed, in such manner as he or she may deem expedient, to disperse
6 and suppress such assemblage, and arrest and secure those engaged in it.

§61-6-5. Death of person in suppression of riots and unlawful assemblages.

1 If, by any means taken under the authority of this article to disperse any such assemblage
2 or arrest those engaged in it, any person present, as spectator or otherwise, be killed or wounded,
3 and neither malice, nor premeditation be present, any member of the ~~Department of Public Safety~~
4 West Virginia State Police, or of the Division of Protective Services, sheriff, or mayor exercising
5 such authority, and everyone acting under his or her order, shall be held guiltless; and if the
6 member of the ~~Department of Public Safety~~ West Virginia State Police, or of the Division of
7 Protective Services, sheriff or mayor, or any person acting under the order of either of them, be
8 killed or wounded in taking such means, or by the rioters, all persons engaged in such assemblage
9 shall be deemed guilty of such killing or wounding.

NOTE: The purpose of this bill is to give officers the Division of Protective Services the authority to compel dispersal of a riot or unlawful assemblage, to control riots and unlawful assemblages, to include the penalty on those officers for failure to exercise power at riots and unlawful assemblages, allow them to summon persons to suppress unlawful assemblages, and to insulate Division of Protective Services officers from liability for the death of persons in riots and unlawful assemblages.

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