

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 46

BY SENATOR RUCKER

[Introduced January 8, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §61-7-2 of said code, all relating to defining “pepper spray”; exempting
3 pepper spray from definition of “deadly weapons”; providing that persons over 16 years of
4 age may carry pepper spray for the purpose of self-defense; and providing that such
5 persons may carry pepper spray in the State Capitol Complex.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

1 (a) If any person willfully interrupts or molests the orderly and peaceful process of any
2 department, division, agency, or branch of state government or of its political subdivisions, he or
3 she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100,
4 or confined in jail not more than six months, or both fined and confined: *Provided*, That any
5 assembly in a peaceable, lawful, and orderly manner for a redress of grievances ~~may not be~~ is
6 not a violation of this section.

7 (b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as
8 defined in §61-7-2 of this code: *Provided*, That a person who may lawfully possess a firearm may
9 keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked
10 and the weapon is out of normal view. It is unlawful for any person to willfully deface any trees,
11 wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork, or adornment in
12 the State Capitol Complex: *Provided, however, That a person over the age of 16 years may carry*
13 *pepper spray, used solely for self-defense, in the State Capitol Complex.* It is unlawful for any
14 person or persons to willfully block or otherwise willfully obstruct any public access, stair, or
15 elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his
16 or her official capacity to desist: *Provided however—further*, That in order to preserve the
17 constitutional right of the people to assemble, it is not willful blocking or willful obstruction for

18 persons gathered in a group or crowd if the persons move to the side or part to allow other persons
19 to pass by the group or crowd to gain ingress or egress: *And provided further*, That this subsection
20 does not apply to a law-enforcement officer acting in his or her official capacity.

21 Any person who violates this subsection is guilty of a misdemeanor and, upon conviction
22 thereof, shall be fined not less than \$100 or confined in jail not more than six months, or both
23 fined and confined.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece
3 of lead or some other heavy substance and, at the handle end, a strap or springy shaft which
4 increases the force of impact when a person or object is struck. The term "blackjack" shall include,
5 but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

6 (2) "Gravity knife" means any knife that has a blade released from the handle by the force
7 of gravity or the application of centrifugal force and when so released is locked in place by means
8 of a button, spring, lever, or other locking or catching device.

9 (3) "Knife" means an instrument, intended to be used or readily adaptable to be used as
10 a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to
11 a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term "knife" shall
12 include, but not be limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and
13 one-half inches in length, any switchblade knife or gravity knife and any other instrument capable
14 of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half
15 inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other
16 recreational uses, or a knife designed for use as a tool or household implement shall not be
17 included within the term "knife" as defined herein unless such knife is knowingly used or intended
18 to be used to produce serious bodily injury or death.

19 (4) "Switchblade knife" means any knife having a spring-operated blade which opens
20 automatically upon pressure being applied to a button, catch or other releasing device in its
21 handle.

22 (5) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected
23 by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner
24 as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the
25 other rigid part may be used as the striking end.

26 (6) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece
27 to be worn over the front of the hand for use as a weapon and constructed in such a manner that,
28 when striking another person with the fist or closed hand, considerable physical damage may be
29 inflicted upon the person struck. The terms "metallic or false knuckles" ~~shall~~ include any such
30 instrument without reference to the metal or other substance or substances from which the
31 metallic or false knuckles are made.

32 (7) "Pistol" means a short firearm having a chamber which is integral with the barrel,
33 designed to be aimed and fired by the use of a single hand.

34 (8) "Revolver" means a short firearm having a cylinder of several chambers that are
35 brought successively into line with the barrel to be discharged, designed to be aimed and fired by
36 the use of a single hand.

37 (9) "Deadly weapon" means an instrument which is designed to be used to produce
38 serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" ~~shall~~
39 includes, but is not ~~be~~ limited to, the instruments defined in subdivisions (1) through (8), inclusive,
40 of this section or other deadly weapons of like kind or character which may be easily concealed
41 on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code,
42 in addition to the definition of "knife" set forth in subdivision (3) of this section, the term "deadly
43 weapon" also includes any instrument included within the definition of "knife" with a blade of three
44 and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and
45 §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and

46 radiological materials. Notwithstanding any other provision of this section, the term “deadly
47 weapon” does not include any item or material owned by the school or county board, intended for
48 curricular use, and used by the student at the time of the alleged offense solely for curricular
49 purposes, nor does the term “deadly weapon” include any material defined as pepper spray, which
50 is a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes
51 irritation and blinding of the eyes and inflammation of the nose, throat, and skin, intended for self-
52 defense use, and used by any person over the age of 16 solely for self-defense purposes.

53 (10) “Concealed” means hidden from ordinary observation so as to prevent disclosure or
54 recognition. A deadly weapon is concealed when it is carried on or about the person in such a
55 manner that another person in the ordinary course of events would not be placed on notice that
56 the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee
57 shall be ~~deemed~~ considered to be carrying on or about his or her person while in or on a motor
58 vehicle if the firearm is located in a storage area in or on the motor vehicle.

59 (11) “Firearm” means any weapon which will expel a projectile by action of an explosion.

60 (12) “Controlled substance” has the same meaning as is ascribed to that term in §60A-1-
61 101(d) of this code.

62 (13) “Drug” has the same meaning as is ascribed to that term in §60A-1-101(1) of this
63 code.

NOTE: The purpose of this bill is to define pepper spray and to exclude pepper spray, used by persons over the age of 16 years solely for self-defense, from the defined class of deadly weapons. The bill also provides that such persons may carry pepper spray in the State Capitol Complex.

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