

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 46

SENATOR RUCKER, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on January 13, 2020]

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

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

22 (2) Any person who violates this subsection is guilty of a misdemeanor and, upon
23 conviction thereof, shall be fined not less than \$100, or confined in jail not more than six months,
24 or both 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 includes, but is 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~~ includes, but is not ~~be~~ limited to, any dagger, dirk, poniard, or stiletto, with a blade over
13 three and one-half inches in length, any switchblade knife or gravity knife, and any other
14 instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade
15 three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing,
16 sports, or other recreational uses, or a knife designed for use as a tool or household implement

17 ~~shall~~ is not be included within the term “knife” as defined ~~herein~~ in this subsection unless ~~such~~ the
18 knife is knowingly used or intended 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
24 manner as to allow the rigid parts to swing freely so that one rigid part may be used as a handle
25 and the 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~~ includes any
30 such 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) “Pepper spray” means a temporarily disabling aerosol that is composed partly of
38 capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose,
39 throat, and skin that is intended for self-defense use.

40 ~~(9)~~ (10) “Deadly weapon” means an instrument which is designed to be used to produce
41 serious bodily injury or death or is readily adaptable to such use. The term “deadly weapon” ~~shall~~
42 ~~include~~ includes, but is not ~~be~~ limited to, the instruments defined in subdivisions (1) through (8),

43 inclusive, of this section or other deadly weapons of like kind or character which may be easily
44 concealed on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of
45 this code, in addition to the definition of “knife” set forth in subdivision (3) of this section, the term
46 “deadly weapon” also includes any instrument included within the definition of “knife” with a blade
47 of three and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this
48 code and §61-7-11a of this code, the term “deadly weapon” includes explosive, chemical,
49 biological, and radiological materials. Notwithstanding any other provision of this section, the term
50 “deadly weapon” does not include any item or material owned by the school or county board,
51 intended for curricular use, and used by the student at the time of the alleged offense solely for
52 curricular purposes. The term “deadly weapon” does not include pepper spray as defined in
53 subdivision (9) of this section when used by any person over the age of 16 solely for self-defense
54 purposes.

55 (10) (11) “Concealed” means hidden from ordinary observation so as to prevent disclosure
56 or recognition. A deadly weapon is concealed when it is carried on or about the person in such a
57 manner that another person in the ordinary course of events would not be placed on notice that
58 the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee
59 ~~shall be deemed~~ is considered to be carrying on or about his or her person while in or on a motor
60 vehicle if the firearm is located in a storage area in or on the motor vehicle.

61 (11) (12) “Firearm” means any weapon which will expel a projectile by action of an
62 explosion.

63 (12) (13) “Controlled substance” has the same meaning as is ascribed to that term in
64 ~~subsection (d), section one hundred one, article one, chapter sixty-a~~ §60A-1-101(e) of this code.

65 (13) (14) “Drug” has the same meaning as is ascribed to that term in ~~subsection (1),~~
66 ~~section one hundred one, article one, chapter sixty-a~~ §60A-1-101(m) of this code.