

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2364**

BY DELEGATES SMITH, MARTIN, MANDT, J. JEFFRIES,

HORST AND WAMSLEY

[Introduced February 13, 2021; Referred to the  
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating  
 2 to possessing deadly weapons on premises of educational facilities; and authorizing  
 3 teachers in elementary or secondary schools to carry concealed firearms and be  
 4 designated as a school protection officer.

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

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; teachers in elementary or secondary schools may carry concealed firearms; designation as school protection officer; suspension of driver’s license; possessing deadly weapons on premises housing courts of law and family law courts.**

1 (a) The Legislature finds that the safety and welfare of the citizens of this state are  
 2 inextricably dependent upon assurances of safety for children attending and persons employed  
 3 by schools in this state and for persons employed by the judicial department of this state. It is for  
 4 the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h),  
 5 of this code and §61-7-11a(b)(2)(l) of this code are enacted as a reasonable regulation of the  
 6 manner in which citizens may exercise the rights accorded to them pursuant to section 22, article  
 7 III of the Constitution of the State of West Virginia.

8 (b) (1) It is unlawful to possess a firearm or other deadly weapon:

9 (A) On a school bus as defined in §17A-1-1 of this code;

10 (B) In or on the grounds of any primary or secondary educational facility of any type:  
 11 Provided, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the  
 12 grounds of any private primary or secondary school, if such institution has adopted a written policy  
 13 allowing for possession of firearms or other deadly weapons in the facility or on the grounds  
 14 thereof;

15 (C) At a school-sponsored function that is taking place in a specific area that is owned,

16 rented, or leased by the West Virginia Department of Education, the West Virginia Secondary  
17 Schools Activities Commission, a county school board, or local public school for the actual period  
18 of time the function is occurring.

19 (2) This subsection does not apply to:

20 (A) A law-enforcement officer employed by a federal, state, county, or municipal law-  
21 enforcement agency;

22 (B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code in the  
23 performance of his or her duties;

24 (C) A retired law-enforcement officer who meets all the requirements to carry a firearm as  
25 a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004,  
26 as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and  
27 has on their person official identification in accordance with that act;

28 (D) A person, other than a student of a primary and secondary facility, specifically  
29 authorized by the board of education of the county or principal of the school where the property  
30 is located to conduct programs with valid educational purposes;

31 (E) A person who, as otherwise permitted by the provisions of this article, possesses an  
32 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly  
33 weapon in a locked motor vehicle;

34 (F) Programs or raffles conducted with the approval of the county board of education or  
35 school which include the display of unloaded firearms;

36 (G) The official mascot of West Virginia University, commonly known as the Mountaineer,  
37 acting in his or her official capacity;

38 (H) The official mascot of Parkersburg South High School, commonly known as the Patriot,  
39 acting in his or her official capacity; or

40 (I) Any person, 21 years old or older, who has a valid concealed handgun permit may  
41 possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas

42 of vehicular ingress or egress to a public school: Provided, That:

43 (i) When he or she is occupying the vehicle, the person stores the handgun out of view  
44 from persons outside the vehicle; or

45 (ii) When he or she is not occupying the vehicle, the person stores the handgun out of  
46 view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or  
47 other interior compartment, or in a locked trunk, or in a locked container securely fixed to the  
48 vehicle.

49 (J) Teachers, Administrators designated as School Protection Officers.

50 (i) Any school district within the state may designate one or more elementary or secondary  
51 school teachers or administrators as a protection officer. The responsibilities and duties of a  
52 school protection officer are voluntary and shall be in addition to the normal responsibilities and  
53 duties of the teacher or administrator.

54 (ii) Any person designated by a school district as a school protection officer shall be  
55 authorized to carry concealed firearms or a self-defense spray device in any school in the district.  
56 A self-defense spray device shall mean any device that is capable of carrying, and that ejects,  
57 releases, or emits, a nonlethal solution capable of incapacitating a violent threat. The school  
58 protection officer may not be permitted to allow any firearm or device out of his or her personal  
59 control while that firearm or device is on school property. Any school protection officer who  
60 violates this subsection may be removed immediately from the classroom and subject to  
61 employment termination proceedings.

62 (iii) Any teacher or administrator of an elementary or secondary school who seeks to be  
63 designated as a school protection officer shall request that designation in writing, and submit it to  
64 the superintendent of the school district which employs him or her as a teacher or administrator.  
65 Along with this request, any teacher or administrator seeking to carry a concealed firearm on  
66 school property shall also submit proof that he or she has a valid concealed carry endorsement  
67 or permit, and all teachers and administrators seeking the designation of school protection officer

68 shall submit a certificate of a school protection officer training program completion from a training  
69 program approved by the West Virginia Department of Homeland Security which demonstrates  
70 that the person has successfully completed the training requirements for the Prevention Resource  
71 Officer Program (PRO) established by the West Virginia Department of Homeland Security  
72 Division of Justice and Community Services. No school district may designate a teacher or  
73 administrator as a school protection officer unless that person has successfully completed the  
74 PRO training program. No school district may allow a school protection officer to carry a  
75 concealed firearm on school property unless the school protection officer has a valid concealed  
76 carry endorsement or permit.

77 (iv) Any school district that designates a teacher or administrator as a school protection  
78 officer shall, within 30 days, notify, in writing, the director of the West Virginia Department of  
79 Homeland Security of the designation, which shall include the following:

80 (1) The full name, date of birth, and address of the officer.

81 (2) The name of the school district, and

82 (3) The date the person was designated as a school protection officer.

83 Notwithstanding any other provisions of law to the contrary, any identifying information  
84 collected under the authority of this subsection may not be considered public information and may  
85 not be subject to a request for public records.

86 (v) A school district may revoke the designation of a person as a school protection officer  
87 for any reason and shall immediately notify the designated school protection officer in writing of  
88 the revocation. The school district shall also within 30 days of the revocation notify the director  
89 of the West Virginia Department of Homeland Security in writing of the revocation of the  
90 designation of such person as a school protection officer. A person who has had the designation  
91 of school protection officer revoked has the right to appeal the revocation decision to the director  
92 of the West Virginia Department of Homeland Security who has final decision authority.

93 (vi) The director of the West Virginia Department of Homeland Security shall maintain a

94 listing of all persons designated by school districts as school protection officers and shall make  
95 this list available to all law-enforcement agencies.

96 (vii) Before a school district may designate a teacher or administrator as a school  
97 protection officer, the school board shall hold a public hearing on whether to allow that  
98 designation. Notice of the hearing shall be published at least 15 days before the date of the  
99 hearing in a newspaper of general circulation within the city or county in which the school district  
100 is located.

101 (3) A person violating this subsection is guilty of a felony and, upon conviction thereof,  
102 shall be imprisoned in a state correctional facility for a definite term of years of not less than two  
103 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

104 (c) A school principal subject to the authority of the State Board of Education who  
105 discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

106 (1) The State Superintendent of Schools. The State Board of Education shall keep and  
107 maintain these reports and may prescribe rules establishing policy and procedures for making  
108 and delivering the reports as required by this subsection; and

109 (2) The appropriate local office of the State Police, county sheriff or municipal police  
110 agency.

111 (d) In addition to the methods of disposition provided by §49-5-1 et seq. of this code, a  
112 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of  
113 §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver's license  
114 or instruction permit issued to the person for a period of time as the court considers appropriate,  
115 not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's  
116 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny  
117 the person's application for a license or permit for a period of time as the court considers  
118 appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the  
119 court pursuant to this subsection is effective upon the date of entry of the order. Where the court

120 orders the suspension of a driver's license or instruction permit pursuant to this subsection, the  
121 court shall confiscate any driver's license or instruction permit in the adjudicated person's  
122 possession and forward to the Division of Motor Vehicles.

123 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this  
124 code and if the person does not act to appeal the conviction within the time periods described in  
125 §61-7-11a(e)(2) of this code, the person's license, or privilege to operate a motor vehicle in this  
126 state shall be revoked in accordance with the provisions of this section.

127 (2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1)  
128 of this code shall forward to the commissioner a transcript of the judgment of conviction. If the  
129 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the  
130 transcript when the person convicted has not requested an appeal within 20 days of the  
131 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk  
132 shall forward a transcript of the judgment of conviction when the person convicted has not filed a  
133 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was  
134 entered.

135 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner  
136 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the  
137 commissioner shall make and enter an order revoking the person's license or privilege to operate  
138 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled  
139 in a secondary school, for a period of one year or until the person's 20th birthday, whichever is  
140 the greater period. The order shall contain the reasons for the revocation and the revocation  
141 period. The order of suspension shall advise the person that because of the receipt of the court's  
142 transcript, a presumption exists that the person named in the order of suspension is the same  
143 person named in the transcript. The commissioner may grant an administrative hearing which  
144 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a  
145 preliminary showing that a possibility exists that the person named in the notice of conviction is

146 not the same person whose license is being suspended. The request for hearing shall be made  
147 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing  
148 is for the person requesting the hearing to present evidence that he or she is not the person  
149 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall  
150 stay the license suspension pending the commissioner's order resulting from the hearing.

151 (4) For the purposes of this subsection, a person is convicted when he or she enters a  
152 plea of guilty or is found guilty by a court or jury.

153 (f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of  
154 age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable  
155 cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to  
156 immediately report his or her knowledge or belief to the appropriate school or law-enforcement  
157 officials.

158 (2) A person violating this subsection is guilty of a misdemeanor and, upon conviction  
159 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,  
160 or both fined and confined.

161 (g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the  
162 premises of a court of law, including family courts.

163 (2) This subsection does not apply to:

164 (A) A law-enforcement officer acting in his or her official capacity; and

165 (B) A person exempted from the provisions of this subsection by order of record entered  
166 by a court with jurisdiction over the premises or offices.

167 (3) A person violating this subsection is guilty of a misdemeanor and, upon conviction  
168 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,  
169 or both fined and confined.

170 (h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the  
171 premises of a court of law, including family courts, with the intent to commit a crime.



172           (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,  
173 shall be imprisoned in a state correctional facility for a definite term of years of not less than two  
174 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

175           (i) Nothing in this section may be construed to be in conflict with the provisions of federal  
176 law.

NOTE: The purpose of this bill is to authorize teachers in elementary or secondary schools to carry concealed firearms and be designated as a school protection officer.

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