

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 419

BY SENATORS SYPOLT, WOODRUM, MAYNARD, PHILLIPS,

AND RUCKER

[Originating in the Committee on the Judiciary;

reported on March 24, 2021]

1 A BILL to amend and reenact §61-7-2 of the Code of West Virginia, 1931, as amended, relating
2 to definitions of dangerous weapons; defining “antique firearm”; and redefining “firearm”
3 so as not to be more restrictive than the federal definition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

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

2 (1) “Antique firearm” means:

3 (A) Any firearm, including, but not limited to, a firearm with a match lock, flintlock,
4 percussion cap, or similar type of ignition system which was manufactured on or before 1898;

5 (B) Any replica of any firearm described in paragraph (A) of this subdivision if such replica
6 is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition which is
7 no longer manufactured in the United States and which is not readily available in the ordinary
8 channels of commercial trade; and

9 (C) Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol, which is
10 designed to use black powder, or black powder substitute, and which cannot use fixed
11 ammunition. For purposes of this subdivision, the term “antique firearm” shall not include any
12 weapon which includes a firearm frame or receiver, any firearm which is converted into a muzzle-
13 loading weapon, or any muzzle-loading weapon which can be readily converted to fire fixed
14 ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

15 (2) “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece
16 of lead or some other heavy substance and, at the handle end, a strap or springy shaft which
17 increases the force of impact when a person or object is struck. The term “blackjack” includes,
18 but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

19 (3) “Concealed” means hidden from ordinary observation so as to prevent disclosure or
20 recognition. A deadly weapon is concealed when it is carried on or about the person in such a

21 manner that another person in the ordinary course of events would not be placed on notice that
22 the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee
23 is considered to be carrying on or about his or her person while in or on a motor vehicle if the
24 firearm is located in a storage area in or on the motor vehicle.

25 (4) "Controlled substance" has the same meaning as is ascribed to that term in §60A-1-
26 101(e) of this code.

27 (5) "Deadly weapon" means an instrument which is designed to be used to produce
28 serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon"
29 includes, but is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of
30 this section or other deadly weapons of like kind or character which may be easily concealed on
31 or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in
32 addition to the definition of "knife" set forth in subdivision (9) of this subsection, the term "deadly
33 weapon" also includes any instrument included within the definition of "knife" with a blade of three
34 and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and
35 §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and
36 radiological materials. Notwithstanding any other provision of this section, the term "deadly
37 weapon" does not include any item or material owned by the school or county board, intended for
38 curricular use, and used by the student at the time of the alleged offense solely for curricular
39 purposes. The term "deadly weapon" does not include pepper spray as defined in ~~subdivision (9)~~
40 ~~of~~ subdivision (12) of this subsection when used by any person over the age of 16 solely for self-
41 defense purposes.

42 (6) "Drug" has the same meaning as is ascribed to that term in §60A-1-101(m) of this code.

43 (7) "Firearm" means any weapon which will expel a projectile by action of an explosion:
44 Provided, That it does not mean an antique firearm as defined in subdivision (1) of this subsection.

45 (8) “Gravity knife” means any knife that has a blade released from the handle by the force
46 of gravity or the application of centrifugal force and when released is locked in place by means
47 of a button, spring, lever, or other locking or catching device.

48 (9) “Knife” means an instrument, intended to be used or readily adaptable to be used as
49 a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to
50 a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term “knife”
51 includes, but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and
52 one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable
53 of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half
54 inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other
55 recreational uses, or a knife designed for use as a tool or household implement is not included
56 within the term “knife” as defined in this subdivision unless the knife is knowingly used or intended
57 to be used to produce serious bodily injury or death.

58 (10) “Metallic or false knuckles” means a set of finger rings attached to a transverse piece
59 to be worn over the front of the hand for use as a weapon and constructed in such a manner that,
60 when striking another person with the fist or closed hand, considerable physical damage may be
61 inflicted upon the person who was struck. The terms “metallic or false knuckles” includes any such
62 instrument without reference to the metal or other substance or substances from which the
63 metallic or false knuckles are made.

64 (11) “Nunchaku” means a flailing instrument consisting of two or more rigid parts,
65 connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in
66 ~~such a manner as to allow~~ that allows the rigid parts to swing freely so that one rigid part may be
67 used as a handle and the other rigid part may be used as the striking end.

68 (12) “Pepper spray” means a temporarily disabling aerosol that is composed partly of
69 capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose,
70 throat, and skin that is intended for self-defense use.

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

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

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