

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2362

By Delegate Holstein

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §61-7-11a of said code, all relating to permitting circuit court judges to
 3 carry a concealed firearm for self-defense purposes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judicial circuits with the following number of
 2 judges:

3 (1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall
 4 have four judges;

5 (2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall
 6 have two judges;

7 (3) The counties of Doddridge, Pleasants, and Ritchie shall constitute the third circuit and
 8 shall have one judge;

9 (4) The counties of Wood and Wirt shall constitute the fourth circuit and shall have three
 10 judges;

11 (5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit
 12 and shall have two judges: *Provided*, That effective January 1, 2017, said circuit court shall have
 13 three judges; said additional circuit judge to be elected at the regularly scheduled election(s) to be
 14 held in the year 2016 and every eighth year thereafter;

15 (6) The county of Cabell shall constitute the sixth circuit and shall have four judges;

16 (7) The county of Logan shall constitute the seventh circuit and shall have two judges;

17 (8) The county of McDowell shall constitute the eighth circuit and shall have two judges;

18 (9) The county of Mercer shall constitute the ninth circuit and shall have three judges;

19 (10) The county of Raleigh shall constitute the tenth circuit and shall have three judges:

20 *Provided*, That effective January 1, 2017, said circuit court shall have four judges; said additional
21 circuit judge to be elected at the regularly scheduled election(s) to be held in the year 2016 and
22 every eighth year thereafter;

23 (11) The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and
24 shall have two judges;

25 (12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

26 (13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven
27 judges;

28 (14) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the fourteenth
29 circuit and shall have two judges;

30 (15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

31 (16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

32 (17) The county of Monongalia shall constitute the seventeenth circuit and shall have three
33 judges;

34 (18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

35 (19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall
36 have one judge: *Provided*, That effective January 1, 2019, said circuit court shall have two judges;
37 said additional circuit judge to be appointed by the Governor and subsequently elected at the next
38 scheduled primary election to be held in 2020 for the unexpired term pursuant to §3-10-3 of this
39 code: *Provided, however*, That said additional circuit judge shall thereafter be elected at the
40 regularly scheduled election(s) to be held in the year 2024 and every eighth year thereafter;

41 (20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

42 (21) The counties of Grant, Mineral, and Tucker shall constitute the twenty-first circuit and
43 shall have two judges;

44 (22) The counties of Hampshire, Hardy, and Pendleton shall constitute the twenty-second
45 circuit and shall have two judges;

46 (23) The counties of Berkeley, Jefferson, and Morgan shall constitute the twenty-third
47 circuit and shall have five judges: *Provided*, That effective January 1, 2017, said circuit court shall
48 have six judges; said additional circuit judge to be elected at the regularly scheduled election(s) to
49 be held in the year 2016 and every eighth year thereafter;

50 (24) The county of Wayne shall constitute the twenty-fourth circuit and shall have two
51 judges;

52 (25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall
53 have two judges;

54 (26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall
55 have one judge: *Provided*, That effective January 1, 2017, said circuit court shall have two judges;
56 said additional circuit judge to be elected at the regularly scheduled election(s) to be held in the
57 year 2016 and every eighth year thereafter;

58 (27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one
59 judge;

60 (28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one
61 judge;

62 (29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two
63 judges;

64 (30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

65 (31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall
66 have one judge.

67 (b) The Kanawha County circuit court shall be a court of concurrent jurisdiction with each
68 single judge circuit where the sitting judge in the single judge circuit is unavailable by reason of
69 sickness, vacation, or other reason.

70 (c) Any judge in office on the effective date of the reenactment of this section shall continue
71 as a judge of the circuit as constituted under prior enactments of this section, unless sooner
72 removed or retired as provided by law, until December 31, 2016.

73 (d) The term of office of all circuit court judges shall be for eight years. The term of office for
74 all circuit court judges elected during an election conducted in the year 2016 shall commence on
75 January 1, 2017, and end on December 31, 2024.

76 (e) For election purposes, in every judicial circuit having two or more judges there shall be
77 numbered divisions corresponding to the number of circuit judges in each circuit. Each judge shall
78 be elected at large from the entire circuit. In each numbered division of a judicial circuit, the
79 candidates for nomination or election shall be voted upon, and the votes cast for the candidates in
80 each division shall be tallied separately from the votes cast for candidates in other numbered
81 divisions within the circuit. The candidate receiving the highest number of the votes cast within a
82 numbered division shall be nominated or elected, as the case may be.

83 (f) Judges serving a judicial circuit comprised of four or more counties with two or more
84 judges shall not be residents of the same county.

85 (g) The Supreme Court of Appeals shall, by rule, establish the terms of court of circuit
86 judges.

87 (h) Judges may carry a concealed firearm for self-defense purposes and shall regularly
88 qualify in the use of a firearm with standards therefor which are equal to or exceed those required
89 of sheriff's deputies in the county in which the judge was elected or appointed.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; 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 by
3 schools in this state and for persons employed by the judicial department of this state. It is for the
4 purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of
5 this code and §61-7-11a(b)(2)(l) of this code are enacted as a reasonable regulation of the manner
6 in which citizens may exercise the rights accorded to them pursuant to section 22, article III of the
7 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 a
25 qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as
26 amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and has on

27 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 is
30 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 from
44 persons outside the vehicle; or

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

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

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

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

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

58 (d) In addition to the methods of disposition provided by §49-5-1 et seq. of this code, a
59 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of
60 §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver's license or
61 instruction permit issued to the person for a period of time as the court considers appropriate, not
62 to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's
63 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
64 the person's application for a license or permit for a period of time as the court considers
65 appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the
66 court pursuant to this subsection is effective upon the date of entry of the order. Where the court
67 orders the suspension of a driver's license or instruction permit pursuant to this subsection, the
68 court shall confiscate any driver's license or instruction permit in the adjudicated person's
69 possession and forward to the Division of Motor Vehicles.

70 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code
71 and if the person does not act to appeal the conviction within the time periods described in §61-7-
72 11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this state shall
73 be revoked in accordance with the provisions of this section.

74 (2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1)
75 of this code shall forward to the commissioner a transcript of the judgment of conviction. If the
76 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
77 transcript when the person convicted has not requested an appeal within 20 days of the
78 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk

79 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
80 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was
81 entered.

82 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
83 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the
84 commissioner shall make and enter an order revoking the person's license or privilege to operate
85 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
86 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is
87 the greater period. The order shall contain the reasons for the revocation and the revocation
88 period. The order of suspension shall advise the person that because of the receipt of the court's
89 transcript, a presumption exists that the person named in the order of suspension is the same
90 person named in the transcript. The commissioner may grant an administrative hearing which
91 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a
92 preliminary showing that a possibility exists that the person named in the notice of conviction is not
93 the same person whose license is being suspended. The request for hearing shall be made within
94 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for
95 the person requesting the hearing to present evidence that he or she is not the person named in
96 the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the
97 license suspension pending the commissioner's order resulting from the hearing.

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

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

104 (2) A person violating this subsection is guilty of a misdemeanor and, upon conviction

105 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or
106 both fined and confined.

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

109 (2) This subsection does not apply to:

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

111 (B) A person exempted from the provisions of this subsection by order of record entered by
112 a court with jurisdiction over the premises or offices; and

113 (C) A circuit court judge, pursuant to §51-2-1 of this code.

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

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

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

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

NOTE: The purpose of this bill is to permit circuit court judges to carry a concealed firearm for self-defense purposes.

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