

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5135

By Delegates Horst, Howell, McGeehan, Summers,
Kimble, Thorne, Espinosa, Householder, Phillips,
Crouse, and Hite

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Committee on the Judiciary]

19 of lead or some other heavy substance and, at the handle end, a strap or springy shaft which
20 increases the force of impact when a person or object is struck. The term "blackjack" includes, but
21 is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

22 (3) "Concealed" means hidden from ordinary observation so as to prevent disclosure or
23 recognition. A deadly weapon is concealed when it is carried on or about the person in such a
24 manner that another person in the ordinary course of events would not be placed on notice that the
25 deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee is
26 considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm
27 is located in a storage area in or on the motor vehicle.

28 (4) "Controlled substance" has the same meaning as is ascribed to that term in §60A-1-
29 101(e) of this code.

30 (5) "Deadly weapon" means an instrument which is designed to be used to produce
31 serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon"
32 includes, but is not limited to, the instruments defined in subdivisions (1), (2), (5), (7), (8), (9), (10),
33 (11), (12), (13), (14), and (15), inclusive, of this section or other deadly weapons of like kind or
34 character which may be easily concealed on or about the person. For the purposes of §18A-5-1a
35 of this code and §61-7-11a of this code, in addition to the definition of "knife" set forth in subdivision
36 (9) of this subsection, the term "deadly weapon" also includes any instrument included within the
37 definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the
38 purposes of §18A-5-1a of this code and §61-7-11a of this code, the term "deadly weapon" includes
39 explosive, chemical, biological, and radiological materials. Notwithstanding any other provision of
40 this section, the term "deadly weapon" does not include any item or material owned by the school
41 or county board, intended for curricular use, and used by the student at the time of the alleged
42 offense solely for curricular purposes. The term "deadly weapon" does not include pepper spray
43 as defined in subdivision (12) of this subsection when used by any person solely for self-defense
44 purposes.

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

46 ~~(7)~~ "Firearm" means any weapon which will expel a projectile by action of an explosion:

47 *Provided*, That it does not mean an antique firearm as defined in ~~subdivision (1)~~ of this subsection;

48 except for the purposes of §48-27-502 of this code.

49 ~~(8)~~ "Gravity knife" means any knife that has a blade released from the handle by the force

50 of gravity or the application of centrifugal force and when released is locked in place by means of a

51 button, spring, lever, or other locking or catching device.

52 ~~(9)~~ "Knife" means an instrument, intended to be used or readily adaptable to be used as a

53 weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a

54 handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term "knife" includes,

55 but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and one-half

56 inches in length, any switchblade knife or gravity knife, and any other instrument capable of

57 inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half

58 inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other

59 recreational uses, or a knife designed for use as a tool or household implement is not included

60 within the term "knife" as defined in this subdivision unless the knife is knowingly used or intended

61 to be used to produce serious bodily injury or death.

62 ~~(10)~~ "Metallic or false knuckles" means a set of finger rings attached to a transverse piece

63 to be worn over the front of the hand for use as a weapon and constructed in such a manner that,

64 when striking another person with the fist or closed hand, considerable physical damage may be

65 inflicted upon the person who was struck. The terms "metallic or false knuckles" includes any such

66 instrument without reference to the metal or other substance or substances from which the

67 metallic or false knuckles are made.

68 ~~(11)~~ "Nunchaku" means a flailing instrument consisting of two or more rigid parts,

69 connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in a

70 manner that allows the rigid parts to swing freely so that one rigid part may be used as a handle

71 and the other rigid part may be used as the striking end.

72 (12) "Pepper spray" means a temporarily disabling aerosol that is composed partly of
73 capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose,
74 throat, and skin that is intended for self-defense use.

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

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

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

**§61-7-3. Carrying a deadly weapon without provisional license or other authorization by
persons under ~~twenty-one~~ eighteen years of age; penalties.**

1 (a) Any person under ~~twenty-one~~ eighteen years of age and not otherwise prohibited from
2 possessing firearms under section seven of this article who carries a concealed deadly weapon,
3 without a state license or other lawful authorization established under the provisions of this code,
4 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more
5 than \$1,000 and may be imprisoned in jail for not more than twelve months for the first offense; but
6 upon conviction of a second or subsequent offense, he or she is guilty of a felony and, upon
7 conviction thereof, shall be imprisoned in t a state correctional facility not less than one nor more
8 than five years and fined not less than \$1,000 nor more than \$5,000.

9 (b) The prosecuting attorney in all cases shall ascertain whether or not the charge made
10 by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or
11 subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney
12 shall introduce the record evidence before the trial court of such second or subsequent offense

13 and may not be permitted to use discretion in introducing evidence to prove the same on the trial.

~~§61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age; exemptions~~

Exemptions from licensing fees.

1 ~~(a) The provisions in section three of this article do not apply to any person at least~~
2 ~~eighteen years of age and fewer than twenty-one years of age who is:~~

3 ~~(1) Carrying a deadly weapon upon his or her own premises;~~

4 ~~(2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence~~
5 ~~or place of business or to a place of repair and back to his or her home, residence or place of~~
6 ~~business; or~~

7 ~~(3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her~~
8 ~~home, residence or place of business to a hunting site and returning to his or her home, residence~~
9 ~~or place of business;~~

10 ~~(4) A member of a properly organized target shooting club authorized by law to obtain~~
11 ~~firearms by purchase or requisition from this state or from the United States for the purpose of~~
12 ~~target practice from carrying any pistol, as defined in this article, unloaded, from his or her home,~~
13 ~~residence or place of business to a place of target practice and from any place of target practice~~
14 ~~back to his or her home, residence or place of business, for using any such weapon at a place of~~
15 ~~target practice in training and improving his or her skill in the use of the weapons;~~

16 ~~(5) A law enforcement officer or law enforcement official or chief executive as defined in~~
17 ~~section one, article twenty-nine, chapter thirty of this code;~~

18 ~~(6) An employee of the West Virginia Division of Corrections duly appointed pursuant to~~
19 ~~section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;~~

20 ~~(7) A member of the United States armed forces, reserve or National Guard;~~

21 ~~(8) A resident of another state who holds a valid permit or license to possess or carry a~~
22 ~~handgun issued by a state or a political subdivision subject to the provisions and limitations set~~

23 ~~forth in section six-a of this article;~~

24 ~~(9) A federal law enforcement officer or federal police officer authorized to carry a weapon~~
25 ~~in the performance of the officer's duty; and~~

26 ~~(10) A parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-~~
27 ~~two of this code in the performance of his or her duties.~~

28 (b) The following judicial officers and prosecutors and staff are exempt from paying any
29 application fees or licensure fees required under this article. However, they shall make application
30 and satisfy all licensure and handgun safety and training requirements to obtain a license as set
31 forth in section four of this article:

32 (1) Any justice of the Supreme Court of Appeals of West Virginia;

33 (2) Any circuit judge;

34 (3) Any retired justice or retired circuit judge designated senior status by the Supreme
35 Court of Appeals of West Virginia;

36 (4) Any family court judge;

37 (5) Any magistrate;

38 (6) Any prosecuting attorney;

39 (7) Any assistant prosecuting attorney; or

40 (8) Any duly appointed investigator employed by a prosecuting attorney.

§61-7-7. Persons prohibited from possessing firearms; classifications; right of nonprohibited persons over ~~twenty-one~~ eighteen years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.

1 (a) Except as provided in this section, no person shall possess a firearm, as such is defined
2 in ~~section two of this article~~ §61-7-2, who:

3 (1) Has been convicted in any court of a crime punishable by imprisonment for a term
4 exceeding one year;

5 (2) Is habitually addicted to alcohol;

6 (3) Is an unlawful user of or habitually addicted to any controlled substance;

7 (4) Has been adjudicated to be mentally incompetent or who has been involuntarily
8 committed to a mental institution pursuant to the provisions of ~~chapter twenty-seven of this code~~
9 §27-1-1 et seq. of this code or in similar law of another jurisdiction: *Provided*, That once an
10 individual has been adjudicated as a mental defective or involuntarily committed to a mental
11 institution, he or she shall be duly notified that they are to immediately surrender any firearms in
12 their ownership or possession: *Provided, however*, That the mental hygiene commissioner or
13 circuit judge shall first make a determination of the appropriate public or private individual or entity
14 to act as conservator for the surrendered property;

15 (5) Is an alien illegally or unlawfully in the United States;

16 (6) Has been discharged from the armed forces under dishonorable conditions;

17 (7) Is subject to a domestic violence protective order that:

18 (A) Was issued after a hearing of which such person received actual notice and at which
19 such person had an opportunity to participate;

20 (B) Restrains such person from harassing, stalking or threatening an intimate partner of
21 such person or child of such intimate partner or person, or engaging in other conduct that would
22 place an intimate partner in reasonable fear of bodily injury to the partner or child; and

23 (C)(i) Includes a finding that such person represents a credible threat to the physical safety
24 of such intimate partner or child; or

25 (ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical
26 force against such intimate partner or child that would reasonably be expected to cause bodily
27 injury; or

28 (8) Has been convicted of a misdemeanor offense of assault or battery either under the
29 provisions of ~~section twenty-eight, article two of this chapter~~ §61-2-28 of this code or the provisions
30 of ~~subsection (b) or (c), section nine of said article~~ §61-2-9(b) or §61-2-9(c) of this code or a federal

31 or state statute with the same essential elements in which the victim was a current or former
32 spouse, current or former sexual or intimate partner, person with whom the defendant has a child
33 in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the
34 defendant's child or ward or a member of the defendant's household at the time of the offense or
35 has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of
36 domestic violence.

37 Any person who violates the provisions of this subsection shall be guilty of a misdemeanor
38 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in
39 the county jail for not less than 90 days nor more than one year, or both.

40 (b) Notwithstanding the provisions of subsection (a) of this section, any person:

41 (1) Who has been convicted in this state or any other jurisdiction of a felony crime of
42 violence against the person of another or of a felony sexual offense; or

43 (2) Who has been convicted in this state or any other jurisdiction of a felony controlled
44 substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II
45 or a Schedule III controlled substance as such are defined in ~~sections two hundred four, two~~
46 ~~hundred five and two hundred six, article two, chapter sixty-a of this code~~ §60A-2-204, §60A-2-
47 205, and §60A-2-206 of this code and who possesses a firearm as such is defined in section two of
48 this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state
49 correctional facility for not more than five years or fined not more than \$5,000, or both. The
50 provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred
51 to in this subsection or to persons convicted of a violation of this subsection.

52 (c) Any person may carry a concealed deadly weapon without a license therefor who is:

53 (1) At least ~~twenty-one~~ eighteen years of age;

54 (2) A United States citizen or legal resident thereof;

55 (3) Not prohibited from possessing a firearm under the provisions of this section; and

56 (4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g) or

57 (n).

58 (d) As a separate and additional offense to the offense provided for in subsection (a) of this
59 section, and in addition to any other offenses outlined in this code, and except as provided by
60 subsection (e) of this section, any person prohibited by subsection (a) of this section from
61 possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction
62 thereof, shall be confined in a state correctional facility for not more than three years or fined not
63 more than \$5,000, or both.

64 (e) As a separate and additional offense to the offense described in subsection (b) of this
65 section, and in addition to any other offenses outlined in this code, any person prohibited by
66 subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty of
67 a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more
68 than ten years or fined not more than \$10,000, or both.

69 (f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of
70 this section may petition the circuit court of the county in which he or she resides to regain the
71 ability to possess a firearm and if the court finds by clear and convincing evidence that the person
72 is competent and capable of exercising the responsibility concomitant with the possession of a
73 firearm, the court may enter an order allowing the person to possess a firearm if such possession
74 would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm by
75 the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to
76 possess a firearm in accordance with the provisions of ~~section five, article seven-a of this chapter~~
77 §61-7A-5 of this code.

78 (g) Any person who has been convicted of an offense which disqualifies him or her from
79 possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set
80 aside or who subsequent thereto receives an unconditional pardon for said offense shall not be
81 prohibited from possessing a firearm by the provisions of the section.

NOTE: The purpose of this bill is to add a definition of the term "ammunition" relating to the requirements for obtaining a state permit to carry a concealed deadly weapon pursuant to the provisions of §61-7-4 of this code. The bill allows those persons 18-20 years of age to be permitted to carry a deadly weapon, as those persons 21 and over are currently permitted to do.

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