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FORTY-NINTH DAY

Tuesday, March 30, 2021

FORTY-NINTH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Monday, March 29, 2021, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for H. B. 3309, on second reading, Special Calendar, had been transferred to the House Calendar; and H. B. 2493 and Com. Sub. for H. B. 2675, on Third reading, House Calendar, had been transferred to the Special Calendar.

Committee Reports

Mr. Speaker (Mr. Hanshaw), Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 21, SP4 Dennis Harvey Roberts Bridge, McDowell County,

Com. Sub. for H. C. R. 55, Studying the viability of creating a veterinary school in West Virginia,

And,

H. C. R. 78, Requesting an examination of juvenile proceedings,

And reports the same back with the recommendation that they each be adopted.

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

Com. Sub. for S. B. 610, Providing tuition and fee waivers at state higher education institutions for volunteers who have completed service in AmeriCorps programs in WV,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 610) was referred to the Committee on Finance.

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

Com. Sub. for S. B. 375, Relating to county boards of education policies for open enrollment,

And reports the same back, with amendment, with the recommendation that it do pass, as amended.

Delegate Linville, Chair of the Committee on Technology and Infrastructure submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

Com. Sub. for S. B. 346, Authorizing DMV use electronic means when providing notice for licensees and vehicle owners,

And reports the same back with the recommendation that it do pass, and with the recommendation that second reference to the Committee on Government Organization be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for S. B. 346) to the Committee on Government Organization was abrogated.

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

S. B. 374, Increasing threshold for bid requirement to \$10,000 to be consistent with other state agencies,

Com. Sub. for S. B. 389, Relating to State Resiliency Office responsibility to plan for emergency and disaster response, recovery, and resiliency,

Com. Sub. for S. B. 421, Authorizing Workforce West Virginia to hire at-will employees,

Com. Sub. for S. B. 429, Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts,

S. B. 463, Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit,

Com. Sub. for S. B. 472, Updating criteria for regulating certain occupations and professions,

And,

Com. Sub. for S. B. 587, Making contract consummation with state more efficient,

And reports the same back with the recommendation that they each do pass.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

H. B. 2022, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2022 - "A Bill making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution,"

With the recommendation that the committee substitute do pass.

Delegate Capito, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

Com. Sub. for S. B. 80, Allowing for administration of certain small estates by affidavit and without appointment of personal representative,

And,

Com. Sub. for S. B. 81, Relating generally to WV Uniform Trust Code,

And reports the same back with the recommendation that they each do pass.

Delegate D. Jeffries, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of March, 2021, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

Com. Sub. for S. B. 9, Continuing Licensed Racetrack Modernization Fund,

S. B. 10, Modifying racetrack licensing due date,

And,

S. B. 305, Providing exemption from consumers sales and service tax for certain aircraft maintenance.

Delegate D. Jeffries, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of March, 2021, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

Com. Sub. for S. B. 517, Relating to sunset provisions of legislative rules.

Messages from the Executive

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on March 29, 2021, he approved **Com. Sub. for S. B. 5**, **Com. Sub. for S. B. 42** and **Com. Sub. for S. B. 523**.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2290, Initiating a State Employment First Policy to facilitate integrated employment of disabled persons.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 10Q. EMPLOYMENT FIRST POLICY.

§18-10Q-1. Legislative findings.

The Legislature finds a need to create a state initiative to promote competitive, integrated, and customized employment opportunities for disabled citizens using publicly funded services regardless of the individual’s level of disability. The state Employment First Policy initiative is intended to promote the expectation that individuals with intellectual, developmental, and other disabilities are valued members of the workforce, and can often meet the same employment standards, responsibilities, and expectations as other wrking-age adults when provided the proper education, reasonable accommodations, and supports.

§18-10Q-2. Definitions.

‘Competitive Employment’ means work that is performed on a full-time or part-time basis (including self-employment) for which an individual is compensated at a rate that is not less than the rates specified in §21-5C-2 of this code, and for which the employee is eligible for the level of benefits provided to other employees and which presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

'Customized Employment' means those employment supports and services for an individual that are designed in a way to personalize the employment relationship between the person with a disability and employer in a way that meets the needs of both.

'Integrated employment' means employment at a location where the percentage of employees with disabilities relative to the employees without disabilities is consistent with the norms of the general workforce, and where the employees with disabilities interact with other persons, to the same extent as employees in comparable positions without disabilities.

§18-10Q-3. Creation of Employment First Taskforce; membership; meeting requirements.

(a) The Commissioner of the West Virginia Bureau for Behavioral Health shall establish a taskforce for the purpose of developing and implementing a state Employment First Policy.

(b) The commissioner shall appoint the membership of the taskforce, which shall include, at a minimum, the following members:

(1) The Commissioner of the West Virginia Bureau for Behavioral Health, or his or her representative, who shall chair the taskforce;

(2) An individual with a developmental disability;

(3) An individual with an intellectual disability;

(4) A family member of a person with a disability;

(5) A representative of the Department of Education;

(6) A representative of Workforce West Virginia;

(7) A representative of the Division of Rehabilitation Services;

(8) A representative of the Bureau for Medical Services (State Medicaid Agency);

(9) A representative of the West Virginia Developmental Disabilities Council;

(10) A representative of a provider of integrated and competitive employment services who does not also provide sheltered or otherwise segregated services for individuals with disabilities;

(11) A representative of West Virginia Center of Excellence in Disabilities;

(12) A representative of Disability Rights of West Virginia (the Governor-designated state protection and advocacy agency);

(13) A representative of the West Virginia Statewide Independent Living Council;

(14) A representative of the West Virginia Community and Technical College Systems;

(15) A representative of the West Virginia Behavioral Healthcare Providers Association;

(16) A representative of the West Virginia Association of Rehabilitation Facilities; and

(17) The State of West Virginia Americans with Disabilities Act Coordinator.

(c) The taskforce shall hold meetings at the call of the chairperson or upon written request of a majority of the members. The taskforce shall meet at least four times a year.

(d) The chairman of the taskforce shall appointment a member to act as secretary for the purposes of the taking of minutes. The minutes shall be approved by the taskforce at each meeting. The minutes and all other documentation shall be maintained by the chair.

§18-10Q-4. Powers and duties of the taskforce; state Employment First Policy; required plan; reporting requirements.

(a) The state Employment First Taskforce shall develop and implement a plan that includes the following:

(1) Describes time frames and proposals for aligning state policies, including eligibility and funding priorities, allocations for responsibility, and authority for ensuring implementation;

(2) Details cost projections for additional state funding needed over a five-year period to:

(A) Provide rate increases and incentives to providers that implement Employment First services; and

(B) Train or retrain the workforce;

(3) Describes strategies, timelines, and plans to increase investment in integrated employment services and may carefully consider plans to reduce sheltered work settings;

(4) Incorporates Employment First practices and methods in policy improvement plans providing customized, person-centered, and individually tailored employment supports to people with intellectual, developmental, and other disabilities, including people with complex support needs;

(5) Complies with federal policy and practice mandates regarding employment services design, settings, and coordination among stakeholders, including:

(A) The Centers for Medicare and Medicaid Services Home and Community-Based Services;

(B) Workforce Innovation and Opportunity Act; and

(C) The United States Department of Justice rulings that found that segregated work settings violate the 'most integrated setting' rule of the Americans with Disabilities Act relative to the findings of the Supreme Court of the United States in the Olmstead court case;

(6) Describes minimal workforce competency-based training standards applicable for job coaches, case managers, and other relevant personnel;

(7) Establishes interagency agreements, as appropriate, to improve coordination of services, and collect and share data to inform long-term systems planning;

(8) Proposes initiatives to address the culture of low expectations, to which parents of young children with intellectual, developmental, and other disabilities are exposed;

(9) Provides the Governor and Legislature the State Employment First Policy within 12 months of the enactment of this bill;

(10) Ensures:

(A) That individuals, particularly secondary and post-secondary students with disabilities, understand the importance of, and are given the opportunity to explore, options for further training as a pathway to integrated employment;

(B) The availability and accessibility of individualized training and support in an individual's preferred employment options;

(C) The availability and accessibility of resources necessary to enable an individual to understand possible effects of earned income and accumulation of assets on the individual's eligibility for public benefits and opportunities to properly manage and save income and assets without jeopardizing such benefits;

(D) That competitive integrated employment, while being the first and preferred outcome, is not required of an individual with a disability to secure and maintain necessary public benefits, health care, training, and support for individuals with disabilities and this statute may not be construed to limit or disallow any disability benefits to which a person with a disability who is unable to be employed as contemplated by this statute would otherwise be entitled; and

(E) That the staff of public schools, vocational service programs, and community providers are trained and supported to assist in achieving the goal of competitive integrated employment for all individuals with disabilities; and

(11) Promotes partnerships with employers to overcome barriers to meet workforce needs, including the creative use of technology and innovation

(b) The taskforce shall provide a written report annually to the Governor and the Joint Committee on Government and Finance on the findings and results of the efforts of the taskforce to accomplish the goals of the plan. These reports shall present data which reflects the number of people with disabilities who attained employment as a result of the implementation of the plan, as well as any barriers to implementation and strategies developed to address them.

(c) The plan as required by this section shall be updated biennially or more frequently as needed.

(d) The Bureau for Behavioral Health, Division of Rehabilitation Services, the Department of Education, Workforce West Virginia, and the Bureau for Medical Services shall, as recommended by the Employment First Taskforce as established in §18-10Q-3 of this code, adopt and implement a joint State Employment First Policy, which recognizes that earning a wage through competitive employment in the general workforce is the first and preferred outcome of all publicly funded services provided to working-age individuals with disabilities.

§18-10Q-5. Sunset date.

The taskforce established in §18-10Q-3 of this code shall terminate and cease to exist on December 31, 2025, unless continued by act of the Legislature."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2290 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-10Q-1, §18-10Q-2, §18-10Q-3, §18-10Q-4, and §18-10Q-5; all relating to initiating a State Employment First Policy to facilitate integrated employment of disabled persons; providing legislative findings; establishing a taskforce to develop a State Employment First Policy; providing for implementation of the State Employment First Policy; providing definitions for ‘competitive employment’, ‘customized employment’, and ‘integrated employment’; and incorporating a sunset provision.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 321**), and there were—yeas 99, nay 1, absent and not voting none, with the nay being as follows:

Nay: Kimes.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2290) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 2897, Expiring funds to the balance of the Department of Commerce.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 2899, Making a supplementary appropriation to the Department of Commerce.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 2920, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 401 - “A Bill to amend and reenact §46A-5-104 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-5-108 of said code, all relating to the Consumer Credit and Protection Act; excluding time, savings, and demand accounts offered

by a bank from general consumer protection claims; and providing for an effective date”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 488 - “A Bill to amend and reenact §7-18-13a and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to the distribution of hotel occupancy tax proceeds to convention and visitor’s bureaus; providing that a convention and visitor’s bureau shall satisfy certain requirements to receive funding from hotel occupancy taxes; requiring certain reporting from convention and visitor’s bureaus; requiring triennial financial reviews of convention and visitor’s bureaus; clarifying that the State Auditor and Legislative Auditor may review the operations and finances of a convention and visitor’s bureau; prohibiting the authorization of a new convention and visitor’s bureau that does not satisfy certain requirements; and clarifying that it is a misdemeanor offense for a member of a governing body to facilitate the distribution of hotel occupancy tax proceeds to a convention and visitor’s bureau that does not satisfy certain requirements”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 588 - “A Bill to amend and reenact §18-9B-17, §18-9B-18, and §18-9B-19 of the Code of West Virginia, 1931, as amended, all relating to requiring county boards of education and county superintendents to comply with the instructions of the State Board of Education; expanding remedies that may be used to enforce certain orders of the State Board of School Finance when a county board of education fails or refuses to comply; expanding circumstances under which the State Board of School Finance can withhold payment of state aid from a county board; allowing, under certain circumstances of noncompliance with state law or State Board of Education policy, the State Board of School Finance to require certain actions during the periods of noncompliance; and requiring the State Board of School Finance to report certain actions of enforcement against a county board to the State Board of Education at its next meeting”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 634 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-29-5a, relating to criminal justice training for law-enforcement officers and correction officers regarding individuals with autism spectrum disorders; development of course instruction; defining terms; providing for training in appropriate interactions with individuals with autism spectrum disorder; and authorizing the Law-Enforcement Professional Standards Subcommittee to develop guidelines for law-enforcement and correction officer response to individuals on the autism spectrum who are victims or witnesses to a crime, or suspected or convicted of a crime”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 660 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-10-7, relating generally to providing for cooperation between civilian law-enforcement agencies and military authorities to facilitate objective independent investigations of possible offenses”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 713 - “A Bill to amend and reenact §15A-4-17 of the Code of West Virginia, 1931, as amended, relating generally to inmate good time; updating references to personnel; clarifying that inmates in the custody of the Commissioner of the Division of Corrections and Rehabilitation receive basic good time unless expressly excluded; creating certain exclusions; clarifying that inmates who received good time on or before October 21, 2020, are entitled to the good time, unless it is lost due to a disciplinary violation; establishing basis for earning extra good time in the discretion of the commissioner; and granting civil immunity to the Division of Corrections and Rehabilitation, its commissioner, employees, agents, and assigns for any and all claims relating to calculation of good time for certain offenders occurring before October 21, 2020”; which was referred to the Committee on the Judiciary.

Resolutions Introduced

Delegates Fleischauer, Pethtel, Hansen, Williams, Walker, Statler, Summers, Garcia, G. Ward, Mallow, Sypolt, Jennings, Barach, Barnhart, Bates, Boggs, Brown, Conley, Cooper, Diserio, Doyle, Evans, Fluharty, Griffith, Hamrick, Hanna, Hornbuckle, Lovejoy, Pushkin, Skaff, Smith, Young, Zatezalo and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Health and Human Resources then Rules:

H. R. 21 - “Urging the Governor of West Virginia to form a task force with our congressional representatives, labor organizations, and other industry leaders to call upon the President of the United States to invoke the Defense Production Act of 1950, to order the Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals to be retrofitted and placed into production for manufacturing, packaging, and shipping of critical, life-saving medical supplies including vaccines, medications, and personal protective equipment, and empower the Governor of West Virginia to save the lives of our friends, neighbors, and fellow citizens.”

Whereas, The Defense Production Act of 1950 grants the President of the United States a broad set of authorities to influence domestic industry in the interest of national defense and can be used across the federal government to shape the domestic industrial base and provide essential materials and goods needed for the national defense; and

Whereas, The State of West Virginia and the entire United States currently face a severe shortage of medical supplies, including life-saving vaccines, medications, and personal protective equipment, which are vital in responding to the ongoing Coronavirus Disease (COVID-19) pandemic; and

Whereas, The failure to massively and expeditiously increase production of vaccines, medications, and personal protective equipment endangers the lives of our fellow citizens; and

Whereas, It is critical that the State of West Virginia utilize its citizens, resources, and facilities to their maximum potential to defeat this COVID-19 virus and protect the health, safety, and welfare of our friends and neighbors; and

Whereas, The Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals, a vital facility, is scheduled to shut down on July 31, 2021; and

Whereas, This vital facility could be quickly repurposed to produce life-saving medical supplies including COVID-19 vaccines, medications, and personal protective equipment, while also preserving over 1,500 West Virginian jobs; and

Whereas, West Virginians always answer the call for assistance from our nation, whether that means service in our armed forces, producing the energy needed to power our homes, or stepping up to do our part in responding to the needs of the COVID-19 pandemic; and

Whereas, The employees of the Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals will rise to this new challenge, continue their decades of proven labor, empower the Governor of West Virginia to continue his mission of saving the lives of West Virginians, and be able to, once again, demonstrate to the State of West Virginia, colleagues and fellow workers, and industry leaders their value by their hard work, expertise, and resolve; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby urges the Governor of West Virginia to form a task force with our congressional representatives, labor organizations, and other industry leaders to call upon the President of the United States to invoke the Defense Production Act of 1950, to order the Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals to be retrofitted and placed into production for manufacturing, packaging, and shipping of critical, life-saving medical supplies including vaccines, medications, and personal protective equipment,, and empower the Governor of West Virginia to save the lives of our friends, neighbors, and fellow citizens; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the Governor of West Virginia, the Honorable James C. Justice II.

Delegate Smith offered the following resolution, which was read by its title and referred to the Committee on the Judiciary then Rules:

H. C. R. 81 - "Requesting the Joint committee on Government and Finance study the legal process for the collection and enforcement of delinquent taxes and lands."

Whereas, The existing process for collecting and enforcing delinquent taxes set forth in chapter 11A of the Code of West Virginia, 1931, as amended, is complicated and results in a lengthy system of placing delinquent lands on the books for counties and the state; and

Whereas, Many properties sit idle, creating public health and safety hazards, which burden then falls to the counties and cities to remedy pursuant to the State Building Code and/or unsafe building commissions for the local governments; and

Whereas, The usability and development of these properties are further encumbered by the mounting fees, penalties, and interest incurred by the existing taxation collection process which makes them financially undesirable; and

Whereas, There is a desire of the Legislature to expedite and streamline the process of collection to benefit the revenues of the local governments, while simultaneously addressing the public health hazards of dilapidated properties and increasing the marketability of these delinquent lands; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the legal process for the collection and enforcement of delinquent taxes and lands; and, be it

Further Resolved, That the Joint Committee on Government and Finance study the existing statutory process concerning: (1) The efficacy of collection and enforcement of delinquent taxes and lands; (2) the interplay of the collection and enforcement systems on the land use and potential economic development capabilities; (3) the burdens placed on local governments by the existing processes for addressing unsafe and dilapidated properties; and (4) the feasibility of streamlining these processes to address the concerns of the Legislature and the local governments of this state; and, be it

Further Resolved, That the Joint Committee and Government and Finance shall seek the input and advice to conduct the study from the: (1) State Auditor; (2) Secretary of Commerce; (3) Secretary of Economic Development; (4) State Fire Marshal; (5) West Virginia Association of Counties; (6) West Virginia Municipal League; and (7) West Virginia University College of Law - Land Use and Sustainable Development Law Clinic; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft any necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegates Hott, Holstein, Ferrell, Wamsley, Riley and Howell offered the following resolution, which was read by its title and referred to the Committee on Government Organization then Rules:

H. C. R. 82 - "Requesting the Joint committee on Government and Finance study the impact of the creation of an Economic Opportunity Task Force, along with the creation of certain regions and goals of the task force."

Whereas, The creation of an Economic Opportunity Task Force would allow for further insight into the potential opportunities for economic development across the State of West Virginia; and

Whereas, By compiling the following, an infrastructure model will be established to set parameters and gather information for the task force: Division of Highways data pertaining to traffic counts; county assessors maps and flood plain tools; West Virginia Economic Development Authority requests and opportunities; Office of Broadband pertaining to telecom availability; and commerce generally pertaining to electric, water, wastewater and gas availability; and

Whereas, Available banking options and appetites shall be divided into nine regions: North Central, Ohio River Valley, Metro Valley, Central West Virginia, Southwest Region, Southeast Region, Highlands, Eastern Panhandle, and Scenic Highway; and

Whereas, There shall be established both short term and a 10-year plan answering how we fully utilize opportunities for economic development; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the process for the establishment of an Economic Opportunity Task Force; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with information gathered by the task force; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft any necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Special Calendar

Third Reading

Com. Sub. for S. B. 275, Relating generally to WV Appellate Reorganization Act of 2021; on third reading, coming up in regular order, was read a third time.

Speaker Pro Tempore Howell in the Chair

Delegate Hanshaw, Mr. Speaker, arose from his seat and addressed the House.

Delegate Hanshaw, Mr. Speaker, in the Chair

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 322**), and there were—yeas 56, nays 44, absent and not voting none, with the nays being as follows:

Nays: Anderson, Barach, Bates, Boggs, Booth, Brown, Bruce, Conley, Criss, Dean, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Kimes, Lovejoy, Martin, McGeehan, Miller, Nestor, Paynter, Pethel, Phillips, Pinson, Pushkin, Reynolds, Rohrbach, Rowe, Skaff, Thompson, Toney, Walker, B. Ward, G. Ward, Williams, Worrell, Young and Zukoff.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 275) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

Com. Sub. for S. B. 275 - "A Bill to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said Code; to amend said code by adding thereto a new section, designated §3-5-6e; to amend and reenact §3-5-7, and §3-5-13 of said Code; to amend and reenact §3-10-3 and §3-10-3a of said Code; to amend and reenact §6-5-1

of said Code; to amend said code by adding thereto a new section, designated §16-2D-16a; to amend said code by adding thereto a new section, designated §23-1-1h; to amend and reenact §23-5-1, §23-5-3, §23-5-4; §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, §23-5-15, and §23-5-16 of said code; to amend said code by adding thereto twelve new sections, designated §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, and §23-5-16a; to amend and reenact §29A-5-4 of said code; to amend and reenact §29A-6-1 of said code; to amend said code by adding thereto a new section, designated §51-2A-24; to amend and reenact §51-9-1a of said code; to amend said code by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12 and §51-11-13; and to amend and reenact §58-5-1 of said code, all relating generally to creating an Intermediate Court of Appeals; requiring the election of judges of the Intermediate Court of Appeals be on a nonpartisan basis; requiring that elections to certain offices be on a division basis when more than one judge of the Intermediate Court of Appeals is to be elected; providing for the timing, day and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that election for Judge of the Intermediate Court of Appeals is to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing for the filling of vacancies on the Intermediate Court of Appeals; defining terms; providing that the Judicial Vacancy Advisory Commission assist initial and subsequent vacancies on the Intermediate Court of Appeals; clarifying meaning of quorum for Judicial Vacancy Advisory Commission; transferring jurisdiction over appeals of decisions of the Health Care Authority in certificate-of-need reviews from the Workers' Compensation Office of Administrative Law Judges and Circuit Court of Kanawha County to the Intermediate Court of Appeals; establishing procedures and time frames for transfer or disposition of unresolved appeals pending with the Office of Judges; transferring jurisdiction over all workers' compensation claims and transferring all powers and duties related thereto from the Office of Judges to the Workers' Compensation Board of Review by a date certain; providing for additional two members to Workers' Compensation Board of Review; providing for modified procedure to appoint members to Workers' Compensation Board of Review; conferring appellate jurisdiction over Office of Judges decisions and Board of Review decisions to the Intermediate Court of Appeals after a date certain; sunseting certain provisions relating to duties and procedures of the Office of Judges with respect to workers' compensation claims; modifying duties and procedures of Board of Review with respect to workers' compensation claims; terminating the Office of Judges by a date certain; authorizing the Board of Review to employ hearing examiners and other necessary personnel; establishing qualifications for hearing examiners hired by the Board of Review; setting forth powers of the Board of Review relating to workers' compensation claims; providing for reports requested by the Insurance Commissioner to be made by the chair of the Board of Review; providing for oversight and administrative authority of the Insurance Commissioner over the Board of Review; authorizing the Board of Review to promulgate procedural rules; granting due consideration and an interview to employees of the Office of Judges who apply for positions with the Board of Review on or before a date certain and directing the Board of Review that such consideration and interview prior to considering any other applicant; authorizing the Board of Review to hire attorneys as hearing examiners; requiring that all orders and decisions of the Board of Review pertaining to an objection be issued and signed by a single member of the Board of Review, with certain exceptions; permitting the board of review member assigned to an objection to delegate certain duties to a hearing examiner; establishing the administrative powers and duties of the Board of Review; increasing the limit on the annual salary of a Board of Review member; authorizing the Board Of Review to promulgate rules of practice and procedure, and establishing a process therefor; establishing duties of the chair of the Board of Review; providing

that the administrative expenses of the Board of Review shall be included in annual budget of the Insurance Commissioner; providing that petitions for review of final decisions of the Workers' Compensation Board of Review must be made to the Intermediate Court of Appeals; establishing certain procedures and other requirements for appeals of Board of Review decisions made to the Intermediate Court of Appeals; providing that the Supreme Court of Appeals has discretion to review final decisions of the Intermediate Court of Appeals in workers' compensation claims; requiring that appeal of contested cases under the State Administrative Procedures Act be made to the Intermediate Court of Appeals; transferring jurisdiction to review family court final orders from circuit courts to the Intermediate Court of Appeals; creating an Intermediate Court of Appeals in West Virginia to be established and operable by a date certain; providing a short title; providing legislative findings; defining terms; establishing and defining an Intermediate Court of Appeals of three judges; providing eligibility criteria for judges of the Intermediate Court of Appeals; providing that judges of the Intermediate Court of Appeals may not be candidates for any elected public office during the judicial term; providing for the location of proceedings of the Intermediate Court of Appeals; providing for a Clerk of the Intermediate Court of Appeals; authorizing jurisdiction of the Intermediate Court of Appeals over certain matters; excluding certain matters from jurisdiction of the Intermediate Court of Appeals; providing that parties to an appeal in the Intermediate Court of Appeals shall have an opportunity for a full and meaningful review on the record of the lower tribunal and an opportunity to be heard; forbidding jurisdiction of the Intermediate Court of Appeals over certain matters; establishing a procedure by which parties to an appeal in the Intermediate Court of Appeals may file a motion for direct review of an appeal by the Supreme Court of Appeals in certain extraordinary circumstances; providing a process for initial appointment of judges to the Intermediate Court of Appeals to fill vacancies in the Intermediate Court of Appeals upon its creation; providing for the regular election of a judge of the Intermediate Court of Appeals upon the expiration of a sitting judge's term; establishing a procedures for the filling of vacancies in unexpired judicial terms by appointment and, in certain circumstances, subsequent election; providing that the Governor's judicial appointments must be made from a list of candidates submitted by the Judicial Vacancy Advisory Commission and are subject to advice and consent of the Senate; providing that procedures and operations of the Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court of Appeals; requiring that appeals to the Intermediate Court of Appeals and related filings be filed with the Clerk of the Supreme Court of Appeals; establishing certain requirements for the filing of appeals to the Intermediate Court of Appeals; clarifying that an appeal bond may be required before appeal to the Intermediate Court of Appeals may take effect; authorizing filing fees; providing for deposit of filing fees in a special revenue account to fund the Ryan Brown Addiction Prevention and Recovery Fund; granting the Intermediate Court of Appeals discretion to require oral argument; recognizing the constitutional authority of the Supreme Court of Appeals to exercise administrative authority over the Intermediate Court of Appeals; providing that Intermediate Court of Appeals proceedings shall take place in publicly available facilities as arranged by the Administrative Director of the Supreme Court of Appeals; authorizing the Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals operations; providing for a Chief Judge of the Intermediate Court of Appeals; providing that the budget for Intermediate Court of Appeals operations shall be included in the appropriation for the Supreme Court of Appeals; authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for lower courts; providing that the Intermediate Court of Appeals shall issue written decisions as a matter of right; providing for discretionary review of Intermediate Court of Appeals decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits, and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing for reimbursement of expenses of Intermediate Court of Appeals staff; authorizing the Attorney General to appear as Counsel for the State before the Intermediate Court of Appeals; providing for severability of any unconstitutional provisions; clarifying when appeal lies before the Intermediate Court of Appeals

and the Supreme Court of Appeals; providing internal effective dates; removing obsolete language from the code; and making technical corrections to the code.”

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for H. B. 2266, Relating to expanding certain insurance coverages for pregnant women; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 323**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: J. Jeffries and McGeehan.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2266) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 2493, Providing valuation limitations for coal property taxation and clarifying the penalties for non-filers; on third reading, coming up in regular order, was read a third time.

Delegate Tully requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 324**), and there were—yeas 64, nays 34, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Barach, Barnhart, Bates, Boggs, Booth, Bridges, Brown, Dean, Diserio, Doyle, Evans, Ferrell, Fleischauer, Garcia, Griffith, Hanna, Hansen, Holstein, Hornbuckle, D. Kelly, Lovejoy, Paynter, Pethtel, Phillips, Pushkin, Reynolds, Rowe, Skaff, Statler, Walker, G. Ward, Williams, Young and Zukoff.

Absent and Not Voting: Bruce and Pritt.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 2493) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for H. B. 2581, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property; on third reading, coming up in regular order, was read a third time.

Delegate Tully requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 325**), and there were—yeas 66, nays 34, absent and not voting none, with the nays being as follows:

Nays: Barach, Barnhart, Bates, Boggs, Booth, Brown, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, D. Kelly, Lovejoy, Miller, Nestor, Paynter, Pethtel, Phillips, Pushkin, Reynolds, Rowe, Skaff, Storch, Thompson, Walker, G. Ward, Williams, Young and Zukoff.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2581) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for H. B. 2667, To create a cost saving program for state buildings regarding energy efficiency; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 326**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Cooper, Kimes and Paynter.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2667) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for H. B. 2675, Relating to the interest rate for condemnation cases and creating conformity with statutory rates; on third reading, coming up in regular order, was, at the request of Delegate Capito, and by unanimous consent, placed at the foot of bills on third reading.

Com. Sub. for H. B. 2720, Creating a Merit-Based Personnel System within DOT; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 327**), and there were—yeas 86, nays 14, absent and not voting none, with the nays being as follows:

Nays: Brown, Diserio, Fleischauer, Garcia, Hansen, Hornbuckle, Kimes, Lovejoy, Pushkin, Thompson, Walker, Williams, Young and Zukoff.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2720) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 2768, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 328**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2768) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 329**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2768) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for H. B. 2769, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 330**), and there were—yeas 90, nays 10, absent and not voting none, with the nays being as follows:

Nays: Diserio, Fleischauer, Fluharty, Kimes, McGeehan, Pushkin, Sypolt, Walker, Williams and Zukoff.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2769) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 331**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Fluharty, Kimes, McGeehan and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2769) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 2790, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 332**), and there were—yeas 99, nay 1, absent and not voting none, with the nay being as follows:

Nay: Kimes.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2790) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 333**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2790) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 2915, Relating to public records management and preservation; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 334**), and there were—yeas 80, nays 20, absent and not voting none, with the nays being as follows:

Nays: Bridges, Brown, Dean, Fast, Foster, Gearheart, Hamrick, Haynes, Hornbuckle, J. Jeffries, Keaton, Kimes, Lovejoy, Maynard, McGeehan, Paynter, Steele, Wamsley, Williams and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 2915) passed.

On motion of Delegate Householder, the title of the bill was amended to read as follows:

H. B. 2915 - "A Bill to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to public records management and preservation; to increase available funds in the Public Records and Preservation Revenue Account to administer a system of records management and preservation for county governments and for grants to counties for records management, access, and preservation purposes."

Delegate Summers moved that the bill take effect July 1, 2021.

On this question, the yeas and nays were taken (**Roll No. 335**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Bruce, Fast and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2915) takes effect July 1, 2021.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 3082, Stabilizing funding sources for the DEP Division of Air Quality; on third reading, coming up in regular order, was read a third time.

Delegate Espinosa requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 336**), and there were—yeas 74, nays 26, absent and not voting none, with the nays being as follows:

Nays: Bridges, Burkhammer, Dean, Fast, Foster, Graves, Hamrick, Haynes, Holstein, J. Jeffries, Jennings, Kessinger, Kimble, Kimes, Longanacre, Martin, Maynard, McGeehan, J. Pack, Paynter, Phillips, Pritt, Smith, Steele, Wamsley and G. Ward.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 3082) passed.

On motion of Delegate Householder, the title of the bill was amended to read as follows:

H. B. 3082 - "A Bill to amend and reenact §22-5-2 and §22-5-4 of the Code of West Virginia, 1931, as amended, relating to air pollution control; providing the West Virginia Department of Environmental Protection, Division of Air Quality, the authority to invest and reinvest funds held in the Air Pollution Control Fund and the Air Pollution Education and Environment Fund and to receive interest thereon from lawful investments of public funds to offset decreasing permit fee collections; providing that at the end of each fiscal year, unexpended balances, including accrued interest, shall not be transferred to the General Revenue Fund, but remain in the two funds for expenditure by the West Virginia Department of Environmental Protection, Division of Air Quality, in furtherance of its mission; and updating code language."

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for H. B. 3106, To change the hearing requirement for misdemeanors to 10 days; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 337**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Martin and Pritt.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3106) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 3298, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 338**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Bridges, J. Jeffries, McGeehan and Young.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3298) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 339**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Gearheart, J. Jeffries and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3298) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

H. B. 3304, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 340**), and there were—yeas 98, nay 1, absent and not voting 1, with the nay and the absent and not voting being as follows:

Nay: Kimes.

Absent and Not Voting: Doyle.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 3304) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Having been postponed in earlier proceedings, the House returned to consideration of, **Com. Sub. for H. B. 2675**, Relating to the interest rate for condemnation cases and creating conformity with statutory rates, and the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 341**), and there were—yeas 9, nays 90, absent and not voting 1, with the yeas and the absent and not voting being as follows:

Yeas: Capito, Criss, Espinosa, Kimble, Martin, Queen, Westfall, Zatezalo and Hanshaw (Mr. Speaker).

Absent and Not Voting: L. Pack.

So, a majority of the members present not having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2675) rejected.

Second Reading

Com. Sub. for H. J. R. 3, Property Tax Modernization Amendment; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Capito, the bill was amended on page 2, line 13, by adding the phrase “section 1” after the word “that.”

And,

By striking out the phrase “by adding thereto a new section, designated section one-d.”

Delegates Fluharty and Skaff moved to amend the bill on page 1, line 4, following the word “activity”, by inserting the words “and personal property tax on motor vehicles”.

Note: The portion of the amendment above is to the title and would be in order following adoption of the Joint Resolution.

On page 2, line 13, following the words “in business activity”, by inserting the words “personal property tax on motor vehicles,”.

And,

On page 3, line 4, following the words “in business activity”, by inserting the words “and personal property tax on motor vehicles”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 342**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Burkhammer and L. Pack.

So, a majority of the members present having voted in the affirmative, the amendment was adopted.

The resolution was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2017, Rewriting the Criminal Code; on second reading, coming up in regular order, was read a second time.

An amendment offered by Delegate Capito was reported by the Clerk, on page nineteen, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“CHAPTER 15. PUBLIC SAFETY.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

(a) Each time a person has a material change in any of the registration information as required by §15-12-3 of this code this article and knowingly fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense under this section.

(b) Except as provided in this section, any person required to register for ten years pursuant to subdivision (1), subsection (a), section four of this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a material change in any required information as required by this article, is guilty of a Class 1 misdemeanor. ~~and, upon conviction thereof, shall be fined not less than \$250 nor more than \$10,000 or confined in jail not more than one year, or both~~ Any person convicted of a second offense under this subsection is guilty of a Class 6 felony. ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years. Any person convicted of a third or subsequent offense under this subsection is guilty of a felony. and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than twenty five years.~~

(c) Any person required to register for life pursuant to this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a material change in any required information as required by this article, is guilty of a Class 6 felony. ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years~~ Any person convicted of a second or subsequent offense under this subsection is guilty of a Class 3 felony. ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ten nor more than twenty five years.~~

(d) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison who knowingly refuses to register or who knowingly fails to provide a material change in information as required by this article shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.

(e) Notwithstanding the provisions of subsection (c) of this section, any person required to register as a sexually violent predator pursuant to this article who knowingly provides materially false information or who refuses to provide accurate information when so required by terms of this article or who knowingly fails to register or knowingly fails to provide a change in any required

information as required by this article is guilty of a Class 5 felony, and, ~~upon conviction thereof, shall, for a first offense, be confined in a state correctional facility not less than two nor more than ten years and for a second or subsequent offense, is guilty of a Class 2 felony. and, shall be confined in a state correctional facility not less than fifteen nor more than thirty five years.~~

(f) Any person who knows or who has reason to know that a sex offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sex offender in eluding a law-enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, his or her noncompliance with the requirements of this section:

(1) Withholds information from, the law-enforcement agency about the sex offender's noncompliance with the requirements of this section and, if known, the whereabouts of the sex offender; or

(2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sex offender; or

(3) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sex offender; or

(4) Provides information to the law-enforcement agency regarding the sex offender which the person knows to be false information is guilty of a Class 1 misdemeanor: ~~and, upon conviction thereof, shall be fined not less than \$250 nor more than \$10,000 or confined in jail not more than one year, or both: *Provided*, That where the person assists or seeks to assist a sex offender whose violation of this section would constitute a felony, the person shall be guilty of a Class 6 felony. and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.~~

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3b. Timber theft; investigations; criminal and civil penalties.

(a) Timber theft is the misappropriation or taking of timber belonging to another, or proceeds derived from the sale of timber, either taken without the consent of the owner, or by means of fraudulent conduct, practices, or representations, with the intent to deprive the owner permanently of the timber or proceeds derived therefrom.

(b) The Division of Forestry has the primary responsibility for the collection, preparation, and central registry of information relating to timber theft. The division has the authority to investigate and enforce the provisions of this section when violations of the provisions of ~~§61-3-52~~ §61-3B-9 of this code occur.

CHAPTER 23. WORKER'S COMPENSATION.

ARTICLE 5B. CRIMES AGAINST THE WORKER'S COMPENSATION SYSTEM.

§23-5B-1. Intentional omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

(1) Failure to subscribe:

(A) Responsible person. Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer's principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a Class 6 felony.

(B) Any corporation, association or partnership who, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a Class 1 misdemeanor.

(2) Failure to pay:

(A) Any person who individually or as owner, partner, president, other officer or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to make premium tax payments to the Workers' Compensation Fund or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed.

(B) Any corporation, association, company, or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to make premium tax payments to the Workers' Compensation Fund or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed.

(C) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation, or association, who, as a responsible person, as defined in this section, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the Workers' Compensation Fund, or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed.

(D) Any corporation, association, company, or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the Workers' Compensation Fund, or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed.

(3) Failure to file premium tax reports:

(A) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to file a premium tax report with the Workers' Compensation Fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a Class 6 felony.

(B) Any corporation, association, company, or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file a premium tax report with the Workers' Compensation Fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a Class 1 misdemeanor.

(4) Failure to file other reports:

(A) Any person, individually or as owner, partner, president or other officer, or manager of a sole proprietorship, firm, partnership, company, corporation, or association who, as a responsible person as defined in this section, knowingly and willfully fails to file any report, other than a premium tax report, required by such chapter shall be guilty of a Class 6 felony.

(B) Any corporation, association, company, or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file any report, other than a premium tax report, with the Workers' Compensation Fund or Insurance Commissioner as required by chapter twenty-three of this code, shall be guilty of a Class 1 misdemeanor.

(5) False testimony or statements:

Any person, individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation, or association who, as a responsible person as defined in this section, knowingly and willfully makes a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a Class 6 felony. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the Workers' Compensation Fund, Insurance Commissioner or private carrier as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, Insurance Commissioner or private carrier.

(6) Asset forfeiture:

(A) The court, in imposing sentence on a person or entity convicted of an offense under this section, shall order the person or entity to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission, Insurance Commissioner or private carrier of the offense. Any person or entity convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term 'payment of the costs of asset forfeiture' means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention, forfeiture or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Workers' Compensation Fund to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue:

Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the Workers' Compensation Fund is located.

§23-5B-2. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.

(1) Any person who shall knowingly and with fraudulent intent secure or attempt to secure compensation from the Workers' Compensation Fund, a private carrier or from a self-insured employer:

(A) That is larger in amount than that to which he or she is entitled; or

(B) That is longer in term than that to which he or she is entitled; or

(C) To which he or she is not entitled, shall be guilty of larceny of such amount.

(2) Any person who shall knowingly and willfully make a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a Class 6 felony.

(3) In addition to any other penalty imposed, the court shall order any person convicted under this section to make full restitution of all moneys paid by the Workers' Compensation Fund, private carrier or self-insured employer as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, private carrier or self-insured employer.

(4) If the person so convicted is receiving compensation from such fund, private carrier or employer, he or she shall, from and after such conviction, cease to receive such compensation as a result of any alleged injury or disease.

(5) Venue for prosecution of any violation of this section shall either be the county in which the claimant resides, the county in which the claimant is employed or working, or in Kanawha County where the Workers' Compensation Fund is located.

§23-5B-3. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

(1) Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice:

(A) To defraud the Workers' Compensation Fund, a private carrier, or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services;

(B) To obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of the Workers' Compensation Fund, a private carrier, or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or

(C) To make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth in the Workers' Compensation Commission's schedule of maximum reasonable amounts to be paid for the treatment or services issued pursuant to subsection (a), section three article four, chapter twenty-three of this code is guilty of a Class 6 felony.

(2) Any person who, in any matter involving a health care program related to workers' compensation insurance, knowingly and willfully:

(A) Falsifies, conceals, or covers up by any trick, scheme or device a material fact; or

(B) Makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, is guilty of a Class 6 felony.

(3) Any person who willfully embezzles, steals or otherwise unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property or other assets of a health care program related to the provision of workers' compensation insurance, is guilty of a Class 6 felony.

(4) Any health care provider who fails, in violation of subsection (5) of this section to post a notice, in the form required by the Workers' Compensation Commission, in the provider's public waiting area that the provider cannot accept any patient whose treatment or other services or supplies would ordinarily be paid for from the Workers' Compensation Fund, private carrier or by a self-insured employer unless the patient consents, in writing, prior to the provision of the treatment or other services or supplies, to make payment for that treatment or other services or supplies himself or herself, is guilty of a Class 3 misdemeanor.

(5) Any person convicted under the provisions of this section shall, after such conviction, be barred from providing future services or supplies to injured employees for the purposes of Workers' Compensation and shall cease to receive payment for services or supplies. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the Workers' Compensation Fund, private carrier or self-insured employer as the result of a violation of this section. The restitution ordered

shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, Insurance Commissioner, a private carrier, or self-insured employer.

(6)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense. Any person convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term 'payment of the costs of asset forfeiture' means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeiture, or of any other necessary expenses incident to the seizure, detention, forfeiture or disposal of the property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of the properties in an effort to maximize the return from the properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Workers' Compensation Fund to determine the validity of the lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the Workers' Compensation Fund is located.

§23-5B-4. Providing false documentation to workers' compensation, to the Insurance Commissioner or a private carrier of workers' compensation insurance; altering documents or certificates from workers' compensation; penalties; venue.

(1) Any person, firm, partnership, company, corporation association or medical provider who submits false documentation to workers' compensation, the Insurance Commissioner, or a private carrier of workers' compensation insurance with the intent to defraud the Workers' Compensation Commission, the Insurance Commissioner or a private carrier of workers' compensation insurance shall be guilty of a Class 1 misdemeanor.

(2) Any person, firm, partnership, company, corporation, association or medical provider who knowingly alters, falsifies, defaces, changes or modifies any certificate or other document which would indicate good standing with the Workers' Compensation Commission, Insurance Commissioner or a private carrier concerning workers' compensation insurance coverage or endorsement by workers' compensation for medical services shall be guilty of a Class 1 misdemeanor.

(3) Venue for prosecution of any violation of this section shall be either the county in which the claimant resides, a defendant's principal business operations are located, or in Kanawha County where the Workers' Compensation Fund is located.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-27. Required reporting of gunshot and other wounds.

(a) Any health care practitioner, defined as a person licensed under §30-1-1 et seq. who provides health care services, who provides medical treatment or health care services to a person suffering from a wound caused by a gunshot or a knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe resulted from a violation of the criminal laws of this state, shall report the same to a law-enforcement agency located within the county within which such wound is treated. The report shall be made initially by telephone and shall be followed by a written report delivered to such agency within forty-eight hours following the initial report: *Provided*, That where two or more persons participate in the medical treatment of such wound, the obligation to report imposed by this section shall apply only to the attending physician or, if none, to the person primarily responsible for providing the medical treatment.

(b) Any health care practitioner, who in good faith reports a wound described in subsection (a) of this section, shall be immune from any civil liability which may otherwise result solely from reporting the same.

§30-1-28. Required reporting of burns.

(a) Any health care practitioner, defined as a person licensed under §30-1-1 et seq. who provides health care services, who provides medical treatment or health care services or who examines a person suffering from an injury caused by a burn resulting from fire or a chemical, where the circumstances under which the examination is made or treatment is rendered, or where the condition of the injury gives the health care practitioner reasonable cause to suspect that the injury occurred during the commission, or attempted commission, of an arson as defined in article three of this chapter, shall report the same to the office of the state Fire Marshal. A written report shall be made by the practitioner, or by an employee or agent of the practitioner at the direction of the provider, to the office of the state Fire Marshal within forty-eight hours after the initial report: *Provided*, That where two or more health care practitioners participate in the examination or treatment of such injury, the obligation to report imposed by this section applies only to the attending physician or, if none, to the person primarily responsible for providing medical treatment for the injury.

(b) Any health care practitioner who in good faith makes or causes to be made a report pursuant to subsection (a) of this section is immune from any civil liability which may otherwise arise as the result of making such report.

(c) Within available funding and as may be determined necessary by the state Fire Marshal, the state Fire Marshal shall conduct educational programs for persons required to report injuries under this section.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-9a. Railroad employees conservators of the peace; special railroad policemen; powers and duties.

The conductor of every passenger car and flag person and brake person employed on such car, as well as the conductor of every train of railroad or traction cars, shall have all the powers of a conservator of the peace while in charge of such car or train.

Any railroad company owning, or leasing and operating, or using any railroad or traction line or system lying wholly or partially within this state, whether such railroad be operated by steam or electric power, may apply to the Governor to appoint such citizen or citizens of this state as such railroad company may designate, to act as special police officers for such railroad or traction company, with the consent of such citizen or citizens; and the Governor may, upon such application, appoint and commission such person or persons, or so many of them as he or she may deem proper, as such special police officers. Every police officer so appointed shall appear before some person authorized to administer oaths and take and subscribe the oath prescribed in the fifth section of the fourth article of the Constitution, and shall file such oath with the clerk of the county commission, or other tribunal in lieu thereof, of the county in which he or she shall reside. He or she shall also file certified copies of such oath in the office of the Secretary of State, and in the office of the clerk of the county commission, or other tribunal established in lieu thereof, of each county through which such railroad or any portion thereof may extend. Every police officer appointed under the provisions of this section shall be a conservator of the peace within each county in which any part of such railroad may be situated, and in which such oath or a certified copy thereof shall have been filed with the clerk of the county commission or other tribunal established in lieu thereof; and, in addition thereto, he or she shall possess and may exercise all the powers and authority, and shall be entitled to all the rights, privileges and immunities within such counties, as are now or hereafter may be vested in or conferred upon a deputy sheriff of such county. Any appointment made by the Governor under the provisions of this section may be revoked by him or her for good cause shown, and such police officers may be removed from office for official misconduct, incompetence, habitual drunkenness, neglect of duty or gross immorality, in the same manner in which regularly elected or appointed county officers may be removed from office. Whenever any such railroad company shall desire to dispense with the services of any police officer, it may file a notice to that effect, under its corporate seal, attested by its secretary, in each of the several offices in which such oath or certified copy thereof shall have been filed; and, thereupon, the powers of the police officer shall cease and determine. Police officers may wear such uniform and badge of authority, or either, as the railroad company, upon whose application they were appointed, may designate, and such railroad company shall pay them for all services rendered pursuant to his or her appointment.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**§55-2-23. Shooting range; limitations on nuisance actions; noise ordinances.**

(a) As used in this section:

(1) 'Person' means an individual, proprietorship, partnership, corporation, club or other legal entity; and

(2) 'Shooting range' means an area, whether indoor or outdoor, designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar shooting.

(b) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the shooting range was established as of the date of the person acquiring the property. If there is a substantial change in use of the shooting range or there is a period of shooting inactivity at a shooting range for a period exceeding one year after the person acquires the property, then the person may maintain a nuisance action if the action is brought within two years from the beginning of the substantial change in use of the shooting range, or the resumption of shooting activity: *Provided*, That if a municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

(c) A person who owned property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that shooting range only if the action is brought within two years after the establishment of the shooting range or two years after a substantial change in use of the shooting range or from the time shooting activity is resumed: *Provided*, That if a municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

(d) Actions authorized by the provisions of this section are not applicable to any indoor shooting range, the owner or operator of which holds all necessary and required licenses and the shooting range being in compliance with all applicable state, county and municipal laws, rules or ordinances regulating the design and operation of such facilities.

(e) (1) No municipal or county ordinance regulating noise may subject a shooting range to noise control standards more stringent than those standards in effect at the time construction or operation of the shooting range began, whichever occurred earlier in time. The operation or use of a shooting range shall not be enjoined based on noise, nor shall any person be subject to an action for nuisance or criminal prosecution in any matter relating to noise resulting from the operation of a shooting range, if the shooting range is operating in compliance with all ordinances relating to noise in effect at the time the construction or operation of the shooting range began, whichever occurred earlier in time.

(2) No shooting range operating or approved for operation within this state which has been condemned through an eminent domain proceeding, and which relocates to another site within the same political subdivision within two years of the final condemnation order, may be subject to any noise control standard more stringent than that in effect at the time construction or operation of the shooting range which was condemned began, whichever occurred earlier in time.

(f) It is the intent of the Legislature in enacting this section during the 2021 regular session of the Legislature that the section be applied retroactively.

ARTICLE 9. GAMING CONTRACTS.**§55-9-1. Gaming contracts void.**

[Repealed.]

§55-9-2. Recovery of money or property lost in gaming.

[Repealed.]

§55-9-3. Recovery of gaming losses by bill in equity; repayment discharges winner from punishment.

[Repealed.]

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**ARTICLE 4. OFFENSES AND PENALTIES.****§60A-4-418. Wanton endangerment involving the use of fire; penalty.**

Any person who, during the manufacture or production of an illegal controlled substance uses fire, the use of which creates substantial risk of death or serious bodily injury to another due to the use of fire, is guilty of a Class 6 felony.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT**ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.****§61-1-1. Treason defined; degree of proof; penalty.**

Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall may be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason against the state constitutes a Class 1 felony, or, at the discretion of the jury, or the discretion of the court when there is a plea of guilty, a Class 5 felony.

§61-1-2. ~~Punishment.~~ Failure to give information of treason; penalty.

~~Whoever is guilty of treason against the state shall be punished by confinement in the penitentiary for life, or, at the discretion of the jury, or the discretion of the court when there is a plea of guilty, by confinement in the penitentiary for not less than three nor more than ten years.~~

If any person has any knowledge of treason against the state, and shall not, as soon as may be, give information thereof to the Governor or some conservator of the peace, he or she shall be guilty of a Class 6 felony.

§61-1-3. ~~Failure to give information of treason; penalty.~~ Desecration of flag; penalty.

~~If any person have any knowledge of treason against the state, and shall not, as soon as may be, give information thereof to the Governor or some conservator of the peace, he or she shall be~~

~~guilty of a felony, and, upon conviction, shall be fined not exceeding \$1,000, or by confinement in the penitentiary not less than one nor more than five years.~~

Any person who for exhibition or display shall place, or cause to be placed, any words, figures, marks, pictures, designs, drawings, or any advertisement of any nature, upon any flag, standard, color or ensign of the United States, or upon the state flag of this state, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words, figures, marks, pictures, designs, drawings, or any advertisement of any nature or kind, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose, any article or substance, being an article of merchandise or a receptacle of merchandise, or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by words or acts, upon any such flag, standard, color or ensign, ~~he or she shall be deemed~~ is guilty of a misdemeanor petty offense, and, upon conviction, shall be fined not less than \$5 nor more than \$100, and may, be confined in jail for a period not exceeding 30 days. Any justice of the peace of the county wherein the offense was committed shall have concurrent jurisdiction of such offense with the circuit or other courts of such county. The words 'flag, standard, color or ensign of the United States,' as used in this section, shall be construed to include any flag, standard, color, ensign, or any representation or picture of a flag, standard, color or ensign, made of or upon any substance whatever, and of any size whatever, showing the national colors, the stars and stripes. This section shall not apply to any act permitted by the statutes of the United States, or of this state, or by the regulations of the United States army and navy, or of the National Guard of this state, or of the members of the department of public safety; nor shall this section be construed to apply to the regular issue of a newspaper or other periodical, or to any book, certificate, diploma, warrant or commission, on which shall be printed said flag, disconnected from any advertisement, or to the vignette of any political ballot.

§61-1-4. Attempt to justify or uphold invasion or insurrection; penalty.

[Repealed.]

§61-1-5. Unlawful speeches, publications, and communications.

[Repealed.]

§61-1-7. Penalty for unlawful speeches, publications, and communications.

[Repealed.]

§61-1-8. Desecration of flag; penalty.

[Repealed.]

§61-1-9. Impersonation of law-enforcement officer or official; penalty.

[Repealed.]

ARTICLE 2. CRIMES AGAINST THE PERSON.**§61-2-1. First and second degree murder defined; punishment; allegations in indictment for homicide.**

Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in article four, chapter sixty-a of this code, is murder of the first degree. Murder of the first degree is a Class 1 felony.

All other murder is murder of the second degree. Murder of the second degree is a Class 2 felony. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of 10 years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

In an indictment for murder and manslaughter, it ~~shall not be~~ is not necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately, and unlawfully slay, kill, and murder the deceased.

§61-2-2. ~~Penalty for murder of first degree.~~ Voluntary manslaughter; penalty.

~~Murder of the first degree shall be punished by confinement in the penitentiary for life.~~

Voluntary manslaughter shall be a Class 4 felony. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

§61-2-3. ~~Penalty for murder of second degree.~~ Involuntary manslaughter; penalty.

~~Murder of the second degree shall be punished by a definite term of imprisonment in the penitentiary which is not less than ten nor more than forty years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of ten years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty two, whichever is greater. Involuntary manslaughter is a Class 1 misdemeanor.~~

§61-2-4. ~~Voluntary manslaughter; penalty.~~ Concealment of deceased human body; penalty.

~~Voluntary manslaughter shall be punished by a definite term of imprisonment in the penitentiary which is not less than three nor more than fifteen years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty two, whichever is greater.~~

(a) Any person who, by any means, knowingly and willfully conceals, attempts to conceal or who otherwise aids and abets any person to conceal a deceased human body where death occurred as a result of criminal activity is guilty of a Class 6 felony.

(b) It is a complete defense in a prosecution pursuant to subsection (a) of this section that the defendant affirmatively brought to the attention of law enforcement, within 48 hours of concealing the body and prior to being contacted regarding the death by law enforcement, the existence and location of the concealed deceased human body.

§61-2-5. Involuntary manslaughter; penalty. Homicide punishable within state if injury occurs within and death without, or vice versa.

~~Involuntary manslaughter is a misdemeanor and, any person convicted thereof shall be confined in jail not to exceed one year, or fined not to exceed \$1,000, or both, in the discretion of the court.~~

If any person is stricken, wounded, or poisoned in, and die by reason thereof out of, this state, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county in which the stroke, wound or poison was given or administered. And if any person is stricken, wounded or poisoned out of this state, and die by reason thereof within this state, the offender is as guilty, and may be prosecuted and punished, as if the mortal stroke or wound had been given, or poison administered, in the county in which the person so stricken, wounded or poisoned may die.

§61-2-5a Concealment of deceased human body; penalty.

[Repealed.]

§61-2-6 Homicide punishable within state if injury occurs within and death without, or vice versa. Attempt to kill or injure by poison; penalty.

~~If any person be stricken, wounded or poisoned in, and die by reason thereof out of, this state, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county in which the stroke, wound or poison was given or administered. And if any person be stricken, wounded, or poisoned out of this state, and die by reason thereof within this state, the offender shall be as guilty, and may be prosecuted and punished, as if the mortal stroke or wound had been given, or poison administered, in the county in which the person so stricken, wounded or poisoned may so die. Any person, who administers, or attempts to administer, any poison or other destructive thing in food, drink, medicine or otherwise, or poisons any spring, well, reservoir, conduit or pipe of water, with intent to kill or injure another person, is guilty of a Class 4 felony.~~

§61-2-7. Attempt to kill or injure by poison; penalty. Abortion; penalty.

~~If any person administer, or attempt to administer, any poison or other destructive thing in food, drink, medicine or otherwise, or poison any spring, well, reservoir, conduit or pipe of water, with intent to kill or injure another person, he or she shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than three nor more than eighteen years.~~

Any person, who administers to, or causes to be taken by, a woman, any drug or other thing, or uses any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and thereby destroys such child, or produces such abortion or miscarriage, is guilty of a Class 4 felony and if the woman dies by reason of the abortion performed upon her, that person is guilty of murder. No person, by reason of any act mentioned in this section, may be punishable where such act is done in good faith, with the intention of saving the life of the woman or child.

§61-2-8. Abortion; penalty. Assault and battery; penalty.

~~Any person who shall administer to, or cause to be taken by, a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than three nor more than ten years; and if such woman die by reason of such abortion performed upon her, such person shall be guilty of murder. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.~~

(a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where it is otherwise provided, is guilty of a Class 5 felony.

(b) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately receiving a violent injury is guilty of a Class 2 misdemeanor.

(c) Battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally causes physical harm to another person is guilty of a Class 1 misdemeanor.

(d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in the 10 years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of this section where the victim was a current or former spouse, current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward at the time of the offense or convicted of a violation of §61-2-28 of this code or has served a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or §61-2-28 of this code when the victim has a present or past relationship, upon conviction, is subject to the penalties set forth in §61-2-28 of this code for a second, third or subsequent criminal act of domestic violence offense, as appropriate.

(e) (1) For purposes of this section:

'Government representative' means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

'School employee' means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise.

'Health care worker' means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician's office, clinic, or outpatient treatment facility.

'Emergency service personnel' means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

'Utility worker' means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

'Law-enforcement officer' has the same definition as this term is defined in §30-29-1 of this code, except for purposes of this section, 'law-enforcement officer' shall additionally include those individuals defined as 'chief executive' in §30-29-1 of this code.

'Correctional employee' means any individual employed by the West Virginia Division of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile Services and an employee of an entity providing services to incarcerated, detained or housed persons pursuant to a contract with such agencies.

'Athletic official' means a person at a sports event who enforces the rules of that event, such as an umpire or referee, or a person who supervises the participants, such as a coach.

'Transport personnel' means any driver, conductor, motorman, pilot, captain, ferryman, or other person in charge of any vehicle, including automobiles, cars, trucks, buses, aircraft, and any boat, driven by steam, electricity, gasoline, or any other motive power, and which is being used for public conveyance, including but not limited to taxicabs, cars for hire, or ride sharing services.

(2) The Court shall consider as an aggravated factor any violation of subsection (a), (b), or (c) of this section committed against a government representative, school employee, health care worker, any emergency services personnel, utility worker, law enforcement officer, athletic official, or transport personnel while acting in their official capacity or on account of their office. All penalties enjoined by this section may be enhanced by one level.

(f) Any person convicted of any crime set forth in this section who is incarcerated in a facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority, or is in the custody of the Division of Juvenile Services and is at least 18 years of age or subject to prosecution as an adult, at the time of committing the offense and whose victim is a correctional employee may not be sentenced in a manner by which the sentence would run concurrent with any other sentence being served at the time the offense giving rise to the conviction of a crime set forth in this section was committed.

§61-2-9 Malicious or unlawful assault; assault; battery; penalties. Assault during commission of or attempt to commit a felony; penalty.

~~(a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by confinement in a state correctional facility not less than two nor more than ten years. If the act is done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony and, upon conviction thereof, shall either be imprisoned in a state correctional facility not less than one nor more than five years, or be confined in jail not exceeding twelve months and fined not exceeding \$500.~~

~~(b) Assault.— Any person who unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately receiving a violent injury is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months or fined not more than \$100, or both fined and confined.~~

~~(c) *Battery.*— Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally causes physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than twelve months or fined not more than \$500, or both fined and confined.~~

~~(d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in the ten years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of this section where the victim was a current or former spouse, current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward at the time of the offense or convicted of a violation of section twenty-eight of this article or has served a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or section twenty-eight of this article when the victim has a present or past relationship, upon conviction, is subject to the penalties set forth in section twenty-eight of this article for a second, third or subsequent criminal act of domestic violence offense, as appropriate. If any person in the commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person, he or she shall be guilty of a Class 5 felony.~~

§61-2-9a. Stalking; harassment; penalties; definitions.

[Repealed.]

§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.

[Repealed.]

§61-2-9c. Wanton endangerment involving the use of fire; penalty.

[Repealed.]

§61-2-9d. Strangulation; definitions; penalties.

[Repealed.]

§61-2-10. Assault during commission of or attempt to commit a felony; penalty.

[Repealed]

~~§61-2-10a.~~ §61-2-10. Violent crimes against the elderly; sentence not subject to suspension or probation.

(a) ~~If any~~ Any person ~~be who is~~ convicted and sentenced for an offense defined under the provisions of section nine or ten §61-2-8 or §61-2-9 of this code, and if the person shall have has committed such offense against a person who is 65 years of age or older, then the sentence shall be mandatory and shall not be subject to suspension or probation: *Provided*, That the court may, ~~in its discretion,~~ suspend the sentence and order probation to any person so convicted upon condition that such person perform public service for a period of time deemed appropriate by the court: *Provided, however*, That the public service may not be rendered in or about facilities or programs providing care or services for the elderly: *Provided further*, That the court may apply

the provisions of §62-11A-1, *et seq.*, of this code to a person committed to a term of one year or less.

(b) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the commission or attempted commission of a felony against a victim 65 years of age or older shall not be applicable unless such fact is: (i) Found by the court upon a plea of guilty or *nolo contendere*; or (ii) found by the jury, if the matter is tried before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees, and emergency medical service personnel; definitions; penalties.

[Repealed.]

§61-2-11. Unlawful shooting at another in street, alley or public resort; penalty. Harassment; penalties; definitions.

~~If any person unlawfully shoot at another person in any street or alley in a city, town or village, or in any place of public resort, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months nor more than three years, and be fined not less than \$100 nor more than \$1,000.~~

(a) Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a Class 2 misdemeanor.

(b) Any person who harasses or repeatedly makes credible threats against another is guilty of a Class 2 misdemeanor.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-601, or §48-27-403 of this code, is guilty of a Class 1 misdemeanor.

(d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section is a Class 6 felony.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-27-501 of this code, who has been served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, shall be guilty of a Class 6 felony.

(f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been previously served with a copy of the order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, is guilty of a Class 6 felony.

(g) Notwithstanding any provision of this code to the contrary, any person who harasses another person with the intent to cause the person to physically injure himself or herself, or to take his or her own life, or who continues to harass another, knowing or having reason to know that the person is likely to physically injure himself or herself, or to take his or her own life based, in whole or in part, on such harassment, is guilty of a Class 5 felony.

(h) For the purposes of this section:

'Bodily injury' means substantial physical pain, illness, or any impairment of physical condition;

'Course of conduct' means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third party by any action, method, device, or means:

(A) Follows, monitors, observes, surveils, or threatens a specific person or persons;

(B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or

(C) Interferes with or damages a person's property or pet;

'Credible threat' means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

'Harasses' means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress, and which serves no legitimate or lawful purpose;

'Immediate family' means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

'Repeatedly' means on two or more occasions.

(i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended, shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(k) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal, or physical, with the alleged victim.

(l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, may promulgate legislative rules and emergency rules pursuant to §29A-3-1 et seq. of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

§61-2-12. Robbery or attempted robbery; penalties. Strangulation; suffocation and asphyxiation; definitions; penalties.

~~(a) Any person who commits or attempts to commit robbery by: (1) Committing violence to the person, including, but not limited to, partial strangulation or suffocation or by striking or beating; or (2) uses the threat of deadly force by the presenting of a firearm or other deadly weapon, is guilty of robbery in the first degree and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten years.~~

~~(b) Any person who commits or attempts to commit robbery by placing the victim in fear of bodily injury by means other than those set forth in subsection (a) of this section or any person who commits or attempts to commit robbery by the use of any means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device, is guilty of robbery in the second degree and, upon conviction thereof, shall be confined in a correctional facility for not less than five years nor more than eighteen years.~~

~~(c) If any person: (1) By force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, he or she shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten nor more than twenty years; and (2) if any person in committing, or in attempting to commit, any offense defined in the preceding clause (1) of this subsection, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, disabling chemical substance or an electronic shock device, he or she shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten years nor more than twenty five years.~~

(a) As used in this section:

'Bodily injury' means substantial physical pain, illness or any impairment of physical condition;

'Strangle' means knowingly and willfully restricting another person's air intake or blood flow by the application of pressure on the neck or throat;

'Suffocate' means knowingly and willfully restricting the normal breathing or circulation of blood by blocking the nose or mouth of another; and

'Asphyxiate' means knowingly and willfully restricting the normal breathing or circulation of blood by the application of pressure on the chest or torso.

(b) Any person who strangles, suffocates, or asphyxiates another without that person's consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a Class 6 felony.

§61-2-13. Extortion or attempted extortion by threats; penalties. Robbery or attempted robbery; penalties.

~~(a) A person who threatens injury to the character, person, or property of another person, or to the character, person, or property of his or her spouse or child, or accuses him or her or them of a criminal offense, and thereby obtains anything of value, or other consideration, he or she is guilty of a felony and, upon conviction, shall be confined in a correctional facility not less than one nor more than five years. A person who makes such threat of injury or accusation of an offense as set forth in this section, but fails to obtain anything of value or other consideration, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and fined not less than \$50 nor more than \$500.~~

~~(b) For purposes of this article, 'consideration' includes sexual acts as defined in §61-8B-1 of this code, and images of intimate parts defined in §61-8-28a of this code.~~

(a) Any person who commits or attempts to commit robbery by:

(1) Committing violence to the person, including, but not limited to, partial strangulation or suffocation or by striking or beating or

(2) using the threat of deadly force by the presenting of a firearm or other deadly weapon, is guilty of robbery, a Class 2 felony.

(3) (A) placing the victim in fear of bodily injury by means other than those set forth in subdivisions (1) and (2) of this subsection; or

(B) any person who commits or attempts to commit robbery by the use of any means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device, is guilty of robbery, a Class 2 felony.

(c) Any person who:

(1) By force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, is guilty of a Class 3 felony and

(2) Any person who, in committing, or in attempting to commit, any offense defined in subdivision (1) of this subsection, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, disabling chemical substance or an electronic shock device, is also guilty of a Class 3 felony.

§61-2-14. Abduction of person; kidnapping or concealing child; penalties. Extortion or attempted extortion by threats; penalties.

~~(a) Any person who takes away another person, or detains another person against such person's will, with intent to marry or defile the person, or to cause the person to be married or defiled by another person; or takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.~~

~~(b) Any person, other than the father or mother, who illegally, or for any unlawful, improper or immoral purpose other than the purposes stated in subsection (a) of this section or section fourteen a or fourteen c of this article, seizes, take or secretes a child under sixteen years of age, from the person or persons having lawful charge of such child, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years.~~

(a) A person who threatens injury to the character, person, or property of another person, or to the character, person, or property of his or her spouse or child, or accuses him or her or them of a criminal offense, and thereby obtains anything of value, or other consideration, he or she is guilty of a Class 6 felony. A person who makes such threat of injury or accusation of an offense as set forth in this section but fails to obtain anything of value or other consideration, is guilty of a Class 6 felony.

(b) For purposes of this article, 'consideration' includes sexual acts as defined in §61-8B-1 of this code, and images of intimate parts defined in §61-8-28a of this code.

§61-2-14a. Kidnapping; penalty

[Repealed.]

§61-2-14b. Venue of offenses under §§61-2-14 and 61-2-14a.

[Repealed.]

§61-2-14c. Penalty for threats to kidnap or demand ransom.

[Repealed.]

§61-2-14d. Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses.

[Repealed.]

§61-2-14e. One aiding or abetting in offense under §61-2-14, §61-2-14a, §61-2-14c or §61-2-14d guilty as principal; venue.

[Repealed.]

§61-2-14f. Penalties for abduction of a child near a school.

[Repealed.]

§61-2-14g. Unlawful restraint; penalties.

[Repealed.]

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

[Repealed.]

§61-2-15. ~~Assault, battery on school employees; penalties.~~ Kidnapping; penalty.

~~(a) If any person commits an assault: (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than five days nor more than six months and fined not less than \$50 nor more than \$100.~~

~~(b) If any person commits a battery: (1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than ten days nor more than twelve months and fined not less than \$100 nor more than \$500.~~

~~(c) For the purposes of this section, 'school employee' means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a 'school employee' includes a student teacher.~~

(a) Any person who unlawfully takes custody of, conceals, confines or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation or enticement with the intent:

(1) To hold another person for ransom, reward, or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or

(3) To use another person as a shield or hostage, is guilty of a Class 1 felony and, upon conviction, notwithstanding the provisions of §62-12-1, et seq., of this code, is not eligible for parole.

(b) The following exceptions apply to the penalty contained in subsection (a) of this section:

(1) A jury may recommend mercy, and if the recommendation is added to their verdict, the person is eligible for parole in accordance with the provisions of §62-12-1, et seq., of this code;

(2) If the person pleads guilty, the court may provide that the person is eligible for parole in accordance with the provisions of §62-12-1, et seq., of this code and, if the court so provides, the person is eligible for parole in accordance with the provisions of that article in the same manner and with like effect as if the person had been found guilty by the verdict of a jury and the jury had recommended mercy;

(3) All cases in which the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom, money or other thing, or any concession or advantage of any sort has been paid or yielded, constitutes a Class 2 felony; or

(4) All cases in which the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded, constitutes a Class 3 felony.

(c) For purposes of this section, 'to use another as a hostage' means to seize or detain and threaten to kill or injure another in order to compel a third person or a governmental organization to do, or abstain from doing, any act as an explicit or implicit condition for the release of the person detained.

(d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a minor abducted or held hostage who is not motivated by monetary purposes, but rather intends to conceal, take, remove the child or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do so, that person is guilty of a Class 6 felony.

(e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the State Police and each agency so notified, shall cooperate in the investigation forthwith.

(f) It is a defense to a violation of subsection (d) of this section, that the accused's action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law enforcement or to the Child Protective Services Division of the Department of Health and Human Resources.

(g) In the case of every offense committed in violation of the provisions of this section, regardless of whether the offense originated within or without this state, the venue of the offense shall lie in the county where the person was taken, or induced to go away or otherwise kidnapped, in the county where such person was held or detained, or in the county through which such person was conducted or transported.

(h) Any person who, with intent to extort from any other person any ransom, money or other thing, or any concession or advantage of any sort, shall, by speech, writing, printing, drawing or any other method or means of communication, directly or indirectly threaten to take away forcibly or by stealth or otherwise kidnap any person, or shall directly or indirectly demand, orally or in writing, or by any other method or means of communication, any ransom, money or other thing, or any concession or advantage of any sort, on a threat to take away forcibly or by stealth or otherwise kidnap any person, is guilty of a Class 6 felony.

§61-2-15a. Assault, battery on athletic officials; penalties.

[Repealed.]

§61-2-16. Injury to passenger by person in charge of public conveyance or boat; penalty. Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses.

~~If any driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, shall, in the management of such vehicle or boat, willfully or negligently inflict bodily injury on any person, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than six months, or be fined not exceeding \$500, or both.~~

(a) Any person who conceals, takes, or removes a minor child in violation of any court order, and with the intent to deprive another person of lawful custody or visitation rights, is guilty of a Class 6 felony.

(b) It shall be a defense under this section that the accused reasonably believed such action was necessary to preserve the welfare of the minor child. The mere failure to return a minor child at the expiration of any lawful custody or visitation period without the intent to deprive another person of lawful custody or visitation rights shall not constitute an offense under this section.

§61-2-16a. Malicious assault; unlawful assault; battery and recidivism of battery; assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance.

[Repealed.]

§61-2-17. One aiding or abetting in offense under §61-2-15 or §61-2-16 guilty as principal; venue.

Any person who, in any way knowingly aid or abet any other person in the commission of any offense described in §61-2-15 or §61-2-16 of this code, either as accessory before or an accessory after the fact, such person so aiding and abetting is guilty as a principal in the commission of such offense and shall be punished in the same manner and to the same extent as is provided in said sections for the person who committed the offense. The venue of any offense committed in violation of the provisions of this section shall be as provided in §61-11-7 of this code.

§61-2-18. Unlawful restraint; penalties.

(a) Any person who, without legal authority intentionally restrains another with the intent that the other person is not allowed to leave the place of restraint and who does so by physical force or by overt or implied threat of violence or by actual physical restraint but without the intent to obtain any other concession or advantage as those terms are used in §61-2-14a of this code is guilty of a Class 1 misdemeanor.

(b) In any prosecution under this section, it is an affirmative defense that:

(1) The defendant acted reasonably and in good faith to protect the person from imminent physical danger; or

(2) The person restrained was a child less than 18 years old and that the actor was a parent or legal guardian, or a person acting under authority granted by a parent or legal guardian of such child, or by a teacher, or other school personnel, acting under authority granted by §18A-5-1 of this code, and that his or her sole purpose was to assume control of such child.

(c) As used in this section to 'restrain' means to restrict a person's movement without his or her consent.

(d) This section shall not apply to acts done by a law-enforcement officer in the lawful exercise of his or her duties.

§61-2-19. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives, or agrees to give to another person money, property, service, or other thing of value in consideration for the recipient's locating, providing, or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(b) Any person who knowingly receives, accepts, or offers to accept money, property, service, or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(c) Any person who violates the provisions of subsections (a) and (b) of this section is guilty of a Class 6 felony.

(d) A child whose parent, guardian, or custodian has sold or attempted to sell said child in violation of the provisions of §48-22-1 *et seq.* of this code may be considered an abused child as defined by §49-1-201 of this code. The court may place such a child in the custody of the Department of Health and Human Resources or with another responsible person as dictated by the best interests of the child.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the Department of Health and Human Resources or any licensed or duly authorized adoption or child-placing agency;

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth, and adoption proceedings;

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother; or

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement, or placement of a minor child for adoption.

(f) At the final hearing on the adoption as provided in §48-22-1 et seq. of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.

§61-2-20. Failure to remove doors from abandoned refrigerators, freezers and other appliances; penalties.

No person may abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length greater than two feet without first removing all entry doors therefrom.

Any person violating the provisions of this section is guilty of a Class 2 misdemeanor. Magistrates shall have jurisdiction of cases arising hereunder concurrent with courts of record.

§61-2-21. Domestic violence — criminal acts.

(a) Domestic battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member, or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a Class 1 misdemeanor.

(b) Domestic assault. — Any person who unlawfully attempts to commit a violent injury against his or her family or household member, or unlawfully commits an act that places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a Class 2 misdemeanor.

(c) Second offense. — Domestic assault or domestic battery.

A person, convicted of a violation of subsection (a) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-14 (a) of this code, where the victim was his or her current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of subsection (a) or (b) of this section, or a violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-14 (a) of this code where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense is guilty of a Class 1 misdemeanor: *Provided*, That limit for fines thereof shall be doubled, and the person so convicted shall serve 60 actual days of confinement.

A person convicted of a violation of subsection (b) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-14 (a) of this code, where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or having previously been granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of subsection (a) or (b) of this section or §61-2-9(b), §61-2-9(c) or §61-2-14 (a), or §61-2-14(g) of this code where the victim was a current or former

spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense shall be convicted of a Class 2 misdemeanor: *Provided*, That limit for fines thereof shall be doubled, and the person so convicted shall serve 30 actual days of confinement.

(d) Any person who has been convicted of a third or subsequent violation of the provisions of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of §61-2-9 or §61-2-14(g) of this code, where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to §61-11-22 of this code for a violation of subsection (a) or (b) of this section, or a violation of §61-2-9, or §61-2-14(g)(a) all of this code in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or any combination of convictions or diversions for these offenses, is guilty of a Class 6 felony.

(e) As used in this section, 'family or household member' means 'family or household member' as defined in §48-27-204 of this code.

(f) A person charged with a violation of this section may not also be charged with a violation of §61-2-9(b) or §61-2-9(c) of this code for the same act.

(g) No law-enforcement officer may be subject to any civil or criminal action for false arrest or unlawful detention for effecting an arrest pursuant to this section or pursuant to §48-27-1002 of this code.

§61-2-22. Abuse or neglect of incapacitated adult; definitions; penalties.

(a) The following words, when used in this section and sections §61-2-23 and §61-2-24 of this code, have the meaning ascribed, unless the context clearly indicates otherwise:

'Abuse' means the intentional infliction of bodily injury on an incapacitated adult;

'Bodily injury' means substantial physical pain, illness or any impairment of physical condition;

'Caregiver' means any person who has assumed the legal responsibility or a contractual obligation for the care of an incapacitated adult or has voluntarily assumed responsibility for the care of an incapacitated adult. The term includes a facility operated by any public or private agency, organization or institution which provides services to, and has assumed responsibility for the care of an incapacitated adult.

'Incapacitated adult' means any person eighteen years of age or older who by reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life necessary to sustaining life and reasonable health;

'Neglect' means the unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult; and

'Serious bodily injury' means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(b) A caregiver who neglects an incapacitated adult or who knowingly permits another person to neglect an incapacitated adult is guilty of a Class 2 misdemeanor.

(c) A caregiver who abuses an incapacitated adult or who knowingly permits another person to abuse an incapacitated adult is guilty of a Class 1 misdemeanor.

(d) A caregiver of an incapacitated adult who intentionally and maliciously abuses or neglects an incapacitated adult and causes the incapacitated adult bodily injury is guilty of a Class 5 felony.

(e) A caregiver of an incapacitated adult who intentionally and maliciously abuses or neglects an incapacitated adult and causes the incapacitated adult serious bodily injury is guilty of a Class 4 felony.

(f) Nothing in this section or in §61-2-29a of this code may be construed to mean an adult is abused or neglected for the sole reason that his or her independent decision is to rely upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment.

(g) Nothing in this section or in §61-2-29a of this code may be construed to mean an incapacitated adult is abused or neglected if deprivation of life-sustaining treatment or other act has been provided for by the West Virginia Health Care Decisions Act, pursuant to §16-30-1 et seq. of this code.

§61-2-23. Death of an incapacitated adult by a caregiver; penalties.

(a) A caregiver who intentionally and maliciously neglects an incapacitated adult causing death is guilty of a Class 3 felony.

(b) A caregiver of an incapacitated adult who causes the death of an incapacitated adult by knowingly allowing any other person to intentionally or maliciously neglect the incapacitated adult is guilty of a Class 2 felony.

(c) A caregiver of an incapacitated adult who intentionally and maliciously abuses an incapacitated adult which causes the death of the incapacitated adult is guilty of a Class 1 felony.

(d) A caregiver of an incapacitated adult who causes the death of an incapacitated adult by knowingly allowing any other person to intentionally and maliciously abuse an incapacitated adult is guilty of a Class 1 felony.

(e) The provisions of this section do not apply to any caregiver or health care provider who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to supply an incapacitated adult with necessary medical care when the medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the incapacitated adult is an adherent member.

§61-2-24. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

(a) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of less than \$2500 is guilty of a Class 1 misdemeanor.

(b) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of more than \$2500 but less than \$25000 is guilty of a Class 6 felony.

(c) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of more than \$25000 is guilty of a Class 5 felony.

(d) Any person convicted of any violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(e) In determining the value of the money, goods, property, or services referred to in subsection (a), (b) or (c) of this section, cumulated amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan may be used.

(f) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Department of Health and Human Resources, Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees shall report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(g) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(h) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(i) For the purposes of this section:

(1) 'Incapacitated adult' means a person as defined by §61-2-22 of this code;

(2) 'Elderly person' means a person who is 65 years or older;

(3) 'Financial exploitation' or 'financially exploit' means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) 'Protected person' means any person who is defined as a 'protected person' in §44A-1-4 of this code and who is subject to the protections of Chapter 44A or Chapter 44C of this code.

(j) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult may not, standing alone, constitute a defense to a violation of subsections (a), (b) or (c) of this section.

(k) Any person who willfully violates a material term of an order entered pursuant to §55-7J-5 of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

(1) For the first offense, be guilty of a Class 2 misdemeanor; and

(2) For a second or subsequent offense, be guilty of a Class 1 misdemeanor.

§61-2-25. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

(a) This section may be known and cited as the Unborn Victims of Violence Act.

(b) For the purposes of this article, the following definitions shall apply: *Provided*, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section.

'Embryo' means the developing human in its early stages. The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization or 10 weeks after the onset of the last menstrual period.

'Fetus' means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth.

(c) For purposes of enforcing the provisions of §61-2-1, §61-2-1, and §61-2-6, of this code, §61-2-8 and §61-2-9 of this code, and §61-2-21(a) of this code, a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims.

(d) *Exceptions.* — The provisions of this section do not apply to:

(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law;

(2) Acts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing or fertility treatment;

(3) Acts or omissions by medical or health care personnel or scientific research personnel in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

(4) Acts involving the use of force in lawful defense of self or another, but not an embryo or fetus; and

(5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying.

(e) For purposes of the enforcement of the provisions of this section, a violation of the provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection afforded by the provisions of subdivision (1), subsection (d) of this section.

(f) Other convictions not barred. — A prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant arising from the same incident.

§61-2-26. Doors to be removed from abandoned refrigerators, freezers and other appliances; penalties.

[Repealed.]

§61-2-27. Required reporting of gunshot and other wounds.

[Repealed.]

§61-2-27a. Required reporting of burns.

[Repealed.]

§61-2-28. Domestic violence — criminal acts

[Repealed.]

§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties

[Repealed.]

§61-2-29a. Death of an incapacitated adult by a caregiver.

[Repealed.]

§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

[Repealed.]

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

[Repealed]

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-1. Arson; degrees of arson; definitions; penalties. ~~Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions.~~

~~(a) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any~~

~~dwelling, whether occupied, unoccupied or vacant, or any outbuilding, whether the property of himself or herself or of another, shall be guilty of arson in the first degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than twenty years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.~~

(b) As used in this section:

(1) 'Dwelling' means any building or structure intended for habitation or lodging, in whole or in part, regularly or occasionally, and shall include, but not be limited to, any house, apartment, hotel, dormitory, hospital, nursing home, jail, prison, mobile home, house trailer, modular home, factory-built home or self-propelled motor home;

(2) 'Outbuilding' means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

(b) First degree arson—

(1) Any person who willfully, unlawfully, and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn any occupied dwelling or outbuilding, whether the property of himself or herself or of another, is guilty of a Class 3 Felony.

(2) Any person who willfully, unlawfully, and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any unoccupied or vacant, dwelling or outbuilding, whether the property of himself or herself or of another, is guilty of a Class 4 Felony.

(c) Second degree arson—

Any person who willfully, unlawfully, and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any building or structure of any class or character, whether the property of himself or herself or of another, not included or prescribed in the preceding subsection, is guilty of arson in the second degree, a Class 5 Felony.

(d) Third degree arson—

Any person who

(A) Willfully, unlawfully, and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any personal property of any class or character, of the value of not less than \$2500, and the property of another person, or

(B) Willfully, unlawfully, and maliciously sets fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands.

is guilty of arson in the third degree, a Class 6 Felony.

(e) Fourth degree arson—

Any person who willfully, unlawfully, and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any personal property of any class or character, of the value of less than \$2500, and the property of another person, is guilty of arson in the fourth degree, a Class 1 misdemeanor.

(f) Attempted arson—

(1) Any person who willfully, unlawfully, and maliciously attempts to set fire to or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice, or solicit any person to burn, any of the buildings, structures, or personal property mentioned in the foregoing subsections, or who commits any act preliminary thereto, or in furtherance thereof, is guilty of attempted arson, a Class 1 misdemeanor.

(2) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building, structure or personal property mentioned in the foregoing sections, in an arrangement or preparation with intent to eventually, willfully, unlawfully, and maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade, incite, entice or solicit the setting fire to or burning of any building, structure or personal property mentioned in the foregoing sections shall, for the purposes of this section, constitutes an attempt to burn that building, structure or personal property.

(g) A person imprisoned pursuant to the provisions of this section, whose sentence is not a result of a guilty plea, is not eligible for parole prior to having served a minimum of one-third of the years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

(h) Any person convicted under any of the provisions of this section shall be liable to any person injured thereby, or in consequence thereof, for double the amount of actual damages sustained by that person.

§61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty. Burning, or attempting to burn, insured property; penalty.

~~Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building or structure of any class or character, whether the property of himself or herself or of another, not included or prescribed in the preceding section, shall be guilty of arson in the second degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than ten years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty two of this code, whichever is greater.~~

Any person who willfully, and with intent to injure or defraud an insurer, sets fire to, or burns, or attempts to do so, or causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building, structure or personal property, of any class or character, whether the property of himself or herself or of another, which at the time is insured, or

which is believed by the person committing an act prohibited by this section to be insured by any person against loss or damage by fire, is guilty of a Class 6 felony. A person imprisoned pursuant to this section, who committed the crime with an intent to defraud, is not eligible for parole prior to having served a minimum of one-third of the years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

§61-3-3. Burning personal property of another of the value of five hundred dollars or more; third-degree arson; penalty; Causing injuries during an arson-related crime; penalties.

~~Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any personal property of any class or character, of the value of not less than \$500, and the property of another person, shall be guilty of arson in the third degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than three years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.~~

(a) Any person who violates §61-2-1 or §61-2-2 of this code, which violation causes bodily injury, but which does not result in death, to any person, is guilty of a felony one class higher than the underlying offense.

(b) Any person who violates §61-2-1 or §61-2-2 of this code, which violation causes serious bodily injury which maims, disfigures, or disables any person, but does not result in death, is guilty of a felony one class higher than the underlying offense. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one-third of the years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

(c) As used in this section:

'Bodily injury' means injury that causes substantial physical pain, illness, or any impairment of physical condition; and

'Serious bodily injury' means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality occurring because of a preterm delivery.

§61-3-4. Attempt to commit arson; fourth-degree arson; penalty; Recovery of costs incurred in fighting fires caused by arson.

~~(a) Any person who willfully and maliciously attempts to set fire to or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice or solicit any person to burn, any of the buildings, structures, or personal property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than two years, or fined not to exceed \$2,500, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.~~

~~(b) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building, structure or personal property mentioned in the~~

~~foregoing sections, in an arrangement or preparation with intent to eventually, willfully and maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade, incite, entice or solicit the setting fire to or burning of any building, structure or personal property mentioned in the foregoing sections shall, for the purposes of this section, constitute an attempt to burn that building, structure or personal property.~~

~~Any person convicted of any crime enumerated in §61-2-1 or §61-2-2 of this code may be ordered to reimburse any fire department or company for the costs expended to control, extinguish and suppress the arson fire, and all reasonable costs associated therewith, including but not limited to, costs for the personal services rendered by any employees of any fire department or company, and operating costs of equipment and supplies used to control, extinguish or suppress the fire.~~

§61-3-5. Burning, or attempting to burn, insured property; penalty; Burglary; entry of dwelling house or outbuilding; penalties.

~~Any person who willfully and with intent to injure or defraud an insurer sets fire to or burns, or attempts so to do, or causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building, structure or personal property, of any class or character, whether the property of himself or herself or of another, which shall at the time be insured or which is believed by the person committing an act prohibited by this section to be insured by any person against loss or damage by fire, guilty of a felony and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than five years or fined not to exceed \$10,000, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of §62-12-13 of this code, whichever is greater.~~

~~(a) Any person who breaks and enters, or enters without breaking, a dwelling house or outbuilding adjoining a dwelling with the intent to commit a violation of the criminal laws of this state is guilty of a Class 4 felony.~~

~~(b) The term 'dwelling house', as used in this section, includes, but is not limited to, a mobile home, house trailer, modular home, factory-built home, or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotorized vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.~~

§61-3-6. Willfully, unlawfully, and maliciously setting fire on lands; Penalty; entry of house, building, vehicle, or enclosed property; penalties; counts in indictment.

~~If any person willfully, unlawfully, and maliciously sets fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands, he or she shall be is guilty of a felony and, upon conviction, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than one year nor more than five years or fined not to exceed \$5,000, or both. He or she shall, moreover, be liable to any person injured thereby, or in consequence thereof, for double the amount of damages sustained by such person. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater~~

Any person who, at any time, breaks and enters, or enters without breaking, any office, shop, storehouse, warehouse, banking house, any other house or building which is not a dwelling house or outbuilding adjoining or occupied in conjunction with the same, any vehicle, conveyance or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, is guilty of a Class 6 felony.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

§61-3-7. Causing injuries during an arson-related crime; penalties; Manufacture or possession of burglary tools; penalties.

~~(a) Any person who violates the provisions of sections one, two, three, four, five or six of this article, which violation causes bodily injury, but does not result in death, to any person shall be guilty of a felony and, upon conviction thereof, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than ten years, or fined not more than \$5,000, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty two of this code, whichever is greater.~~

~~(b) Any person who violates the provisions of sections one, two, three, four, five or six of this article, which violation causes serious bodily injury which maims, disfigures, or disables any person, but does not result in death, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than three nor more than fifteen years, or fined not more than \$10,000, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty two of this code, whichever is greater.~~

Any person who manufactures or has in his or her possession any tool, instrument or other thing adapted, designed or commonly used for committing, advancing or facilitating offenses involving unlawful entry into a premises, theft by a physical taking, or offenses involving forcible breaking of safes or other containers or safe-like depositories of property, under circumstances that manifest or demonstrate an intent to use, or has knowledge that another person intends to use the same in the commission of an offense of the same kind or character, is guilty of a Class 1 misdemeanor.

§61-3-8. Recovery of costs incurred in fighting fires caused by arson Criminal offenses involving theft detection shielding devices; detention.

~~Any person convicted of any felony enumerated in section one, two, three, four, five or six of this article may be ordered to reimburse any fire department or company for the costs expended to control, extinguish and suppress the arson fire, and all reasonable costs associated therewith, including but not limited to, costs for the personal services rendered by any employees of any fire department or company, and operating costs of equipment and supplies used to control, extinguish or suppress the fire.~~

(a) As used in this section:

'Theft detection device' means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

'Theft detection device remover' means any tool or device specifically designed or manufactured to be used to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

'Theft detection shielding device' means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(b) A person commits unlawful distribution of a theft detection shielding device when he or she knowingly manufactures, sells, offers to sell or distribute any theft detection shielding device.

(c) A person commits unlawful possession of a theft detection shielding device when he or she knowingly possesses any theft detection shielding device with the intent to commit theft or retail theft.

(d) A person commits unlawful possession of a theft detection shielding device remover when he or she knowingly possesses any theft detection device remover with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding said merchandise.

(e) A person commits unlawful use of a theft detection shielding device or a theft detection shielding remover when he or she uses or attempts to use either device while committing a violation of this article.

(f) A person commits unlawful removal of a theft detection device when he or she intentionally removes any theft detection device by the use of manual force or by any tool or device, which is not specifically designed or manufactured to remove theft detection devices, from merchandise prior to purchase.

(g) Any person convicted for violating the provisions of subsections (b), (c), (d) or (e) of this section is guilty of a Class 2 misdemeanor.

(h) Any person convicted of violating the provisions of subsection (f) of this section is guilty of a Class 3 misdemeanor.

(i) The activation of an anti-shoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment constitutes reasonable cause for the detention of the person so exiting by the owner or operator or the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that such a device is being utilized. Each such detention shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.

(j) Such taking into custody and detention by a law-enforcement officer, merchant, or merchant's employee, if done in compliance with all the requirements of this section, does not

render such law-enforcement officer, merchant, or merchant's employee criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

§61-3-9. Grand larceny, aggravated grand larceny, and petit larceny distinguished; penalties; Larceny of bank notes, checks, writings of value and book accounts; determination of value

(a) Any person who commits simple larceny of goods or chattels of the value of \$2,500 or more, is guilty of a Class 6 felony, designated grand larceny.

(b) Any person who commits simple larceny of goods or chattels of the value of \$25,000 or more, is guilty of a Class 5 felony, designated aggravated grand larceny.

(c) Any person who commits simple larceny of goods or chattels of the value of less than \$2,500, is guilty of a Class 1 misdemeanor, designated petit larceny.

(d) Any person who steals any bank note, check, or other writing or paper of value, or any book of accounts for or concerning money or goods due to be delivered, is guilty of the larceny thereof, and shall receive the same punishment, according to the value of the article stolen, that is prescribed for the punishment of larceny of goods or chattels.

(e) In a prosecution under this section, the money due on or secured by the writing, paper, or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be considered to be the value of the article stolen.

§61-3-10. Receiving or transferring stolen goods.

Any person who buys or receive from another person, or aid in concealing, or transfer to a person other than the owner thereof, any stolen goods or other thing of value, which he or she knows or has reason to believe has been stolen, is guilty of the larceny thereof and may be prosecuted although the principal offender is not convicted.

§61-3-11. Burglary; entry of dwelling or outhouse; penalties; Bringing into this state, receiving, or disposing of property stolen in another state; penalty.

(a) Any person who breaks and enters, or enters without breaking, a dwelling house or outbuilding adjoining a dwelling with the intent to commit a violation of the criminal laws of this state is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than 15 years.

(b) The term 'dwelling house', as used in §61-3-11(a) of this code, includes, but is not limited to, a mobile home, house trailer, modular home, factory built home, or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotorized vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.

Any person, who brings into this state, or receives, converts to his or her own use, or sells, property of any character, of value, which was stolen in another state, and which he or she knows or has reason to believe was stolen, is guilty of the larceny thereof in the county in which such property may be found, used, converted, or sold, and may be prosecuted for the offense therein.

and, upon conviction, shall be punished as provided for the offense of larceny committed within this state.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment; Embezzlement.

~~If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding \$100.~~

~~An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.~~

(a) (1) Any officer, agent, clerk, or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated who:

(A) Embezzles or fraudulently converts to his or her own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which have come into his or her possession, or been placed under his or her care or management, by virtue of his or her office, place, or employment; or

(B) Embezzles or fraudulently converts to his or her own use, any funds obtained by the use of any card, plate, code, account number, or other means of account access that can be used, alone, or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) Is guilty of the larceny of the value thereof.

(b) Any officer, agent, clerk, or servant of this state, or of any county, district, school district or municipal corporation who appropriates or uses for his or her own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, shall be determined to have embezzled the same and is guilty of the larceny of the value thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his or her own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it

is not necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his or her own benefit or for the benefit of any other person.

(c) Any person who holds a fiduciary power of attorney or who has a fiduciary relationship with a person and in so doing willfully and with intent to defraud embezzles, misappropriates or fraudulently converts for his or her own benefit, or for the benefit of another, the assets or property, real or personal, with which he or she has been entrusted, or misuses or misappropriates funds from the person to whom he or she owes a fiduciary duty or misuses any account, line of credit or credit card of the principal for purposes not contemplated by the terms of the power of attorney instrument or fiduciary relationship, or for purposes not intended by the principal in the execution of the power of attorney or for purposes not intended by the fiduciary relationship, shall be determined to have embezzled the same and, upon conviction, is guilty of the larceny of the value thereof: *Provided*, That he or she is guilty of a felony one class higher than the underlying offense.

(d) Any carrier or other person to whom money or other property which may be the subject of larceny may be delivered to be carried for hire, or if any other person who may be entrusted with such property who embezzles or fraudulently converts to his or her own use, or secretes with intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place at which, or to the person to whom, they were to be delivered, is guilty of the larceny of the value thereof: *Provided*, That he or she is guilty of a felony one class higher than the underlying offense.

(e) Any person guilty of a violation of any provision of this section is an officer, agent, clerk, or servant of any banking institution, is guilty of a felony one class higher than the underlying offense.

(f) It is not necessary to describe with specificity in the indictment of any person, or to identify upon the trial of any person, the particular bullion, money, bank note, draft or security for money, funds, or other property which is so taken, converted, or embezzled.

§61-3-13. Grand and petit larceny distinguished; penalties; Falsifying accounts; penalty

~~(a) If a person commits simple larceny of goods or chattels of the value of \$1,000 or more, such person is guilty of a felony, designated grand larceny, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than \$2,500.~~

~~(b) If a person commits simple larceny of goods or chattels of the value of less than \$1,000, such person is guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed \$2,500, or both, in the discretion of the court.~~

Any officer, clerk or agent of this state, or of any county, district, school district or municipal corporation thereof, or of any banking institution or incorporated company, or any clerk or agent of any firm or person or association of persons not incorporated, who makes, alters or omits to make any entry in any book of account of, or in any account kept by the state, county, district, school district, municipal corporation, banking institution, incorporated company, firm or person, or association of persons, or mutilates, destroys or conceals any such account or book of accounts, with intent in so doing to conceal, the true state of any account, or to defraud the state or any county, district, school district, municipal corporation, banking institution, company, firm or person, or with intent to enable or assist any person to obtain money to which he or she was not entitled, is guilty of a Class 5 felony.

§61-3-14. Larceny of bank notes, checks, writings of value and book accounts; penalty; Possession or use of automated sales suppression devices; penalty.

~~If any person steal any bank note, check, or other writing or paper of value, or any book of accounts for or concerning money or goods due to be delivered, he or she shall be deemed guilty of the larceny thereof, and receive the same punishment, according to the value of the article stolen, that is prescribed for the punishment of larceny of goods or chattels.~~

(a) General. — When used in this article, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. —

'Automated sales suppression device' or 'zapper' means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

'Electronic cash register' means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

'Phantom-ware' means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

'Transaction data' includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address and identification number of the vendor and the receipt or invoice number of the transaction.

'Transaction report' means a report documenting, but not limited to, the sales taxes collected, media totals and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(c) It is unlawful to sell willfully and knowingly, purchase, install, transfer or possess in this state any automated sales suppression device or zapper or phantom-ware.

(d) Any person convicted of a violation of subsection (c) of this section is guilty of a Class 6 felony; and, is liable for all taxes and penalties due the state as the result of the fraudulent use of an automated sales suppression device, zapper or phantom-ware and shall forfeit all profits associated with the sale or use of an automated sales suppression device or phantom-ware.

(f) An automated sales suppression device or phantom-ware and any cash register or device containing such device or software is contraband and, as such, subject to seizure and destruction by any duly authorized law-enforcement agency in the state, including the Criminal Investigation Division of the State Tax Department.

§61-3-15. How value of notes, book accounts and other writings determined; Destroying or concealing will; embezzlement by fiduciary; penalty.

In a prosecution under the preceding section, the money due on or secured by the writing, paper or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen.

Any person, who fraudulently destroys or conceals any will or codicil, with intent to prevent the probate thereof, is guilty of a Class 6 felony.

Any guardian, personal representative, or other fiduciary, who willfully and knowingly fails to make and return an inventory of any personal property (of which an inventory is required by law to be made) which may come to his or her hands as such, or willfully and knowingly fails or refuses to produce any such property for appraisal in the manner required by law, or willfully and knowingly conceals or embezzles any such property, is guilty of the larceny of the value thereof; and the failure of any such guardian, personal representative or other fiduciary to account for and pay over or deliver, when directed by the court, as required by law, any money, bullion, bank notes or other property, determined by the proper officer of court to be due and payable, is prima facie evidence that such guardian, personal representative or other fiduciary has embezzled the same.

§61-3-16. Larceny of things savoring of realty; Obtaining money, property, and services by false pretenses; disposing of property to defraud creditors; penalties.

Things which savor of the realty, and are at the time they are taken part of the freehold, whether they be of the substance or produce thereof, or affixed thereto, shall be deemed goods and chattels, of which larceny may be committed, although there be no interval between the severing and taking away.

(a)(1) Any person who obtains by false pretense, token, or representation, with intent to defraud, any money, goods or other property which may be the subject of larceny; or

(2) Any person who obtains, on credit, any money, goods, or other property which may be the subject of larceny, by representing that there is money due him or her or to become due him or her, and assigns the claim for such money, in writing, to the person from whom he or she obtains such money, goods or other property, and afterwards collects the money due or to become due, without the consent of the assignee, and with the intent to defraud; then

(3) Is guilty of larceny of the value thereof.

(b) Any person who obtains by any false pretense, token, or representation, with intent to defraud, the signature of another to a writing, the false making of which would be forgery, is guilty of a Class 6 felony.

(c)(1) Any person who removes any of his or her property out of any county with the intent to prevent the same from being levied upon by any execution; or

(2) Any person who secretes, assigns, or conveys, or otherwise disposes of any of his or her property with the intent to defraud any creditor or to prevent the property from being made liable for payment of debts; or

(3) Any person who receives the property of another with the intent to defraud any creditor or to prevent the property from being made liable for the payment of debts;

(4) Is guilty of a Class 1 misdemeanor.

(d) (1) Any person, firm, or corporation that obtains labor, services or any other such thing of value by any false pretense, token, or representation, with intent to defraud, the person, firm or corporation is guilty of theft of services and is guilty of the larceny of the value thereof;

(2) Theft of services includes the obtaining of a stop payment order on a check, draft or order for payment of money owed for services performed in good faith and in substantial compliance with a written or oral contract for services, with the fraudulent intent to permanently deprive the provider of such labor, services or other such thing of value of the payment represented by such check, draft or order, and any person, firm or corporation violating the provisions of this subdivision is guilty of the larceny of the value thereof.

(e) Prosecution for an offense under this section does not bar or otherwise affect adversely any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of the criminal offense.

§61-3-17. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.

(a) As used in this section:

'Counterfeit credit card' means the following:

Any credit card or a representation, depiction, facsimile, aspect, or component thereof that is counterfeit, fictitious, altered, forged, lost, stolen, incomplete or obtained in violation of this section, or as part of a scheme to defraud; or

Any invoice, voucher, sales draft or other reflection or manifestation of such a card.

'Credit card making equipment' means any equipment, machine, plate mechanism, impression or any other contrivance which can be used to produce a credit card, a counterfeit credit card, or any aspect or component of either.

'Traffic' means:

To sell, transfer, distribute, dispense, or otherwise dispose of any property; or

To buy, receive, possess, obtain control of or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of such property.

'Notice' means either information given in person or information given in writing to the person to whom the number, card or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to that person at his or her last known address, is prima facie evidence that such notice was duly received. A cardholder's knowledge of the revocation of his or her credit card may be reasonably inferred by evidence that notice of such revocation was mailed to him or her, at least four days prior to his or her use or attempted use of the credit card, by first class mail at his or her last known address.

(b)(1) It is unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another beyond or without the authority of the person to whom the card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where the card, number or device has been revoked and notice of such revocation has been given to the person to whom issued.

(2) It is unlawful for any person knowingly to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

(3) Any person who violates any provision of this subsection is guilty of the larceny of the value of the credit, goods, property, or service obtained or attempted to be obtained.

(c) Any person who makes, manufactures, presents, embosses, alters, or utters a credit card with intent to defraud any person, issuer of credit or organization providing money, goods, services, or anything else of value in exchange for payment by credit card is guilty of forgery, a Class 6 felony.

(d) Any person who traffics in or attempts to traffic in ten or more counterfeit credit cards or credit card account numbers of another in any six-month period is guilty of a Class 6 felony.

(e) Any person who receives, possesses, transfers, buys, sells, controls or has custody of any credit card making equipment with intent that the equipment be used in the production of counterfeit credit cards is guilty of a Class 6 felony.

(f) Any person who knowingly receives, possesses, acquires, controls or has custody of a counterfeit credit card is guilty of a Class 1 misdemeanor.

§61-3-18. Receiving or transferring stolen goods. Intercepting or monitoring customer telephone calls; penalty.

~~If any person buy or receive from another person, or aid in concealing, or transfer to a person other than the owner thereof, any stolen goods or other thing of value, which he or she knows or has reason to believe has been stolen, he or she shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender be not convicted.~~

(a) It is unlawful for any person, firm or corporation to intercept or monitor, or to attempt to intercept or monitor, the transmission of a message, signal or other communication by telephone between an employee or similar agent of that person, firm or corporation and a customer of that

person, firm or corporation unless the person, firm or corporation notifies each employee or agent subject to interception or monitoring that their telephone messages are subject to interception or monitoring. Any person, firm or corporation violating the provisions of this section is guilty of a Class 3 misdemeanor.

(b) Nothing contained in this section may require marking of telephone instruments nor require consent to interception or monitoring, in the case of a wiretap or other form of monitoring which is engaged in for the sole purpose of law enforcement and which is lawful in all other respects.

(c) The Public Service Commission may not issue any rule or regulation requiring or suggesting the monitoring of any message, signal or other communication by telephone to or from any telephone utility customer so as to obtain the content or substance of any such communication.

§61-3-19. Bringing into this state, receiving, or disposing of property stolen in another state; penalty; Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.

If any person shall bring into this state, or shall receive, convert to his or her own use, or sell, property of any character, of value, which was stolen in another state, and which he or she knows or has reason to believe was stolen, he or she shall be deemed guilty of the larceny thereof in the county in which such property may be found, used, converted or sold, and may be prosecuted for such offense therein, and, upon conviction, shall be punished as provided for the offense of larceny committed within this state.

(a) Any person who willfully deprives another person of any money, goods, property, or services by means of fraudulent pretenses, representations or promises is guilty of the larceny of the value thereof.

(b) In determining the value of the money, goods, property, or services referred to in subsection (a) of this section, it is permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

(c) A violation of law may be prosecuted under this section notwithstanding any other provision of this code.

§61-3-20. Embezzlement; Casting away, destroying, or interfering with floating craft or material; penalty.

If any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently converts to his or her own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which shall have has come into his or her possession, or been placed under his or her care or management, by virtue of his or her office, place or employment, he or she shall be is guilty of the larceny thereof. If such the guilty person be is an officer, agent, clerk, or servant of any banking institution, he or she shall be is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary a state correctional facility not less than 10 years. And it shall not be is not necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security for money which is so taken, converted to his or her own use or embezzled by him or her.

~~And whenever any officer, agent, clerk, or servant of this state, or of any county, district, school district or municipal corporation, shall appropriate or uses for his or her own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, he or she shall be held to have embezzled the same and be is guilty of the larceny thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his or her own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it shall not be is not necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his or her own benefit or for the benefit of any other person.~~

Any person who willfully casts away or otherwise destroys any vessel within any county with intent to injure or defraud any owner thereof, or any owner of any property on board the same, or insurer of such a vessel or property, or any part thereof, or, who takes, carries away, removes, injures, destroys, breaks, cuts, detaches, unties, loosens, impairs, weakens, or otherwise interferes with any rope, line, fastening, connecting or other appliance used to tie, moor, attach or fasten to a bank of any stream, any floating craft, lumber, timber or material, which is the property of another, with the intent to injure, defraud or damage such other person, or to cause such floating craft, lumber, timber or material to become adrift, or to float away, without the consent of the owner thereof, is guilty of a Class 6 felony. If such act was committed without any intent to injure, defraud, or damage such other person, that person is guilty of a Class 1 misdemeanor.

§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.

[Repealed.]

§61-3-21. Embezzlement by carrier or other person; Interference with or destruction of buoys, signal lights or other aids to navigation; penalty.

~~If any carrier or other person to whom money or other property which may be the subject of larceny may be delivered to be carried for hire, or if any other person who may be intrusted with such property, embezzle or fraudulently convert to his or her own use, or secrete with intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place at which, or to the person to whom, they were to be delivered, he or she shall be deemed guilty of the larceny thereof.~~

Any person or persons, who willfully or maliciously interferes with, injures, or destroys any buoy, lamp, lantern, signal light or other aid to navigation erected or maintained by the government of this state, or of the United States, in this state, every person so offending guilty of a Class 1 misdemeanor. If the violation causes bodily injury or death, every person so offending is guilty of a Class 6 felony.

§61-3-22. Falsifying accounts; penalty; Malicious killing of animals by poison or otherwise; penalty.

~~If any officer, clerk or agent of this state, or of any county, district, school district or municipal corporation thereof, or of any banking institution or incorporated company, or any clerk or agent of any firm or person or association of persons not incorporated, make, alter or omit to make any entry in any book of account of, or in any account kept by such state, county, district, school~~

~~district, municipal corporation, banking institution, incorporated company, firm or person, or association of persons, or mutilate, destroy or conceal any such account or book of accounts, with intent in so doing to conceal, the true state of any account, or to defraud the state or any county, district, school district, municipal corporation, banking institution, company, firm or person, or with intent to enable or assist any person to obtain money to which he or she was not entitled, such officer, clerk or agent shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.~~

Any person who maliciously administers poison to or exposes poison with the intent that it should be taken by, any horse, cow or other animal of another person, or any person who maliciously maims, kills, or causes the death of any horse, cow or other animal of another person, is guilty of a Class 6 felony: *Provided*, That this section shall not be construed to include dogs.

§61-3-22a. Possession or use of automated sales suppression devices; penalty

[Repealed.]

§61-3-23. Destroying or concealing will; embezzlement by fiduciary; penalty. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.

~~If any person fraudulently destroy or conceal any will or codicil, with intent to prevent the probate thereof, he or she shall be guilty of a felony, and, upon conviction, be confined in the penitentiary not less than one nor more than five years. If any guardian, personal representative, or other fiduciary, shall wilfully and knowingly fail to make and return an inventory of any personal property (of which an inventory is required by law to be made) which may come to his or her hands as such, or wilfully and knowingly fail or refuse to produce any such property for appraisement in the manner required by law, or wilfully and knowingly conceal or embezzle any such property, he or she shall be guilty of the larceny thereof; and the failure of any such guardian, personal representative or other fiduciary to account for and pay over or deliver, when directed by the court, as required by law, any money, bullion, bank notes or other property, determined by the proper officer of court to be due and payable, shall be prima facie evidence that such guardian, personal representative or other fiduciary has embezzled the same~~

(a) Any debtor under any security instrument conveying personal property, who retains possession of such personal property, and who, without the consent of the owner of the claim secured by the security instrument, and with intent to defraud, removes or causes to be removed any of the property securing the claim out of the county where it is situated at the time it became security for such claim or out of a county to which it was removed by virtue of a former consent of the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or converts the same to his or her own use, is guilty of a Class 2 misdemeanor.

(b) Any person in possession or control of any personal property by virtue of or subject to a written lease who, with intent to defraud and without written consent of the owner, disposes of such property by sale or transfer, or, after receiving a written notice to return the property or otherwise make the property available to the lessor, secretes or converts such property to his or her own use and in so doing places the property in a location other than the locations described in the written lease, or removes or causes to be removed such property from the state is guilty of the larceny of the value of such property.

In any prosecution under the provisions of this subsection, written notice may be mailed by certified mail, addressed to the consumer at the address of the consumer stated in the lease, and served on the consumer within 10 days of the expiration of the lease, which notice shall state that the lease has expired, and that the consumer has 10 days from receipt of the notice to return the leased property. Proof that the consumer failed to return the property within 10 days of receiving the notice shall constitute prima facie evidence, in any prosecution under this subsection, that the consumer intended to defraud the owner.

Whenever the consumer is a resident of the county in which the lease was contracted, the dealer, after written notice to the consumer within 10 days after the expiration of the lease, may obtain immediate possession of the leased property without formal process, if this can be done without breach of the peace. The dealer is not liable to the consumer for any damages for any action taken that is reasonable, necessary, and incidental to the reclaiming or taking possession of the leased property.

§61-3-24. Obtaining money, property, and services by false pretenses; disposing of property to defraud creditors; penalties. False statement as to financial condition of person, firm, or corporation; penalty.

~~(a)(1) If a person obtains from another by any false pretense, token or representation, with intent to defraud, any money, goods or other property which may be the subject of larceny; or~~

~~(2) If a person obtains on credit from another any money, goods or other property which may be the subject of larceny, by representing that there is money due him or her or to become due him or her, and assigns the claim for such money, in writing, to the person from whom he or she obtains such money, goods or other property, and afterwards collects the money due or to become due, without the consent of the assignee, and with the intent to defraud;~~

~~(3) Such person is guilty of larceny. If the value of the money, goods or other property is \$1,000 or more, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than \$2,500. If the value of the money, goods or other property is less than \$1,000, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than \$2,500, or both.~~

~~(b) If a person obtains by any false pretense, token or representation, with intent to defraud, the signature of another to a writing, the false making of which would be forgery, the person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or, in the discretion of the court, be confined in jail not more than one year and fined not more than \$2,500.~~

~~(c)(1) If a person removes any of his or her property out of any county with the intent to prevent the same from being levied upon by any execution; or~~

~~(2) If a person secretes, assigns or conveys, or otherwise disposes of any of his or her property with the intent to defraud any creditor or to prevent the property from being made liable for payment of debts; or~~

~~(3) If a person receives the property of another with the intent to defraud any creditor or to prevent the property from being made liable for the payment of debts;~~

~~(4) The person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$2,500 and be confined in jail not more than one year.~~

~~(d) If a person, firm or corporation obtains labor, services or any other such thing of value from another by any false pretense, token or representation, with intent to defraud, the person, firm or corporation is guilty of theft of services. If the value of the labor, services or any other such thing of value is \$1,000 or more, the person, firm or corporation is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than \$2,500. If the value of the labor, services or any other such thing of value is less than \$1,000, the person, firm or corporation is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than \$2,500, or both, in the discretion of the court.~~

~~(e) Theft of services includes the obtaining of a stop payment order on a check, draft or order for payment of money owed for services performed in good faith and in substantial compliance with a written or oral contract for services, with the fraudulent intent to permanently deprive the provider of such labor, services or other such thing of value of the payment represented by such check, draft or order. Notwithstanding the penalties set forth elsewhere in this section, any person, firm or corporation violating the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two times the face value of the check, draft or order.~~

~~(f) Prosecution for an offense under this section does not bar or otherwise affect adversely any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of the criminal offense.~~

Any person who knowingly makes or causes to be made, either directly or indirectly, or through any agency whatever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any other person, firm or corporation, in whom or in which he or she is interested, or for whom or for which he or she is acting, for the purpose of procuring in any form whatever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit either of himself or herself or of such person, firm or corporation; or who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself or herself, or such person, firm or corporation in which he or she is interested, or for whom he or she is acting, procures, upon the faith thereof, for the benefit either of himself or herself, or of such person, firm or corporation, either or any of the things of benefit mentioned herein; or who, knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself or herself or such person, firm or corporation in which he or she is interested, or for whom he or she is acting, represents on a later day, either orally or in writing, that such statement theretofore made, if then again made on such day, would be then true, when in fact such statement, if then made, would be false, and procures upon the faith thereof, for the benefit either of himself or herself or of such other person, firm or corporation, either or any of the things of benefit mentioned herein, is guilty of a Class 3 misdemeanor.

§61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.

[Repealed.]

§61-3-24b. Making, selling, possessing, transferring, or advertising for sale a device or plans for a device designed to obtain or use telephone or telegraph service or facilities by false or fraudulent means; penalty.

[Repealed.]

§61-3-24c. Intercepting or monitoring customer telephone calls; penalty.

[Repealed.]

§61-3-24d. Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.

[Repealed.]

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

[Repealed.]

§61-3-24f. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.

[Repealed.]

§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

[Repealed.]

§61-3-24h. Providing false documentation to workers' compensation, to the Insurance Commissioner or a private carrier of workers' compensation insurance; altering documents or certificates from workers' compensation; penalties; venue.

[Repealed.]

§61-3-25. Casting away, destroying, or interfering with floating craft or material; penalty; Publication of false advertisements; penalty.

~~If any person wilfully cast away or otherwise destroy any vessel within any county with intent to injure or defraud any owner thereof, or any owner of any property on board the same, or insurer of such a vessel or property, or any part thereof, he or she shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary of this state not less than one nor more than five years; or, if any person take, carry away, remove, injure, destroy, break, cut, detach, untie, loosen, impair, weaken, or otherwise interfere with any rope, line, fastening, connecting or other appliance used to tie, moor, attach or fasten to a bank of any stream, any floating craft, lumber, timber or material, the property of another, with intent to injure, defraud or damage such other person, or to cause such floating craft, lumber, timber or material to become adrift, or to float away, without the consent of the owner thereof, he or she shall be deemed guilty~~

of a felony, and, upon conviction thereof, shall be confined in the penitentiary of this state not less than one nor more than five years.

Any person, firm, corporation or association, or their agents or employees, who, with intent to sell, or in anywise dispose of, merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or over any radio or television station, or internet posting, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue and deceptive, is guilty of a petty offense, and, upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$300, and such violation, by an agent or employee, is an offense as well by the principal or employer, and they may be indicted for the same, either jointly or severally.

§61-3-26. Interference with or destruction of buoys, signal lights or other aids to navigation; penalty. Fraudulently obtaining food or lodging; penalty.

~~If any person or persons shall wilfully or maliciously interfere with, injure or destroy any buoy, lamp, lantern, signal light or other aid to navigation erected or maintained by the government of this state, or of the United States, in this state, every person so offending shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine not exceeding \$500, or by imprisonment in the jail of the county not exceeding six months, or both, according to the aggravation of the offense, in the discretion of the court.~~

Any person who receives, or causes to be furnished, any food or accommodation at any hotel, inn, eating, lodging or boardinghouse, or restaurant, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, and any person who obtains credit at any hotel, inn, eating, lodging or boardinghouse, or restaurant, by the use of any false pretense or device, or by depositing in such hotel, inn, eating, lodging or boardinghouse, or restaurant, any baggage or property of less value than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent, and any person who, after obtaining credit or accommodation at any hotel, inn, eating, lodging or boardinghouse, or restaurant, absconds from such hotel, inn, eating, lodging or boardinghouse, or restaurant, or removes or attempts to remove therefrom any baggage or personal property of any kind subject to the lien provided for in §38-11-5 of this code, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, without first having paid, satisfied or arranged all claims or bills for lodging, entertainment or accommodation, is guilty of a petty offense, and, upon conviction thereof, shall be fined not more than \$300. For a second or subsequent offense within five years of another offense under this section, that person is guilty of a Class 2 misdemeanor.

§61-3-27. Malicious killing of animals by poison or otherwise; penalty. Intoxication of person in charge of locomotive engine or car; penalties.

~~If a person maliciously administers poison to, or exposes poison with the intent that it should be taken by, any horse, cow or other animal of another person, or if any person maliciously maims, kills, or causes the death of any horse, cow or other animal of another person, of the value of \$100 or more, the person is guilty of a felony, and, upon conviction, shall be imprisoned in the~~

~~penitentiary not less than one year nor more than ten years; and, if the horse, cow or other animal is of less value than \$100, the person is guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than three months and fined not more than \$500: *Provided*, That this section shall not be construed to include dogs. Any person who, while in charge of a locomotive engine, whether the same be driven by steam, electricity or other motive power, running upon the railroad or traction lines of any corporation, or while acting as conductor or brakeman of any car or train of cars on such railroad or traction line, is intoxicated, is guilty of a Class 1 misdemeanor; and for the second offense is guilty of a Class 6 felony.~~

§61-3-28. Offenses against railroad property and persons on railroad property; definitions. Jumping on or off car or train in motion; driving vehicle upon track or bridge except at crossings; penalty; exceptions.

(a) As used in this section:

(1) 'Bodily injury' means substantial physical pain, illness or any impairment of physical injury.

(2) 'Railroad' means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(ii) High-speed ground transportation systems that connect metropolitan areas but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(3) 'Railroad carrier' means a person providing railroad transportation; railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. 'Railroad property' does not include administrative buildings, administrative offices, or administrative office equipment;

(4) 'Right-of-way' means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs;

(5) 'Yard' means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives and other rolling stock are kept when not in use or when awaiting repairs.

(b) Whoever willfully damages or attempts to damage railroad property or willfully endangers or attempts to endanger the safety of another, by:

(1) Taking, removing, altering, or otherwise vandalizing a railroad sign, placard or marker;

(2) Throwing or dropping an object capable of causing significant damage to railroad property at or on a locomotive, railroad car or train;

(3) Shooting a firearm or other dangerous weapon at a locomotive, railroad car or train;

(4) Removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any railroad carrier, and without consent of the railroad carrier involved;

(5) Interfering or tampering with, or obstructing in any way, or threatening to interfere with, tamper with or obstruct in any way any railcar or locomotive, switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without consent of the railroad carrier involved; or

(6) Taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state without consent of the railroad carrier is guilty of a felony; then

(7) If, by virtue of a person undertaking any of the above actions, railroad property damage does not exceed \$1,000 2,500 and no bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction thereof, the person shall be ~~fin~~ed ~~not less than \$500 nor more than \$5,000,~~ confined in a regional jail for not more than one year, or both guilty of a Class 1 misdemeanor. If bodily injury occurs to another not acting with or in connection with the perpetrator as a result of any of the aforesaid acts or if railroad property damage exceeds \$1,000 2,500, upon conviction thereof, the person shall be guilty of a Class 4 Felony ~~fin~~ed ~~not less \$1,000 nor more than \$10,000,~~ committed to the custody of the Commission of Corrections for not less than one nor more than ten years, or both.

(c) Any person, not a passenger or employee, who is found trespassing upon any railroad or traction car or train of any railroad in this state, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; or shall drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public, private or farm crossings, such person so offending is guilty of a Class 3 misdemeanor.

(d) The provisions of this section do not apply to any person employed by a railroad who is performing the duties assigned by the railroad or who is otherwise performing within the scope of his or her employment. The provisions of this section may be applied in addition to any penalty set forth in §61-3B-8 of this Code.

§61-3-29. ~~Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution. Procuring gas, water or electricity, by device, with intent to defraud; penalty.~~

~~(a) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction~~

~~thereof, shall be fined not more than \$2,000, or confined in jail not more than one year, or both fined and confined.~~

~~(b) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby creates a substantial risk of serious bodily injury to another or results in the interruption of service to the public is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in a state correctional facility not less than one nor more than three years, or both fined and imprisoned.~~

~~(c) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby causes serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$50,000, or imprisoned in a state correctional facility not less than one nor more than five years, or both fined and imprisoned.~~

~~(d) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby hinders, impairs or disrupts, directly or indirectly, the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.~~

~~(e) For purposes of restitution under article eleven a of this article, a railroad company, public utility, business, or owner of property that is damaged, destroyed or disrupted may be deemed a victim and entitled to restitution, should the court so order, from any person convicted of an offense under this section.~~

~~(f) Nothing in this section limits or restricts the ability of an entity referred to in subsection (a), (b), (c) or (d) of this section or a property owner or other person who has been damaged or injured as a result of a violation of this section from seeking recovery for damages arising from violation of this section.~~

Any person who, with intent to injure or defraud, procures, makes, or causes to be made, any pipe, tube, wire, or other conductor of gas, water or electric energy, and connects the same, or causes it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water, or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice, or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas, water or electric meter, or obstructs its action, is guilty of a Class 2 misdemeanor.

§61-3-30. Removal, injury to or destruction of property, monuments designating land boundaries and of certain no trespassing signs; penalties. Dams or obstructions in watercourses; penalty.

~~(a) If any person unlawfully, but not feloniously, takes and carries away, or destroys, injures or defaces any property, real or personal, of another, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500, or confined in the county or regional jail not more than one year, or both fined and imprisoned.~~

~~(b) Any person who unlawfully, willfully and intentionally destroys, injures or defaces the real or personal property of one or more other persons or entities during the same act, series of acts or course of conduct causing a loss in the value of the property in an amount of \$2,500 or more, is guilty of the felony offense of destruction of property and, upon conviction thereof, shall be fined not more than \$2,500 or imprisoned in the state correctional facility for not less than one year nor more than ten years, or in the discretion of the court, confined in the county or regional jail not more than one year, or both fined and imprisoned.~~

~~(c) If any person breaks down, destroys, injures, defaces or removes any monument erected for the purpose of designating the boundaries of a municipality, tract or lot of land, or any tree marked for that purpose, or any sign or notice upon private property designating no trespassing upon the property, except signs or notices posted in accordance with the provisions and purposes of sections seven, eight and ten, article two, chapter twenty of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more than \$200, or confined in the county or regional jail not less than one nor more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction of all offenses arising under the provisions of this section. The provisions of this paragraph do not apply to the owner, or his or her agent, of the lands on which such signs or notices are posted. No person may fell any timber and permit the same to remain in any navigable or floatable stream of this state when to do so obstructs the passage of boats, rafts, staves, ties, or timber of any kind.~~

Except as may be provided in Chapter 20 or Chapter 22 of this code, no person may construct or maintain any dam or other structure in any stream or watercourse, which in any way prevents or obstructs the free and easy passage of fish up or down such stream or watercourse, without first providing as a part of such dam or other structure a suitable fish ladder, way or flume, so constructed as to allow fish easily to ascend or descend the same; which ladder, way or flume shall be constructed only upon plans, in a manner, and at a place, satisfactory to the Division of Natural Resources: *Provided*, That if the director of the Division of Natural Resources determines that there is no substantial fish life in such stream or watercourse, or that the installation of a fish ladder, way or flume would not facilitate the free and easy passage of fish up or down a stream or watercourse, or that an industrial development project requires the construction of such dam or other structure and the installation of an operational fish ladder, way or flume is impracticable, the director may, in writing, permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing a suitable fish ladder, way or flume; and in all navigable and floatable streams provisions shall be made in such dam or structure for the passage of boats and other crafts, logs and other materials: *Provided, however*, That this section does not relieve such person from liability for damage to any riparian owner on account of the construction or maintenance of such dam.

Any person who violates any of the provisions of this section is guilty of a Class 1 misdemeanor, and, whether a conviction is had under this section or not, such violation is a nuisance, which may be abated at the suit of any citizen or taxpayer, the county commission of

the county, or, as to fish ladders, at the suit of the director of the Division of Natural Resources, and, if the same endangers county roads, the county commission may abate such nuisance peaceably without such suit.

§61-3-31. ~~Damage to or destruction of property by bailee for hire or loan; penalty; damages recoverable in civil action. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.~~

If any bailee for hire or loan of any property shall wilfully, or with gross negligence, damage or destroy the property of any person, while the same is in the custody or possession of such bailee, he or she shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined not exceeding \$100, or be imprisoned in the county jail for a term not exceeding thirty days, in the discretion of the court, and shall be liable to the owner or owners of such property for the value thereof, or the injury done to the same, in a civil action. (a) For the purposes of this section, the following terms have the following meanings.

'Business registration certificate' has the same meaning ascribed to it in section two, article twelve, chapter eleven of this code.

'Purchaser' means any person in the business of purchasing scrap metal or used auto parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto parts.

'Scrap metal' means any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, a catalytic converter or any materials derived from a catalytic converter, or steel railroad track and track material.

(b) In addition to any requirement necessary to do business in this state, a scrap metal dealer shall:

(1) Have a current valid business registration certificate from the Tax Commissioner;

(2) Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures office;

(3) Provide a notice of recycling activity to the Department of Environmental Protection; and

(4) Register as a scrap metal dealer with the Secretary of State, who is hereby directed to maintain a list of scrap metal dealers and make it publicly available. The list shall include the dealer's business address, hours of operation, physical address, phone number, facsimile number, if any, and the name of the owners or principal officers of the business.

(c) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan or taken on consignment.

(d) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell said scrap metal; and

(2) A photocopy of a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: *Provided*, That, if the purchaser has a copy of the seller's valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

(e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (c) and (d) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: *Provided*, That the purchaser retains and makes available for review consistent with subsection (g) of this section the contract, bill of sale or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: *Provided, however*, That the purchaser may redact any pricing or other commercially sensitive information from said contract, bill of sale or similar documentation before making it available for inspection.

(f) No purchaser of scrap metal may knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(g) Using a form provided by the West Virginia State Police, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser's place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser's regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: *Provided*, That in lieu of the purchaser keeping the records at their place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the sheriff of the county wherein he or she is transacting business within seventy-two hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(h) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(i) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen, or taken under false pretenses may be returned to the proper owner of such material.

(j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.

(k)(1) Nothing in this section applies to a purchaser of a vehicle on which a catalytic converter is installed, a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter, or a motor vehicle on which a catalytic converter is installed, for personal, family, household or business use.

(2) In transactions not exempted by subdivision (1) of this subsection, any person delivering five or more automobile catalytic converters to a scrap metal dealer shall, in addition to the requirements set forth in subsection (c) of this section, execute a document stating he or she is the lawful owner of the catalytic converters, or authorized by the lawful owner to sell the catalytic converters. Next to his or her signature he or she shall place a clear impression of his or her index finger or thumb that is in ink and free of smearing. This documentation shall be maintained consistent with subsection (c) of this section.

(l) Any person who knowingly or with fraudulent intent violates any provision of this section for which no penalty is specifically set forth, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a Class 3 misdemeanor and, upon conviction, shall be fined as an enterprise; upon conviction of a second offense thereof, shall be guilty of a Class 2 misdemeanor and, upon conviction, shall be fined as an enterprise and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense thereof shall be guilty of a Class 1 misdemeanor and, upon conviction, shall be fined as an enterprise, and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date said cancellation shall take effect.

(m) No person may have or take possession of any scrap metal that he or she knows, or has reason to know, has been stolen or unlawfully obtained. Any person violating this subsection is guilty of the larceny of the value thereof.

(n) No scrap metal dealer may purchase, possess, or receive scrap metal that the scrap metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller. Any person violating this subsection is guilty of the larceny of the value thereof.

(o) No scrap metal dealer may purchase, possess, or receive any of the following items of scrap metal, or any reasonably recognizable part thereof, without obtaining written documentation which reflects that the seller is authorized to possess and sell the item or items and that the seller is in lawful possession of the item of scrap metal:

(1) Utility access covers;

(2) Street light poles or fixtures;

(3) Road or bridge guard rails;

(4) Water meter covers;

(5) Highway or street signs;

(6) Traffic directional or traffic control signs;

(7) Traffic light signals;

(8) Any metal marked with any form of the name or initials of a governmental entity;

(9) Property marked as or readily identifiable as owned by a telephone, cable, electric, water or other utility provider;

(10) Property owned and marked by a railroad;

(11) Cemetery markers or vases;

(12) Historical markers;

(13) Utility manhole covers and storm water grates; and

(14) Fire hydrant or fire hydrant caps; or

(15) Twisted pair copper telecommunications wiring of twenty-five pair or greater in 19, 22, 24 or 26 gauge.

(p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession of scrap metal knowing or have reason to know that it is stolen or obtained illegally if it is done pursuant to a written agreement with law-enforcement officials.

§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession. Precious metals and gem dealers; records; prohibited acts.

~~(a) Any debtor under any security instrument conveying personal property, who retains possession of such personal property, and who, without the consent of the owner of the claim secured by such security instrument, and with intent to defraud, removes or causes to be removed any of the property securing such claim out of the county where it is situated at the time it became security for such claim or out of a county to which it was removed by virtue of a former consent of the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or~~

~~converts the same to his or her own use, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than \$500, or imprisoned not more than six months, or both, in the discretion of the court.~~

~~(b) Any person in possession or control of any personal property by virtue of or subject to a written lease who, with intent to defraud and without written consent of the owner, disposes of such property by sale or transfer, or, after receiving a written notice to return the property or otherwise make the property available to the lessor, secretes or converts such property to his or her own use and in so doing places the property in a location other than the locations described in the written lease, or removes or causes to be removed such property from the state shall be deemed guilty of the larceny of such property.~~

~~In any prosecution under the provisions of this subsection, written notice may be mailed by certified mail, addressed to the consumer at the address of the consumer stated in the lease, and served on the consumer within ten days of the expiration of the lease, which notice shall state that the lease has expired and that consumer has ten days from receipt of such notice to return the leased property. Proof that the consumer failed to return the property within ten days of receiving such notice shall in any prosecution under this subsection constitute prima facie evidence that the consumer intended to defraud the owner.~~

~~Whenever the consumer is a resident of the county in which the lease was contracted, the dealer, after written notice to the consumer within ten days after the expiration of the lease, has the right to immediate possession of the leased property, without formal process to secure return and possession of the leased property, if this can be done without breach of the peace. The dealer is not liable to the consumer for any damages for any action taken that is reasonable, necessary and incidental to the reclaiming or taking possession of the leased property. (a) Each person, firm, or corporation in the business of purchasing precious metals or precious gems, or both, for any purpose other than personal, family or household use, is subject to the provisions of this section. Each such purchaser shall secure from the seller of the precious metal or precious gem sufficient proof of lawful ownership or an affidavit of ownership, the original of which shall be retained by the purchaser.~~

~~(b) Each such purchaser of a precious metal or precious gem shall truly and accurately list each purchase in a permanent record book clearly showing the kind, character and amount of metal or gem purchased, any special or unique quality or item of description concerning the metal or gem purchased; the date of purchase, the full name and residence address and mailing address of the seller, and any telephone number of the seller. Such record book shall be open to inspection by any law-enforcement officer in this state during normal business hours of the purchaser. If any such purchase is made within a municipality, the purchaser shall report all the information required by this section in writing to the chief of the police department of the municipality within 24 hours of the purchase. If any such purchase is made outside of a municipality, the purchaser shall report all the information required by this section in writing to the sheriff of the county wherein the purchase was made within 24 hours of the purchase. The information required by this section shall be preserved for a period of not less than three years.~~

~~(c) Each such purchaser of a precious metal or precious gem shall not, for a period of 10 calendar days after the purchase, dispose of such metal or gem, remove such metal or gem from the state or alter in any way the form or substance of such metal or gem.~~

(d) As used in this section, 'precious metal' means any gold, silver, platinum, or other valuable metal; and 'precious gem' means any diamond, pearl, emerald, ruby, sapphire or similar precious stone.

(e) Any person, firm or corporation violating any provision of this section is guilty of a Class 6 felony.

§61-3-33. Entry upon inclosed lands; penalty; liability for damages. Unauthorized use of dumpsters; penalties.

If any person shall, without the consent of the owner or occupier thereof, enter upon the enclosed lands of another and do any damage, or shall, without such consent, pull down in whole or in part, or injure, any fence of another, or without permission open and leave open the gate or drawbar of another, or enter upon the enclosed lands of another after being forbidden so to do, or enter thereon and curse, or insult, or annoy, the owner thereof or any person rightfully there, he or she shall be guilty of a misdemeanor, and, upon conviction, be fined not less than five nor more than \$100; and, in default of the payment of the fine, the offender may, in the discretion of the judge or justice, be committed to jail for not less than five days. He or she shall, moreover, be liable to the party injured for the damages sustained by such injury; and it shall be no defense to any prosecution or suit under this section, that such fence was not a lawful fence. (a) Any person who without authorization, and for that person's own benefit, dumps garbage or trash, or assists in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with subsection (b) of this section. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section.

(b) Any person convicted of a misdemeanor under subsection (a) of this section shall be subject to the following penalties:

(1) Upon a first conviction under this section, the defendant shall be convicted of a petty offense and fined not less than \$50 nor more than \$200.

(2) Upon a second conviction under this section, the defendant shall be convicted of a petty offense and fined not less than \$200 nor more than \$300.

(3) Upon any subsequent conviction in excess of a second conviction under this section, the defendant shall be guilty of a Class 3 misdemeanor.

Notwithstanding the provisions of §61-11A-4 of this code or §50-3-2a of this code, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received.

§61-3-34. Taking or injuring garden or field crops; penalties. Identity theft; penalty.

If a person enters the orchard, field, garden or market garden of another person, without the consent of the owner or occupier thereof, and does any damage to the fruit, vegetables, grain or grass growing or being thereon, or takes, carries away, injures or destroys any of the grain, fruit, grass or vegetables growing or being thereon, the person is guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$500, or confined in jail not exceeding six months, or

~~both. If a person commits any of the acts mentioned herein, and if it is charged in the indictment or information and proved that the property injured or destroyed, or taken or carried away, is of a greater value than \$1,000, the person is guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and fined not less than fifty nor more than \$2,500. Any person who knowingly takes the name, birth date, social security number, or other identifying information of another person, without the consent of that other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person's name, or for the purpose of gaining employment, is guilty of a Class 6 felony and, upon conviction, shall be liable to the owner in the amount of three times the value of all damages provable resulting from such identity theft: *Provided*, That the provisions of this section do not apply to any person who obtains another person's drivers license or other form of identification for the sole purpose of misrepresenting his or her age.~~

§61-3-35. Digging cultivated ginseng; penalty. Failure to pay for gasoline.

~~(a) It shall be unlawful for any person to dig cultivated ginseng or prospect for the same, on the lands of another without written consent of the owner or owners thereof first obtained. The property must be properly posted with 'No Trespassing' signs, 'Private Property' signs, or other signs that explain to a person to stay off the property. The signs must be of reasonable size to be read by an average person and must be posted at reasonable intervals of at least two hundred feet around the property.~~

~~(b) Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, and, for each subsequent offense, shall be fined not less than \$1,000.~~

Any person who knowingly and willfully drives a motor vehicle off the premises of an establishment where gasoline offered for retail sale was dispensed into the fuel tank of the motor vehicle with the intent to avoid payment for the gasoline that was so dispensed is guilty of the larceny thereof. In addition to the penalties provided for by §61-3-13 of this code, upon a second conviction for larceny of gasoline, the court shall order the suspension of the person's license to drive a motor vehicle for six months, and upon a third or subsequent conviction, the court shall order the suspension of the person's license to drive a motor vehicle for one year.

Whenever a second or subsequent offense occurs under the provisions of this section, the clerk of the court shall transmit a certified abstract of the judgment to the Division of Motor Vehicles within 72 hours of the conviction. Upon receipt of the abstract of judgment the Division of Motor Vehicles shall enter an order suspending the person's license to operate a motor vehicle for the appropriate time period.

§61-3-36. Anchoring or beaching shanty boats on lands of another; penalties. Scanning device or reencoder fraud; felony; definitions; and penalties.

~~If any person, being the owner or occupier of any shanty boat, or boat of like kind, who anchors, ties or beaches such boat upon the real estate of another for a longer period than twelve hours, except in case of distress, without the permission of the owner or agent of the owner of such real estate, upon which such boat is anchored, tied or beached, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$50, or confined in the county jail not more than thirty days, in the discretion of the court. And each twelve hours that such owner or occupier, after having been notified to remove, allows such boat to remain at such place, or~~

~~anchored, tied or beached upon the premises of such owner, shall be treated as a separate offense. And any such person having been notified to remove such boat, who shall, within thirty days thereafter, gain anchor, tie or beach any boat upon the real estate of such owner, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding \$50 and imprisoned in the county jail not exceeding thirty days. Any justice of the peace in any county of the state where such offense or offenses shall be committed shall have jurisdiction thereof.~~

(a) As used in this section, the term:

'Authorized user' means the person to whom a payment card is issued or any other person acting with the permission of the person to whom the card is issued;

'Merchant' means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the owner or operator. A 'merchant' also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money or anything else of value from the person;

'Payment card' means a credit card, charge card, debit card, hotel key card, stored value card or any other card that is issued to an authorized card user and that allows the user to obtain, purchase or receive goods, services, money, or anything else of value from a merchant;

'Reencoder' means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card; and

'Scanning device' means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(b) Any person who uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$2,500 or confined in jail for not more than one year, or both fined and confined.

(c) Any person who uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$2,500 or confined in jail not more than one year, or both fined and confined.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, any person who is convicted of the provisions of subsection (b) or (c) of this section who has previously been convicted of a violation of either subsection is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than three years or fined not more than \$5,000, or both fined and imprisoned.

§61-3-37. False statement as to financial condition of person, firm or corporation; penalty. Possession of bogus receipts or universal product codes with intent to defraud; penalties.

~~Any person who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any other person, firm or corporation, in whom or in which he or she is interested, or for whom or for which he or she is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit either of himself or herself or of such person, firm or corporation; or who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself or herself, or such person, firm or corporation in which he or she is interested, or for whom he or she is acting, procures, upon the faith thereof, for the benefit either of himself or herself, or of such person, firm or corporation, either or any of the things of benefit mentioned herein; or who, knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself or herself or such person, firm or corporation in which he or she is interested, or for whom he or she is acting, represents on a later day, either orally or in writing, that such statement theretofore made, if then again made on such day, would be then true, when in fact such statement, if then made, would be false, and procures upon the faith thereof, for the benefit either of himself or herself or of such other person, firm or corporation, either or any of the things of benefit mentioned herein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail for not more than one year, or by a fine of not more than \$1,000, or both fine and imprisonment, in the discretion of the court. Any person who, with intent to defraud, possesses two or more fraudulently obtained or counterfeit sales receipts or fraudulently obtained or counterfeit universal product codes, or possesses a device the purpose of which is to manufacture counterfeit retail sales receipts or counterfeit universal product code labels, is guilty of a Class 6 felony.~~

§61-3-38. Publication of false advertisements; penalty. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.

~~Any person, firm, corporation or association, or their agents or employees, who, with intent to sell, or in anywise dispose of, merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or over any radio station, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue and deceptive, shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$100, and such violation, by an agent or employee, shall be deemed an offense as well by the principal or employer, and they may be indicted for the same, either jointly or severally.~~

(a) Any person who misrepresents himself or herself to:

(1) Be a member or veteran of the armed forces of the United States; or

(2) Be a recipient of any military commendation, decoration, or medal awarded to members of the armed forces of the United States or the several states who does so with the intent to obtain money, property, or a thing of value is guilty of the offense of misrepresentation of military status.

(b)(1) Any person violating the provisions of this section of this code where the value of the money, property, or thing of value is \$2,500 or more is guilty of a Class 6 felony.

(2) Any person violating the provisions of this section where the value of the money, property, or thing of value is less than \$2,500, is guilty of a Class 1 misdemeanor.

§61-3-39. Obtaining property in return for worthless check; penalty.

[Repealed.]

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

[Repealed.]

§61-3-39b. Payment as defense.

[Repealed.]

§61-3-39c. Reason for dishonor; duty of drawee.

[Repealed.]

§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.

[Repealed.]

§61-3-39e. Notice of dishonor by payee; service charge.

[Repealed.]

§61-3-39f. Manner of filing complaint for warrant; form.

[Repealed.]

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

[Repealed.]

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

[Repealed.]

§61-3-39i. Preparation of list of worthless check warrants.

[Repealed.]

§61-3-39j. Use of worthless check list upon receipt of complaint for warrant.

[Repealed.]

§61-3-39k. Duties of prosecuting attorney upon receipt of notice of multiple worthless check warrants; magistrate court clerk to advise complainant.

[Repealed.]

§61-3-39m. Creation and operation of a program for worthless check offenders; acceptance of person in program.

[Repealed.]

§61-3-39n. Notice to persons accepted to the worthless check restitution program.

[Repealed.]

§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution program.

[Repealed.]

§61-3-39p. Fees for participation in the worthless check restitution program.

[Repealed.]

§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.

[Repealed.]

§61-3-40. Fraudulently obtaining food or lodging; penalty.

[Repealed.]

§61-3-41. Employees conservators of the peace; special railroad policemen; penalties.

[Repealed.]

§61-3-42. Intoxication of person in charge of locomotive engine or car; penalties.

[Repealed.]

§61-3-43. Jumping on or off car or train in motion; driving vehicle upon track or bridge except at crossings; penalty.

[Repealed.]

§61-3-44. Procuring gas, water or electricity, by device, with intent to defraud; penalty.

[Repealed.]

§61-3-45. Tampering with pipes, tubes, wires or electrical conductors; penalty.

[Repealed.]

§61-3-45a. Unlawful opening of pipes, pipelines, tanks, etc.; penalties.

[Repealed.]

§61-3-46. Use of slugs, false coins, etc., in coin-box telephone; penalty.

[Repealed.]

§61-3-47. Dams or obstructions in watercourses; penalty.

[Repealed.]

§61-3-48. Offenses involving damage to shrubbery, flowers, trees and timber; limitation of section; penalties.

[Repealed.]

§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

[Repealed.]

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

[Repealed.]

§61-3-49a. Unlawful sale of used, secondhand, rebuilt, repossessed, etc., watches and clocks; penalty; revocation of license to sell.

[Repealed.]

§61-3-49b. Disruption of communications and utilities services.

[Repealed.]

§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.

[Repealed.]

§61-3-51. Precious metals and gem dealers; records; prohibited acts.

[Repealed.]

§61-3-52. Wrongful injuries to timber; criminal penalties.

[Repealed.]

§61-3-53. Unauthorized use of dumpsters.

[Repealed.]

§61-3-54. Taking identity of another person; penalty.

[Repealed.]

§61-3-55. Failure to pay for gasoline.

[Repealed.]

§61-3-56. Scanning device or reencoder fraud; felony; definitions; and penalties.

[Repealed.]

§61-3-57. Possession of bogus receipts or universal product codes with intent to defraud; penalties.

[Repealed.]

§61-3-58. Unlawful operation of a recording device.

[Repealed.]

§61-3-59. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.

[Repealed.]

ARTICLE 3A. SHOPLIFTING

§61-3A-3. Penalties.

A person convicted of shoplifting shall be punished as follows:

(a) First offense conviction. — Upon a first shoplifting conviction:

(1) When the value of the merchandise is less than or equal to \$2,500, the person is guilty of a ~~misdemeanor~~ petty offense and, shall be fined not more than \$250.

(2) When the value of the merchandise exceeds \$2,500, the person is guilty of a Class 3 misdemeanor and, ~~shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than sixty days, or both.~~

(b) Second offense conviction. — Upon a second shoplifting conviction:

(1) When the value of the merchandise is less than or equal to \$2,500, the person is guilty of a Class 2 misdemeanor and, ~~shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than six months or both.~~

(2) When the value of the merchandise exceeds \$2,500, the person is guilty of a Class 1 misdemeanor and, ~~shall be fined not less than \$500 and shall be confined in jail for not less than six months nor more than one year.~~

(c) Third offense conviction. — Upon a third or subsequent shoplifting conviction, ~~regardless of if the value of the merchandise, the person is guilty of a felony and, shall be fined not is less than \$2,500, the person is guilty of a Class 1 misdemeanor; if the value of the merchandise is greater than \$2,500, they are guilty of a Class 6 Felony nor more than \$500, and shall be imprisoned in the penitentiary a state correctional facility for not less than one year nor more than 10 years. At least one year shall actually be spent in confinement and not subject to probation: Provided, That an order for home detention by the court pursuant to the provisions of §62-11B-1 et seq. of this code may be used as an alternative sentence to the any incarceration required by this subsection.~~

(d) Mandatory penalty. — In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of \$50, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

(e) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.

§61-3A-4a. Criminal offenses involving theft detection shielding devices; detention.

[Repealed.]

§61-3A-7. Organized retail theft; offenses; penalties; cumulation; venue; forfeiture.

(a) (1) Any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of \$2,050 or more with the intent to sell, trade or otherwise distribute the merchandise ~~shall be is~~ guilty of a Class 5 felony, and, upon conviction, ~~shall be imprisoned in a state correctional facility for a determinate term of not less than one nor more than ten years or be fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.~~

(b) (2) Notwithstanding the provisions of subsection (a) subdivision (1) of this subsection any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of \$10,000 or more with the intent to sell, trade or otherwise distribute the merchandise ~~shall be is~~ guilty of a Class 4 felony, and, upon conviction, ~~shall be imprisoned in a state correctional facility for a determinate term of not less than two nor more than twenty years fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined.~~

(c) (b) (1) Any person who purchases, trades or barter for, or otherwise obtains with any form of consideration, merchandise with a cumulative value of \$2,500 or more from persons he knows or has reason to believe was obtained by three or more persons engaged in a common scheme or plan to violate the provisions of section one of this article ~~shall be is~~ guilty of a Class 5 felony.

~~(2) (d) Any person who violates the provisions of this section by purchasing, trading or bartering for merchandise with a cumulative value of \$2,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than one year, nor more than ten years or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.~~

~~(e) Notwithstanding the provisions of subsection (d) of this section, any~~ Any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of \$10,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than two years, nor more than twenty years or fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined. purchases, trades, or barters for, or otherwise obtains with any form of consideration, merchandise with a cumulative value of \$10,000 or more from persons he knows or has reason to believe was obtained by three or more persons engaged in a common scheme or plan to violate the provisions of section one of this article is guilty of a Class 4 felony.

~~(f) (c)~~ In determining the value of merchandise in a prosecution under this section, it is permissible to cumulate the value of merchandise obtained as part of a common scheme or plan.

~~(g) (d)~~ Violations of subsections (a), and (b) and (e) of this section occurring in one or more counties of this state may be prosecuted in any county wherein any part of the offense was committed and the provisions of subsection ~~(f) (c)~~ of this section are applicable to offenses so occurring.

~~(h) (e)(1)~~ Any interest a person has acquired or maintained in any cash, asset, or other property of value in any form, derived in part or total from any proceeds obtained from participating in a violation of this section, may be seized, and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in §60A-7-1 *et seq.* of this code.

(2) Notwithstanding subdivision (1) of this subsection, at sentencing for a violation of this section, the court may direct disgorgement to the victim or victims of any cash, asset, or other property of value in any form, derived in part or total from any proceeds obtained from such violation.

ARTICLE 3B. TRESPASS.

§61-3B-2. Trespass in structure or conveyance.

(a) Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty of a ~~misdemeanor~~ petty offense and, upon conviction thereof, shall be fined not more than \$100.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a Class 2 misdemeanor ~~and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than six months, or both fined and confined. Provided, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.~~

(c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of §61-7-1 of this code, is guilty of a Class 6 felony ~~misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or be confined in jail for not more than one year, or both fined and confined.~~

§61-3B-3. Trespass on property other than structure or conveyance. Removal, injury to or destruction of property, monuments designating land boundaries and of certain no trespassing signs; penalties.

(a) It is an unlawful trespass for any person to knowingly, and without being authorized, licensed, or invited, to enter or remain on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation.

~~(b) (1) First offense conviction. — Upon a first trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500~~ petty offense and shall be fined not more than \$300.

~~(c) (2) Second offense conviction. — Upon a second trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a Class 3 misdemeanor. and shall be fined not less than \$500 nor more than \$1,000.~~

~~(d) (3) Third offense conviction. — Upon a third and subsequent trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a Class 2 misdemeanor and shall be fined not less than \$1,000 nor more than \$1,500.~~

(b) If any person unlawfully, but not feloniously, takes and carries away, or destroys, injures or defaces any property, real or personal, of another, he or she is guilty of a Class 1 misdemeanor.

(c) Any person who unlawfully, willfully and intentionally destroys, injures or defaces the real or personal property of one or more other persons or entities during the same act, series of acts or course of conduct causing a loss in the value of the property in an amount of \$2,500 or more, is guilty of the felony offense of destruction of property; a Class 6 Felony.

(d) If any person breaks down, destroys, injures, defaces or removes any monument erected for the purpose of designating the boundaries of a municipality, tract, or lot of land, or any tree marked for that purpose, or any sign or notice upon private property designating no trespassing upon the property, except signs or notices posted in accordance with the provisions and purposes of sections seven, eight and ten, article two, chapter twenty of this code, he or she is guilty of a Class 2 misdemeanor. The provisions of this subsection do not apply to the owner, or his or her agent, of the lands on which such signs or notices are posted.

(e) If the offender defies an order to leave, personally communicated to him or her by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he or she is guilty of a Class 1 misdemeanor ~~and, upon conviction, shall be fined not less than \$100 nor more than \$500, confined in jail for not more than six months, or both fined and confined.~~

(f) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his or her commission of the offense of trespass on property other than a structure or conveyance, such offender, notwithstanding §61-7-1. of this code, he or she is guilty of a Class 6 felony ~~misdemeanor and, upon conviction, shall be confined in jail for not more than six months, fined not more than \$100, or both confined and fined.~~

(g) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property ~~in the course of~~ during a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage. However, this ~~article subsection~~ shall not apply in a labor dispute.

§61-3B-4. Trespass on student residence premises or student facility premises of an institution of higher education.

(a) For the purposes of this section:

(1) 'Residence hall' means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated, or controlled by an institution of higher education.

(2) 'Student facility' means a facility owned, operated, or controlled by an institution of higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold, or served to students enrolled at such institution, but does not include facilities at which athletic events are regularly scheduled and an admission fee is generally charged.

(3) 'Institution of higher education' means any state university, state college or state community college under the control, supervision, and management of the West Virginia board of trustees or West Virginia board of directors, or any other university, college, or institution of higher education in the state subject to rules for accreditation under the provisions of section seven, article four, chapter eighteen-b of this code.

(4) 'Person authorized to have access to a residence hall or student facility' means:

(A) A student who resides or dwells in the residence hall; or

(B) An invited guest of a student who resides or dwells in the residence hall; or

(C) A parent, guardian or person who has legal custody of a student who resides or dwells in the residence hall; or

(D) An employee of the institution of higher education who is required by such employment by such institution to be in the residence hall or student facility and who is acting within the scope of his or her employment; or

(E) A delivery person, repair person or other such person who is not an employee of the institution of higher education but who nonetheless has a legitimate commercial reason to be in the residence hall or student facility and who is acting pursuant to such legitimate commercial reason.

(b) If a person authorized to have access to a residence hall or a student facility enters such residence hall or student facility and by such presence or acts interferes with the peaceful or orderly operation of such residence hall or student facility, such person may be asked to leave such residence hall or student facility. If a person not authorized to have access to a residence hall or student facility enters such a residence hall or student facility, that person may be asked to leave such residence hall or student facility notwithstanding the fact that he or she has not interfered with the peaceful or orderly operation of such residence hall or student facility or otherwise committed a breach of the peace or violated any statute or ordinance. Such request to leave may be made by the president or other administrative head of the institution of higher education, an employee designated by the president to maintain order in the residence hall or student facility, a campus police officer appointed pursuant to the provisions of section five, article four, chapter eighteen-b of this code, or a municipal police officer, a sheriff or deputy sheriff, or a member of the West Virginia state police.

(c) It ~~shall be~~ is unlawful for a person to remain in a residence hall or student facility after being asked to leave as provided for in subsection (b) of this section.

(d) Any person who violates the provisions of subsection (c) of this section ~~shall be~~ is guilty of a ~~misdemeanor~~ petty offense and, upon conviction thereof, shall be fined \$15. For any second or subsequent conviction for a violation occurring within one year after a previous violation for similar conduct, such person shall be fined an amount not to exceed \$100.

(e) This section shall not be construed to be in derogation of the common law, nor shall the provisions of this section contravene or infringe upon existing statutes related to the same subject.

§61-3B-5. Trespass on state government property; aiding and abetting; penalties.

(a) Notwithstanding any provision of this code to the contrary, any person who knowingly and willfully violates an administrative order of a court, a rule or emergency rule promulgated by the secretary of administration, a joint rule of the Senate and House of Delegates or a rule of the Senate or House of Delegates relating to access to government buildings or facilities or portions thereof under their control or who knowingly and willfully aids or abets another to violate such an order, rule or joint rule is guilty of a Class 3 misdemeanor ~~and, upon conviction, shall be confined for not more than thirty days or fined less than \$500, or both.~~

(b) Any person who violates the provisions of subsection (a) of this section with the intent to commit a crime which constitutes a misdemeanor is guilty of a Class 1 misdemeanor ~~and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than \$1,000, or both.~~

(c) Any person who violates the provisions of subsection (a) of this section with the intent to commit a crime which constitutes a felony is guilty of a Class 6 felony ~~and, upon conviction, shall be incarcerated in a state correctional facility for not less than one nor more than five years or fined not more than \$5,000, or both.~~

§61-3B-6. Mine trespass; penalties.

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a Class 6 felony and, upon conviction thereof, shall be imprisoned ~~in a correctional facility not less than one year and nor more than 10 years~~ accordingly and shall be fined not less than \$5,000 nor more than \$10,000:

Provided, That for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) Sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.

(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings, or abandoned workings, without permission, and with the intent to commit a felony or any larceny, is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be confined in jail ~~not less than one week and not more than one month~~ accordingly and shall be fined not less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the person ~~shall be~~ is guilty of a Class 6 felony and shall be confined ~~in a correctional facility not less than one year and not more than five years~~ accordingly and shall be fined not less than \$5,000 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the person ~~shall be~~ is guilty of a Class 4 felony and shall be confined ~~in a correctional facility not less than five years and not more than 10 years~~ accordingly and shall be fined not less than \$10,000, nor more than \$25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than ~~one year~~ six months and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a Class 6 felony and, upon conviction thereof, shall be imprisoned accordingly ~~in a correctional facility for not less than two nor more than 10 years~~ and shall be fined not less than \$5,000 nor more than \$10,000.

(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a Class 4 felony and, upon conviction thereof, shall be imprisoned accordingly ~~in a correctional facility for not less than three nor more than 15 years~~ and shall be fined not less than \$10,000 nor more than \$25,000.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property during a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage.

(g) The terms 'mine', 'active workings', 'inactive workings', and 'abandoned workings' have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

(h) Nothing in this section ~~shall~~ may be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

§61-3B-7. Agricultural trespass. Animal or crop facilities trespass; penalties; injunctive relief.;

(a) As used in this section:

(1) 'Animal' means poultry, livestock, domestic animals, and captive cervids owned and possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not include an animal used for illegal gaming.

(2) 'Animal or crop facility' means a facility that is used in the production, management, sale, or processing of animals or crops. The term includes, but is not limited to:

(A) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or premises where animals or crops are located;

(B) A managed bee colony;

(C) A livestock market;

(D) A facility used for the preparation of, or processing of, animals, crops, or value-added foods for sale; and

(E) A facility used to carry out any agritourism activity, as that term is defined and used in §19-36-1 *et seq.* of this code.

(3) 'Crop' means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

(b) Any person who willfully trespasses on the property of another which constitutes an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility is guilty of willful trespass upon an animal or crop facility.

(c) Any person who conspires with one or more persons to violate subsection (b) of this section and commits an overt act in furtherance thereof is guilty of conspiracy to willfully trespass upon an animal or crop facility.

(d) Any person who violates subsection (b) of this section is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail accordingly not more than 30 days, or both fined and confined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person convicted of a second or subsequent violation of subsection (b) or a violation of subsection (c) of this section is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned ~~in a state correctional facility for not less than one nor more than five years~~ accordingly, or both fined and imprisoned.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs, or causes damage to property in the course of, a willful trespass in violation of this section is liable to the owner or operator of the animal or crop facility in the amount of twice any damage caused.

(g) The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages in, or threatens to engage in, conduct that constitutes a violation of this section:

(1) The action may be brought in the circuit court of any county in which any part of the conduct or threatened conduct occurs or is threatened to occur.

(2) The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or permanent injunction.

(3) The circuit court may issue injunctive relief without the owner or operator of an animal or crop facility giving security for its issuance.

§61-3B-8. Offenses involving damage to shrubbery, flowers, trees and timber; limitation of section; penalties. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

(a) It is unlawful to break, cut, take, or carry away, or in any manner to damage any of the shrubbery or flowers, including everything under the title of flora, whether wild or cultivated, growing within one hundred yards on either side of any public road in this state, without the permission in writing of the owner or tenant of the land upon which the shrubbery or flowers, including everything under the title of flora, are growing.

(b) It is unlawful for any person willfully or knowingly to have in his or her possession, or to haul along any public road in this state, any trees, shrubbery, or flowers, including everything under the title of flora, which are protected by this section, unless the person so having in his or her possession or hauling the trees, shrubbery or flowers, and any other plant, has permission in writing so to do from the owner or tenant of the land from which they have been taken.

(c) At the request of a law-enforcement officer, a person engaged in any act which would constitute an offense under the provisions of subsection (a) or (b) of this section if such act were done without the required permission specified therein, shall display the written permission to such officer.

(d) Notwithstanding the provisions of this section:

(1) An employee of the department of highways or of a county or municipality performing roadside maintenance shall obtain the permission of an owner before engaging in any act specified in subsection (a) or (b) of this section but is not required to obtain the permission in writing or to display the written permission as provided in subsection (c) of this section; and

(B) When any of the acts specified in subsection (a) or (b) of this section are permitted pursuant to an existing contract with the owner or a predecessor in title to the subject real estate, or by virtue of a judgment or decree of a court of competent jurisdiction, or by other operation of civil law, then a public utility as defined in §24-1-2 of this code, or any other person or entity holding such existing rights, may not be required to obtain any further permission of the present owner to exercise such existing rights: *Provided*, That the holder of such existing rights shall notify the owner of the land of the holder's intent to perform proposed work upon such lands, by first class United States mail, postage prepaid, addressed to the person and address of record upon the current land books in the assessor's office in the county in which the land is situate: *Provided*,

however, That if the proposed work includes several tracts within a larger area, then notice shall be sufficient if provided by publication in a newspaper of general circulation within the county, describing the boundaries and type of work proposed within such area of work. Where prior notice is not practical by reason of a sudden emergency which endangers persons or property of either the owner of the real property, the holder of these rights, the general public or public service, then the owner of the real property shall be notified that the emergency work has been performed, such notice to be by first class United States mail, as above provided for prior notice to the current owner as indicated in the land book records. Where the emergency work was performed on several tracts within a larger area, then the notice shall be sufficient if made by publication in a newspaper of general circulation within the county.

(f) Any person who violates the provisions of subsection (a) or (b) of this section is guilty of a petty offense, and, upon conviction thereof, for the first offense shall be fined not more than \$50, and, for subsequent offenses, is guilty of a Class 3 misdemeanor for each offense.

(g) Magistrates have concurrent jurisdiction with circuit courts for offenses under this subsection.

(h) Any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage, or carry away, or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plant, or product of any growing plant, in violation of the provisions of this section or those of §61-3B-9 of this Code shall be liable to the owner in the amount of three times the value of the timber, trees, growing plants, or products thereof, which shall be in addition to and notwithstanding any other penalties by law provided.

§61-3B-9. Sanctions for certain illegal taking and wrongful injuries to timber; penalties.

(a) It is unlawful for any person to enter upon the lands or premises of another without written permission of the owner of the lands or premises, in order to break, cut, take or carry away or in any manner to damage or cause to be broken, cut, taken or carried away or in any manner damaged, any trees or timber on the land, any person who knowingly and intentionally cuts down, injures, removes, or destroys, without the permission of the owner or his or her agent, timber of a value of \$2,500 or less, is guilty of a Class 3 misdemeanor.

(b) Any person who knowingly and intentionally cuts down, injures, removes, or destroys, without the permission of the owner or his or her agent, timber of a value of \$2,500 or more, or who is convicted of a second or subsequent violation within 10 years of a violation of subdivision (a) of this section, shall be guilty of a Class 6 felony.

(c) The necessary trimming and removal of timber shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of timber if performed

(1) to permit the construction, repair, maintenance, cleanup, and operations of pipelines and utility lines and appurtenances of public utilities and public service corporations,

(2) to aid registered land surveyors and professional engineers in the performance of their professional services,

(3) for boundary line maintenance,

(4) for the construction, maintenance, and repair of streets, roads, and highways, or for the control and regulation of traffic thereon by the state, its municipalities, and its political subdivisions

(5) for the lawful operations of registered land surveyors and professional engineers; and,

(6) for the lawful operation of pipeline companies, or by the lawful operators and product purchasers of natural resources other than timber.

(d) No fine or imprisonment imposed pursuant to this subsection shall be construed to limit any cause of action by a landowner for recovery of damages otherwise allowed by law. If a person charged or convicted under the provisions of this section enters into an agreement with a landowner to make financial restitution for the landowner's timber damages, any applicable statute of limitations effecting the landowner's cause of action shall be tolled from the date the agreement was entered into until a breach of the agreement occurs.

(e) If a criminal action is brought under the provisions of this section, the county prosecutor shall publish a Class 2 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code in the county where the property involved is located which provides a description of the property and a general summary of the timber damages. If a landowner suffering timber damages is not aware of those damages prior to the publication of the Class 2 legal advertisement, any applicable statute of limitations effecting the landowner's cause of action for the recovery of damages shall be tolled from the time the damages were incurred, and may not commence until the date the final Class 2 legal advertisement is published.

§61-3B-10. Critical Infrastructure Protection Act; prohibiting certain acts, including trespass and conspiracy to trespass against property designated a critical infrastructure facility; criminal penalties; civil action; disruption of services; criminal penalties.

(a) This section may be referred to as the 'West Virginia Critical Infrastructure Protection Act'.

(b) For purposes of this section:

'Critical Infrastructure' means systems and assets, whether physical or virtual, so vital to the United States of America or the State of West Virginia that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, state economic security, national public health or safety, state public health or safety, or any combination of those matters, whether such systems or assets are in operation or are under any state of construction.

'Critical infrastructure facility' means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization:

(1) A petroleum or alumina refinery,

(2) An electrical power generating facility, substation, switching station, electrical control center or electric power transmission and distribution towers and lines and associated equipment infrastructure

- (3) A chemical, polymer or rubber manufacturing facility.
- (4) A water intake structure, water treatment facility, wastewater treatment plant or pump station.
- (5) A natural gas compressor station.
- (6) A liquid natural gas terminal or storage facility.
- (7) Wireline and wireless telecommunications infrastructure, including but not limited to public safety communications towers and equipment, telephone lines, communications towers and tower equipment, radio towers and tower equipment.
- (8) A port, railroad switching yard, trucking terminal, or other freight transportation facility, including any railroad track, railroad bridge, railroad shop, railroad station, railroad tunnel, railroad viaduct, railroad trestle, railroad depot, warehouse, terminal, railroad signal system or train control system, or any centralized dispatching or safety system for the same.
- (9) A gas processing plant, including a plant used in the processing, treatment or fractionation of natural gas or natural gas liquids.
- (10) A transmission facility used by a federally licensed radio or television station.
- (11) A steelmaking facility that uses an electric arc furnace to make steel.
- (12) A facility identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program.
- (13) A dam that is regulated by the state or federal government.
- (14) A natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural gas transmission facility, or a natural gas utility distribution facility.
- (15) A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility.
- (16) Military facilities, including national guard facilities and equipment storage areas where non-military personnel are prohibited.
- (17) Department of Highways facilities and locations near or on roads or highways where the public is prohibited.
- (18) Health care facilities.
- (19) A timber facility or timber processing facility, or
- (20) Any above-ground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, or other storage facility that is enclosed by a fence, other physical barrier or is clearly marked with signs prohibiting trespassing, that are obviously designed to exclude intruders.

(c)(1) Any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a Class 2 misdemeanor, and, upon conviction thereof, shall be fined of not less than \$250 nor more than \$1,000, or confined in jail, or both fined and confined.

(2) If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not less than \$500 nor more than \$3,000, or imprisoned in a state correctional facility accordingly, or both fined and imprisoned.

(3) Any person who willfully damages, destroys, vandalizes, defaces or tampers with equipment in a critical infrastructure facility is guilty of a Class 5 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or imprisoned in a state correctional facility accordingly, or both fined and imprisoned.

(4) If a person willfully damages, destroys, vandalizes, defaces or tampers with equipment in a critical infrastructure facility; and such action,

(A) thereby creates a substantial risk of serious bodily injury to another, or results in the interruption of service to the public; or

(B) thereby hinders, impairs or disrupts, directly or indirectly, the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person; or

(C) thereby causes serious bodily injury to another; then

that person is guilty of a Class 4 felony.

(5) Any person or organization who conspires with any person or organization to commit the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section is guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be fined accordingly. Any person or organization who conspires with any person or organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility is guilty of a Class 6 felony and, shall, upon conviction thereof, be fined accordingly.

(d) Any person who causes intentionally trespasses against a critical infrastructure facility and by such act causes a disruption of communication services or public utility services to ten or more households or subscribers shall be guilty of a Class 2 misdemeanor. For a second offense, the person is guilty of a Class 6 felony; and for third and subsequent offenses, the person is guilty of a Class 5 felony.

(e)(1) Any person who is arrested for or convicted of an offense under this section may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by this section.

(2) Any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in subdivision (1) of subsection (c) of this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

(f) The provisions of this section do not apply to:

(1) Any person or organization:

(i) Monitoring or attentive to compliance with public or worker safety laws, or, wage and hour requirements;

(ii) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor dispute including any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the managing or maintenance of collective bargaining agreements, and the terms to be included in those agreements; or

(iii) Engaging in union organizing or recruitment activities including attempting to reach workers verbally, in writing with pamphlets and investigation of non-union working conditions, or both.

(2) The right to free speech or assembly, including, but not limited to, protesting and picketing.

(3) To a contractor who has a contractual relationship with a critical infrastructure facility and the contractor's employees are acting within their scope of employment performing work at a critical infrastructure facility.

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-2. ~~Legislative findings.~~ Definitions.

The Legislature finds that:

~~(a) The computer and related industries play an essential role in the commerce and welfare of this state.~~

~~(b) Computer related crime is a growing problem in business and government.~~

~~(c) Computer related crime has a direct effect on state commerce and can result in serious economic and, in some cases, physical harm to the public.~~

~~(d) Because of the pervasiveness of computers in today's society, opportunities are great for computer related crimes through the introduction of false records into a computer or computer system, the unauthorized use of computers and computer facilities, the alteration and destruction of computers, computer programs and computer data, and the theft of computer resources, computer software and computer data.~~

~~(e) Because computers have now become an integral part of society, the Legislature recognizes the need to protect the rights of owners and legitimate users of computers and computer systems, as well as the privacy interest of the general public, from those who abuse computers and computer systems.~~

~~(f) While various forms of computer crime or abuse might possibly be the subject of criminal charges or civil suit based on other provisions of law, it is appropriate and desirable that a~~

~~supplemental and additional statute be provided which specifically proscribes various forms of computer crime and abuse and provides criminal penalties and civil remedies therefor.~~

As used in this article, unless the context clearly indicates otherwise:

'Access' means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.

'Authorization' means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.

'Computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term 'computer' includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any other electronic data storage device or equipment, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

'Computer contaminant' means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources or damage or destroy the normal operation of the computer.

'Computer data' means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software and may be in any medium, including, but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

'Computer network' means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

'Computer operations' means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A 'computer operation' for a particular computer shall also mean any function for which that computer was designed.

'Computer program' means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.

'Computer software' means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

'Computer services' means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.

'Computer supplies' means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.

'Computer resources' includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

'Owner' means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

'Person' means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department, or agency thereof.

'Property' includes:

(1) Real property;

(2) Computers and computer networks;

(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(i) Tangible or intangible;

(ii) In a format readable by humans or by a computer;

(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human;
and

(4) Computer services.

'Value' means having any potential to provide any direct or indirect gain or advantage to any person.

'Financial instrument' includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

'Value of property or computer services' shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

§61-3C-3. Definitions. Computer fraud; access to Legislative or state-owned computer; criminal penalties.

As used in this article, unless the context clearly indicates otherwise:

(a) ~~'Access' means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.~~

(b) ~~'Authorization' means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.~~

(c) ~~'Computer' means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term 'computer' includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any other electronic data storage device or equipment, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.~~

(d) ~~'Computer contaminant' means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources or damage or destroy the normal operation of the computer.~~

(e) ~~'Computer data' means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software and may be in any medium, including, but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.~~

~~(f) 'Computer network' means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.~~

~~(g) 'Computer operations' means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A 'computer operation' for a particular computer shall also mean any function for which that computer was designed.~~

~~(h) 'Computer program' means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.~~

~~(i) 'Computer software' means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.~~

~~(j) 'Computer services' means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.~~

~~(k) 'Computer supplies' means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.~~

~~(l) 'Computer resources' includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.~~

~~(m) 'Owner' means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.~~

~~(n) 'Person' means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.~~

~~(o) 'Property' includes:~~

~~(1) Real property;~~

~~(2) Computers and computer networks;~~

~~(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:~~

~~(i) Tangible or intangible;~~

~~(ii) In a format readable by humans or by a computer;~~

~~(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or~~

~~(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and~~

~~(4) Computer services.~~

~~(p) 'Value' means having any potential to provide any direct or indirect gain or advantage to any person.~~

~~(q) 'Financial instrument' includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.~~

~~(r) 'Value of property or computer services' shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.~~

(a) Any person who, knowingly and willfully, directly, or indirectly, accesses or causes to be accessed any computer, computer services or computer network for the purpose of (1) executing any scheme or artifice to defraud or (2) obtaining money, property or services by means of fraudulent pretenses, representations or promises is guilty of a Class 5 felony.

(b)(1) Any person who, knowingly and willfully, directly, or indirectly, accesses, attempts to access, or causes to be accessed any data stored in a Legislative or state-owned computer without authorization is guilty of a Class 6 felony.

(2) Notwithstanding the provisions of §61-3C-16. of this code to the contrary, in any criminal prosecution under this subsection against a state employee, public officer, or member of the Legislature, it is not a defense (A) that the defendant had reasonable grounds to believe that he or she had authorization to access the data merely because of his or her employment or membership, or (B) that the defendant could not have reasonably known that he or she did not have authorization to access the data: *Provided*, That the Joint Committee on Government and Finance shall promulgate rules for the respective houses of the Legislature regarding appropriate access of members and staff and others to the legislative computer system.

§61-3C-4. Computer fraud; access to Legislature computer; criminal penalties. Unauthorized access to computer services.

~~(a) Any person who, knowingly and willfully, directly or indirectly, accesses or causes to be accessed any computer, computer services or computer network for the purpose of (1) executing any scheme or artifice to defraud or (2) obtaining money, property or services by means of fraudulent pretenses, representations or promises is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in the penitentiary for not more than ten years, or both fined and imprisoned.~~

~~(b)(1) Any person who, knowingly and willfully, directly or indirectly, accesses, attempts to access, or causes to be accessed any data stored in a computer owned by the Legislature without~~

authorization is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in the penitentiary for not more than five years, or both fined and imprisoned.

~~(2) Notwithstanding the provisions of section seventeen of this article to the contrary, in any criminal prosecution under this subsection against an employee or member of the Legislature, it shall not be a defense (A) that the defendant had reasonable grounds to believe that he or she had authorization to access the data merely because of his or her employment or membership, or (B) that the defendant could not have reasonably known he or she did not have authorization to access the data: *Provided*, That the Joint Committee on Government and Finance shall promulgate rules for the respective houses of the Legislature regarding appropriate access of members and staff and others to the legislative computer system.~~

Any person who knowingly, willfully and without authorization, directly or indirectly, accesses or causes to be accessed a computer or computer network with the intent to obtain computer services is guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall, further, be liable to the value of any economic benefit derived from such unauthorized access.

§61-3C-5. Unauthorized access to computer services. Unauthorized possession of computer data or programs.

~~Any person who knowingly, willfully and without authorization, directly or indirectly, accesses or causes to be accessed a computer or computer network with the intent to obtain computer services shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$1,000 or confined in the county jail not more than one year, or both.~~

(a) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of \$25,000 or more is guilty of a Class 5 felony.

(b) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of less than \$25,000 but greater than \$2,500 is guilty of a Class 6 felony.

(c) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of \$2,500 or less is guilty of a Class 1 misdemeanor.

§61-3C-6. Unauthorized possession of computer data or programs. Alteration, destruction, etc., of computer equipment.

~~(a) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of \$5,000 or more shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in the penitentiary for not more than ten years, or both.~~

~~(b) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of less than \$5,000 shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than \$1,000 or confined in the county jail for not more than one year, or both.~~

Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services, is guilty of larceny of the value of the property or services so lost.

§61-3C-7. Alteration, destruction, etc., of computer equipment. Disruption of computer services.

~~(a) Misdemeanor offenses.— Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services up to \$1,000, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the county or regional jail not more than six months, or both.~~

~~(b) Felony offenses.— Any person who knowingly, willfully and without authorization, directly or indirectly, damages or destroys or attempts to damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data by knowingly introducing, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services more than \$1,000 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$200 and not more than \$10,000 or confined in a state correctional facility not more than ten years, or both, or, in the discretion of the court, be fined not less than \$200 nor more than \$1,000 and confined in the county or regional jail not more than one year.~~

(a) Any person who knowingly, willfully and without authorization, directly or indirectly, disrupts or degrades or causes the disruption or degradation of computer services or denies or causes the denial of computer services to an authorized recipient or user of such computer services, is guilty of a Class 6 Felony;

(b) If such act results in a serious risk of bodily injury or death to any person, or in such bodily injury or death, the person is guilty of a Class 4 Felony.

§61-3C-8. Disruption of computer services. Unauthorized possession of computer information, etc.

Any person who knowingly, willfully and without authorization, directly or indirectly, disrupts or degrades or causes the disruption or degradation of computer services or denies or causes the denial of computer services to an authorized recipient or user of such computer services, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$1,000 or confined in the county jail not more than one year, or both. Any person who knowingly, willfully and without authorization, possesses any computer data, computer software, computer supplies or a computer program which he or she knows or reasonably should know was obtained in violation of any section of this article is guilty of a Class 3 misdemeanor.

§61-3C-9. Unauthorized possession of computer information, etc. Disclosure of computer security information.

~~Any person who knowingly, willfully and without authorization, possesses any computer data, computer software, computer supplies or a computer program which he or she knows or reasonably should know was obtained in violation of any section of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$1,000 or confined in the county jail for not more than one year, or both.~~

Any person who knowingly, willfully and without authorization discloses a password, identifying code, personal identification number or other confidential information about a computer security system to another person is guilty of a Class 6 felony.

§61-3C-10. Disclosure of computer security information. Obtaining confidential public information.

~~Any person who knowingly, willfully and without authorization discloses a password, identifying code, personal identification number or other confidential information about a computer security system to another person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in the county jail for not more than six months, or both.~~

(a) Any person who knowingly, willfully and without authorization accesses or causes to be accessed any computer or computer network and thereby obtains information filed by any person with the state or any county or municipality which is required by law to be kept confidential is guilty of a Class 6 felony.

(b) Any person who knowingly, willfully and without authorization accesses or causes to be accessed any computer or computer network with the intent to cause harm to another, whether physical, financial, or reputational, and thereby obtains information filed by any person with the state or any county or municipality which is required by law to be kept confidential is guilty of a Class 5 felony.

§61-3C-11. Obtaining confidential public information. Computer invasion of privacy.

~~Any person who knowingly, willfully and without authorization accesses or causes to be accessed any computer or computer network and thereby obtains information filed by any person with the state or any county or municipality which is required by law to be kept confidential shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in the county jail not more than six months, or both.~~

(a) Any person who knowingly, willfully and without authorization accesses a computer or computer network and examines any employment, salary, credit or any other financial or personal information relating to any other person, after the time at which the offender knows or reasonably should know that he or she is without authorization to view the information displayed, is guilty of a Class 1 misdemeanor.

Any person who knowingly, willfully and without authorization accesses a computer or computer network with the intent to cause harm to another, whether physical, financial, or reputational, and examines any employment, salary, credit or any other financial or personal information relating to any other person, after the time at which the offender knows or reasonably

should know that he or she is without authorization to view the information displayed, is guilty of a Class 6 felony.

§61-3C-12. Computer invasion of privacy- Fraud and related activity in connection with access devices.

~~Any person who knowingly, willfully and without authorization accesses a computer or computer network and examines any employment, salary, credit or any other financial or personal information relating to any other person, after the time at which the offender knows or reasonably should know that he or she is without authorization to view the information displayed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in the county jail for not more than six months, or both.~~

(a) As used in this section, the following terms shall have the following meanings:

'Access device' means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument), or that can be used to initiate a transfer of any other thing of value;

'Counterfeit access device' means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

'Unauthorized access device' means any access device that is lost, stolen, expired, revoked, canceled, or obtained without authority;

'Produce' includes design, alter, authenticate, duplicate, or assemble;

'Traffic' means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of.

(b) Any person who knowingly and willfully possesses any counterfeit or unauthorized access device is guilty of a Class 2 misdemeanor.

(c) (1) Any person who knowingly, willfully and with intent to defraud uses a counterfeit or unauthorized access device is guilty of the larceny of the value of the money, goods, services, funds, or any other thing of value so obtained;

(2) For purposes of this section, the value of the use of said access device, whether counterfeit or unauthorized, shall be calculated in the aggregate rather than for each individual occurrence.

(d) Any person who knowingly, willfully and with intent to defraud possesses a counterfeit or unauthorized access device or who knowingly, willfully and with intent to defraud, produces or traffics in any counterfeit or unauthorized access device is guilty of a Class 6 felony.

(e) This section shall not prohibit any lawfully authorized investigative or protective activity of any state, county or municipal law-enforcement agency.

§61-3C-13. Fraud and related activity in connection with access devices. Endangering public safety.

~~(a) As used in this section, the following terms shall have the following meanings:~~

~~(1) 'Access device' means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);~~

~~(2) 'Counterfeit access device' means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;~~

~~(3) 'Unauthorized access device' means any access device that is lost, stolen, expired, revoked, canceled, or obtained without authority;~~

~~(4) 'Produce' includes design, alter, authenticate, duplicate, or assemble;~~

~~(5) 'Traffic' means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of.~~

~~(b) Any person who knowingly and willfully possesses any counterfeit or unauthorized access device shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the county jail for not more than six months, or both.~~

~~(c) Any person who knowingly, willfully and with intent to defraud possesses a counterfeit or unauthorized access device or who knowingly, willfully and with intent to defraud, uses, produces or traffics in any counterfeit or unauthorized access device shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in the penitentiary not more than ten years, or both.~~

~~(d) This section shall not prohibit any lawfully authorized investigative or protective activity of any state, county or municipal law enforcement agency.~~

Any person who accesses a computer or computer network and knowingly, willfully and without authorization (a) interrupts or impairs the providing of services by any private or public utility; (b) interrupts or impairs the providing of any medical services; (c) interrupts or impairs the providing of services by any state, county or local government agency, public carrier or public communication service; or otherwise endangers public safety is guilty of a Class 3 felony.

§61-3C-14. Endangering public safety. Obscene, anonymous, harassing, and threatening communications by computer, cell phones and electronic communication devices; penalty.

~~Any person who accesses a computer or computer network and knowingly, willfully and without authorization (a) interrupts or impairs the providing of services by any private or public utility; (b) interrupts or impairs the providing of any medical services; (c) interrupts or impairs the providing of services by any state, county or local government agency, public carrier or public communication service; or otherwise endangers public safety shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than \$50,000 or imprisoned not more than twenty years, or both.~~

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer, mobile phone, personal digital assistant, or other electronic communication device to:

(1) Make contact with another person without disclosing his or her identity with the intent to harass or abuse;

(2) Make contact with a person after being requested by the person to desist from contacting them: *Provided*, That a communication made by a lender or debt collector to a consumer, regarding an overdue debt of the consumer that does not violate Chapter 46A of this code, does not violate this subsection;

(3) Threaten to commit a crime against any person or property; or

(4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.

(b) For purposes of this section:

(1) 'Electronic communication device' means and includes a telephone, wireless phone, computer, pager or any other electronic or wireless device which is capable of transmitting a document, image, voice, e-mail or text message using such device in an electronic, digital or analog form from one person or location so it may be viewed or received by another person or persons at other locations.

(2) 'Use of a computer, mobile phone, personal digital assistant or other electronic communication device' includes, but is not limited to, the transmission of text messages, electronic mail, photographs, videos, images or other nonvoice data by means of an electronic communication system, and includes the transmission of such data, documents, messages and images to another's computer, e-mail account, mobile phone, personal digital assistant or other electronic communication device.

(3) 'Obscene material' means material that:

(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals, or sadomasochistic sexual abuse; and

(C) A reasonable person would find, taken as a whole, lacks literary, artistic, political, or scientific value.

(c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal digital assistant or other electronic communication device under his or her control to be used for any purpose prohibited by this section.

(d) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.

(e) Any person who violates a provision of this section is guilty of a Class 2 misdemeanor. For a second or subsequent offense, the person is guilty of a Class 1 misdemeanor.

§61-3C-14a. Obscene, anonymous, harassing, and threatening communications by computer, cell phones and electronic communication devices; penalty.

[Repealed]

§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.

[Repealed]

§61-3C-14c. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.

[Repealed]

§61-3C-15. Computer as instrument of forgery. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.

~~The creation, alteration or deletion of any computer data contained in any computer or computer network, which if done on a tangible document or instrument would constitute forgery under section five, article four, chapter sixty one of this code will also be deemed to be forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to any crime set forth in section five, article four, chapter sixty one if a creation, alteration or deletion of computer data was involved in lieu of a tangible document or instrument.~~

(a) Any person over the age of 18, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be a minor, in order to engage in any illegal act proscribed by the provisions of §§61-8-1 et seq., §§61-8B-1 et seq., §§61-8C-1 et seq., or §§61-8D-1 et seq., or any felony offense under §60A-4-401, is guilty of a Class 5 felony.

(b) Any person over the age of 18 who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor's, or the person believed to be a minor's, physical presence with the intent to engage in any sexual activity or conduct with such a minor that is prohibited by law, is guilty of a Class 3 felony: *Provided*, That subsection (a) shall be considered a lesser included offense to that created by this subsection.

§61-3C-16. Civil relief; damages. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.

~~(a) Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefor in circuit court and may be entitled to recover for each violation:~~

~~(1) Compensatory damages;~~

~~(2) Punitive damages; and~~

~~(3) Such other relief, including injunctive relief, as the court may deem appropriate.~~

~~Without limiting the generality of the term, 'damages' shall include loss of profits.~~

~~(b) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a manner as to protect the secrecy and security of the computer network, computer data, computer program or computer software involved in order to prevent any possible recurrence of the same or a similar act by another person or to protect any trade secret or confidential information of any person. For the purposes of this section 'trade secret' means the whole or any portion or phase of any scientific or technological information, design, process, procedure or formula or improvement which is secret and of value. A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those authorized by the owner to have access thereto for a limited purpose.~~

~~(c) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.~~

~~(d) A civil action under this section must be commenced before the earlier of: (1) Five years after the last act in the course of conduct constituting a violation of this article; or (2) two years after the plaintiff discovers or reasonably should have discovered the last act in the course of conduct constituting a violation of this article.~~

(a) It is unlawful for a person to use a computer or computer network knowingly and intentionally, as defined in §61-3C-3 of this code, to engage in conduct with the intent to harass, intimidate, or bully a minor, including, but not limited to:

(1) Posting, disseminating, or encouraging others to post or disseminate private, personal, or sexual information pertaining to a minor on the Internet; or

(2) Posting obscene material, as defined in §61-3C-14a of this code, in a real or doctored image of a minor on the Internet;

(b) For the purposes of this section:

(1) 'Harass, intimidate or bully' means any intentional gesture, or any intentional electronic, written, verbal, or physical act, communication, transmission, or threat that:

(A) A reasonable person under the circumstances should know the act will have the effect of any one or more of the following:

(i) Physically harming a minor;

(ii) Damaging a minor's property;

(iii) Placing a minor in reasonable fear of harm to his or her person; or

(iv) Placing a minor in reasonable fear of damage to his or her property; or

(B) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or emotionally abusive environment for a minor.

(2) 'Minor' means an individual under the age of 18 years old.

(c) This section does not apply to a peaceful activity intended to:

(i) Express a political view; or

(ii) Provide information to others with no intent to harass, intimidate, or bully.

(d) Any person who violates this section is guilty of a Class 1 misdemeanor.

§61-3C-17. Defenses to criminal prosecution. Computer as instrument of forgery.

~~(a) In any criminal prosecution under this article, it shall be a defense that:~~

~~(1) The defendant had reasonable grounds to believe that he or she had authority to access or could not have reasonably known he or she did not have authority to access the computer, computer network, computer data, computer program or computer software in question; or,~~

~~(2) The defendant had reasonable grounds to believe that he or she had the right to alter or destroy the computer data, computer software or computer program in question; or,~~

~~(3) The defendant had reasonable grounds to believe that he or she had the right to copy, reproduce, duplicate or disclose the computer data, computer program, computer security system information or computer software in question.~~

~~(b) Nothing in this section shall be construed to limit any defense available to a person charged with a violation of this article.~~

The creation, alteration or deletion of any computer data contained in any computer or computer network, which if done on a tangible document or instrument would constitute forgery under §61-4-5 of this code shall also be considered to be forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to any crime set forth in §61-4-5 of this code if a creation, alteration, or deletion of computer data was involved in lieu of a tangible document or instrument.

§61-3C-18. Venue. Civil relief; damages.

~~For the purpose of criminal and civil venue under this article, any violation of this article shall be considered to have been committed:~~

~~(1) In any county in which any act was performed in furtherance of any course of conduct which violates this article;~~

~~(2) In the county of the principal place of business in this state of the aggrieved owner of the computer, computer data, computer program, computer software or computer network, or any part thereof;~~

~~(3) In any county in which any violator had control or possession of any proceeds of the violation or any books, records, documentation, property, financial instrument, computer data,~~

~~computer software, computer program, or other material or objects which were used in furtherance of or obtained as a result of the violation;~~

~~(4) In any county from which, to which, or through which any access to a computer or computer network was made, whether by wires, electromagnetic waves, microwaves or any other means of communication; and~~

~~(5) In the county in which the aggrieved owner or the defendant resides or either of them maintains a place of business.~~

(a) Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefor in circuit court and may be entitled to recover for each violation:

(1) Compensatory damages;

(2) Punitive damages; and

(3) Such other relief, including injunctive relief, as the court may consider appropriate.

Without limiting the generality of the term, 'damages' shall include loss of profits.

(b) At the request of any party to an action brought pursuant to this section, the court may conduct all legal proceedings in such a manner as to protect the secrecy and security of the computer network, computer data, computer program or computer software involved in order to prevent any possible recurrence of the same or a similar act by another person or to protect any trade secret or confidential information of any person. For the purposes of this section 'trade secret' means the whole or any portion or phase of any scientific or technological information, design, process, procedure or formula or improvement which is secret and of value. A trade secret is presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those authorized by the owner to have access thereto for a limited purpose.

(c) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(d) A civil action under this section shall be commenced before the earlier of: (1) Five years after the last act in the course of conduct constituting a violation of this article; or (2) two years after the plaintiff discovers or reasonably should have discovered the last act in the course of conduct constituting a violation of this article.

§61-3C-19. Prosecution under other criminal statutes not prohibited. Defenses to criminal prosecution.

~~Criminal prosecution pursuant to this article shall not prevent prosecution pursuant to any other provision of law.~~

(a) In any criminal prosecution under this article, it is a defense that:

(1) The defendant had reasonable grounds to believe that he or she had authority to access or could not have reasonably known he or she did not have authority to access the computer, computer network, computer data, computer program or computer software in question; or,

(2) The defendant had reasonable grounds to believe that he or she had the right to alter or destroy the computer data, computer software or computer program in question; or,

(3) The defendant had reasonable grounds to believe that he or she had the right to copy, reproduce, duplicate, or disclose the computer data, computer program, computer security system information or computer software in question.

(b) Nothing in this section may be construed to limit any defense available to a person charged with a violation of this article.

§61-3C-20. Personal jurisdiction. Venue.

~~Any person who violates any provision of this article and, in doing so, accesses, permits access to, causes access to or attempts to access a computer, computer network, computer data, computer resources, computer software or computer program which is located, in whole or in part, within this state, or passes through this state in transit, shall be subject to criminal prosecution and punishment in this state and to the civil jurisdiction of the courts of this state.~~

For the purpose of criminal and civil venue under this article, any violation of this article shall be considered to have been committed:

(1) In any county in which any act was performed in furtherance of any course of conduct which violates this article;

(2) In the county of the principal place of business in this state of the aggrieved owner of the computer, computer data, computer program, computer software or computer network, or any part thereof;

(3) In any county in which any violator had control or possession of any proceeds of the violation or any books, records, documentation, property, financial instrument, computer data, computer software, computer program, or other material or objects which were used in furtherance of or obtained as a result of the violation;

(4) In any county from which, to which, or through which any access to a computer or computer network was made, whether by wires, electromagnetic waves, microwaves, or any other means of communication; and

(5) In the county in which the aggrieved owner or the defendant resides or either of them maintains a place of business.

§61-3C-21. Severability. Prosecution under other criminal statutes not prohibited.

~~If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this article which can be given effect without the invalid provision or application, and to that end the provisions of this article are declared to be severable.~~

Criminal prosecution pursuant to this article may not prevent prosecution pursuant to any other provision of law.

§61-3C-22. Personal jurisdiction.

Any person who violates any provision of this article and, in doing so, accesses, permits access to, causes access to or attempts to access a computer, computer network, computer data, computer resources, computer software or computer program, which is located, in whole or in part, within this state, or passes through this state in transit, is subject to criminal prosecution and punishment in this state and to the civil jurisdiction of the courts of this state.

§61-3C-23. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this article which can be given effect without the invalid provision or application, and to that end the provisions of this article are declared to be severable.

ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.**§61-3D-2. Acquisition of cable television services.**

(a) A person who acquires cable television services for himself or herself or another, whether through his or her own efforts or with the assistance of another, or both, by:

(1) Making or maintaining any unauthorized connection, whether physically, electrically, or inductively, to a distribution or transmission line;

(2) Attaching or maintaining the attachment of any unauthorized device to any cable, wire, or other component of a cable system or to a television receiving set connected to a cable system;

(3) Making or maintaining any unauthorized modification or alteration to any device installed by a cable system operator; or

(4) Knowingly permits another person to enter upon his or her property for the purpose of securing cable service in an unauthorized manner as described in subdivision (1), (2) or (3) of this subsection ~~shall be~~ is guilty of a misdemeanor and, upon conviction, shall be punished in accordance with subsection (c) of this section.

(b) A person who subscribes to and receives cable television services through an authorized connection of a television receiving set at his or her dwelling and, within his or her dwelling, makes an authorized or an unauthorized connection of an additional television receiving set or sets or audio system which receives cable television service through such authorized connection, ~~shall~~ is not be guilty of a misdemeanor under subsection (a) of this section.

(c) Any person convicted of a misdemeanor under subsection (a) of this section shall be subject to the following penalties:

(1) Upon a first conviction under this section, the defendant ~~shall be~~ is guilty of a ~~misdemeanor~~ petty offense and fined not less than \$100, nor more than \$250.

(2) Upon a second conviction under this section, the defendant ~~shall be fined not less than \$250, nor more than \$500, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned~~ is guilty of a Class 3 misdemeanor.

(3) Upon any subsequent conviction in excess of a second conviction under this section, the defendant shall be ~~fin~~ed not less than \$500, nor more than \$1,000, or imprisoned in the county jail not less than thirty days nor more than sixty days, or both fined and imprisoned is guilty of a Class 2 misdemeanor.

Notwithstanding the provisions of §61-11A-4 or section §50-3-2a of this code, the magistrate or court may order restitution not to exceed the value of unauthorized cable services received.

§61-3D-3. Sale or transfer of the device or plan intended for acquisition or diversion.

(a) A person who sells, gives, or otherwise transfers to another or offers, advertises or exposes for sale to another any device, mechanism, tool or printed circuit, or any kit, plan or instructional procedure for the making of such device, mechanism, tool or printed circuit, with the knowledge that another will acquire cable television services in violation of this article, ~~shall be is~~ guilty of a misdemeanor and, shall be punishable in accordance with subsection (b) of this section.

(b) (1) Upon a first conviction under this section, the defendant ~~shall be fined not less than \$250, nor more than \$500~~ is guilty of a petty offense and fined not less than \$100, nor more than \$250.

(2) Upon a second conviction under this section, the defendant ~~shall be fined not less than \$500, nor more than \$1,000, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned~~ is guilty of a Class 3 misdemeanor.

(3) Upon any subsequent conviction in excess of a second conviction under this section, the defendant ~~shall be fined not less than \$500, nor more than \$1,000, or imprisoned in the county jail not less than sixty days, nor more than one year~~ is guilty of a Class 2 misdemeanor.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

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

'Bodily injury' means injury that causes substantial physical pain, illness, or any impairment of physical condition

'Destructive device' means any bomb, grenade, mine, rocket, missile, pipe bomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

'Destructive device' does not include a firearm as such is defined in §61-7-2 of this code, or sparkling devices, novelties, toy caps, model rockets and their components or fireworks as these terms are defined in §29-3E-2 of this code, or high-power rockets and their components, as defined in this section.

'Explosive material' means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or

packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes. Also included are all explosive materials listed annually by the office of the State Fire Marshal and published in the State Register, said publication being hereby mandated.

'High power rocket' means the term as defined in National Fire Protection Association Standard 1127, 'Code for High Power Rocketry.'

'Hoax bomb' means any device or object that by its design, construction, content, or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device.

'Incendiary device' means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: *Provided*, That no similar device commercially manufactured and used solely for the purpose of illumination shall be ~~deemed~~ considered to be an incendiary device.

'Legal authority' means that right as expressly stated by statute or law.

'Model rocket' means the term as defined in National Fire Protection Association Standard 1122, 'Code for Model Rocketry.'

'Person' means an individual, corporation, company, association, firm, partnership, society or joint stock company.

'Serious bodily injury' means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality occurring because of a preterm delivery.

'Storage magazine' is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage of explosive materials.

§61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty.

Any person who possesses or manufactures any explosive material without first obtaining a permit to use explosives from the office of the state Fire Marshal or who possesses or manufactures any destructive device or incendiary device ~~shall be~~ is guilty of a Class 6 felony and, ~~upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years or fined not more than \$5,000, or both.~~

§61-3E-4. Criminal use of destructive device, explosive material, or incendiary device; penalty.

Any person who unlawfully and intentionally damages the property of another or attempts to damage the property of another by the use of a destructive device, explosive material or incendiary device ~~shall be~~ is guilty of a Class 5 felony ~~and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than two nor more than ten years, or fined not more than \$10,000, or both.~~

§61-3E-5. Causing accidental or intentional death or injury; penalties.

(a) Any person who violates the provisions of this article which violation causes bodily injury to any person ~~shall be~~ is guilty of a Class 5 felony ~~and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than two nor more than ten years, or fined not more than \$5,000, or both; if the violation was undertaken with the intent to cause bodily injury or death, that person is guilty of a Class 4 felony.~~

(b) Any person who violates the provisions of this article which violation causes serious bodily injury to any person ~~shall be~~ is guilty of a Class 4 felony ~~and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than three nor more than fifteen years, or fined not more than \$10,000, or both; if the violation was undertaken with the intent to cause bodily injury or death, that person is guilty of a Class 3 felony.~~

(c) Any person who violates the provisions of this article which violation causes the death of any person ~~shall be~~ is guilty of a Class 3 felony ~~and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for a definite term of years of not less than ten years nor more than forty years; if the violation was undertaken with the intent to cause bodily injury or death, that person is guilty of a Class 2 felony.~~

No person sentenced to a period of imprisonment pursuant to the provisions of this subsection shall may be eligible for parole prior to having served a minimum of 10 years.

§61-3E-6. Causing death or injury to an explosives detection animal; penalty.

Any person who violates the provisions of this article which violation causes death, serious or debilitating bodily injury to an explosives detection animal owned or used by a law-enforcement agency, ~~shall be~~ is guilty of a Class 6 felony ~~and, upon conviction thereof, be committed to the custody of the Division of Corrections for not less than one year nor more than five years or fined not more than \$5,000 or both; if the violation was undertaken with the intent to cause bodily injury or death to the animal, that person is guilty of a Class 5 felony.~~

Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State Fire Marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills, and replacement costs of any disabled or killed animal.

§61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty.

(a) Any person who knowingly manufactures, purchases, sells, advertises for sale, transports, or possesses a hoax bomb with intent to violate any provision of this code ~~shall be~~ is guilty of a

~~Class 1 misdemeanor. Any person convicted of a violation of this section shall be incarcerated in a county or regional jail for not less than six months nor more than one year, or fined \$5,000, or both.~~

(b) Notwithstanding the provisions of subsection (a) of this section, any person who possesses or uses a hoax bomb to commit or attempt to commit any felony ~~shall be~~ is guilty of a Class 6 felony and, ~~upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years, or fined not more than \$10,000, or both.~~

§61-3E-8. Theft of explosive material from storage magazines or buildings; penalty.

Any person who breaks and enters or shall enter without breaking any storage magazine, shop, office, storehouse, warehouse or any other building or out-house adjoining thereto, any railcar, boat, vessel or motor vehicle within the jurisdiction of any county within this state where explosive material is stored, with the intent to commit larceny of the explosive material shall be is guilty of a Class 5 felony and, ~~upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years or fined not more than \$10,000, or both.~~

§61-3E-9. Receipt, possession, storage, sale, or transportation of stolen explosive material; penalty.

Any person who receives, conceals, transports, ships, stores, barter, sells, or disposes of any explosive material knowing or have reason to know that such materials is stolen is guilty of a Class 6 felony and, ~~upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years or fined not more than \$10,000, or both.~~

§61-3E-10. Wanton endangerment involving destructive devices, explosive materials, or incendiary devices; penalty.

Any person who wantonly performs any act with a destructive device, explosive material or incendiary device which creates substantial risk of death or serious bodily injury to another ~~shall be is~~ guilty of a Class 5 felony and, ~~upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than two years nor more than ten years or fined not more than \$10,000, or both.~~

§61-3E-12. Contraband, seizure, forfeiture.

(a) Any destructive device, explosive material, incendiary device, or hoax bomb possessed, involved in, used, or intended to be used in a violation of this article or any violation of any criminal law or regulation of this state are hereby declared to be contraband and any property interest therein shall be vested in the State of West Virginia. ~~Said~~ The contraband may be seized by the office of the state Fire Marshal or other law-enforcement agency conducting said investigation and upon application to the circuit court of the county in which said contraband is seized be forfeited to the State of West Virginia for destruction or for training purposes by the office of the state Fire Marshal or other law-enforcement agency.

(b) The Legislature hereby finds and declares that the seizure and use of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in section five, article XII of the Constitution of West Virginia and to the extent that the seizure and use may be

found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and use under this article is not part of net proceeds as the same is contemplated by section five, article XII of the Constitution of West Virginia.

§61-3E-13. Legislative findings.

[Repealed.]

ARTICLE 3F. WORTHLESS CHECKS.

§61-3F-1. Obtaining property in return for worthless check; penalty.

It is unlawful for any person, firm, or corporation to obtain any money, services, goods or other property or thing of value by means of a check, draft, or order for the payment of money or its equivalent upon any bank or other depository, knowing at the time of the making, drawing, issuing, uttering or delivering of the check, draft or order that there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation. The making, drawing, issuing, uttering or delivery of any such check, draft or order, for or on behalf of any corporation, or its name, by any officer or agent of the corporation, shall subject the officer or agent to the penalties of this section to the same extent as though the check, draft or order was his or her own personal act, when the agent or officer knows that the corporation does not have sufficient funds on deposit in or credit with the bank or depository from which the check, draft or order can legally be paid upon presentment.

This section shall not apply to any check, draft, or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his or her credit with the drawee sufficient funds to ensure payment as aforesaid, nor may this section apply to any postdated check, draft or order.

No prosecution may be confined to the provisions of this section by virtue of the fact that worthless checks, drafts, or orders may be employed in the commission of some other criminal act.

A person who violates the provisions of this section is guilty of the larceny of the amount of the check, draft, or order.

§61-3F-2. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

(a) It is unlawful for any person, firm, or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent on a preexisting debt upon any bank or other depository, knowing or having reason to know there is not sufficient funds on deposit in or credit with the bank or other depository with which to pay the check, draft or order upon presentation. The making, drawing, issuing, uttering, or delivering of any check, draft or order on a preexisting debt, for or on behalf of any corporation, or its name, by any officer or agent of the corporation, shall subject the officer or agent to the penalty of this section to the same extent as though the check, draft or order was his or her own personal act.

(b) This section shall not apply to any check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his or her credit with the drawee sufficient funds to ensure payment as aforesaid, nor shall this section apply to any postdated check, draft or order. This

section shall not apply when the insufficiency of funds or credit is caused by any adjustment to the drawer's account by the bank or other depository without notice to the drawer or is caused by the dishonoring of any check, draft or order deposited in the account unless there is knowledge or reason to believe that the check, draft or order would be dishonored.

(c) Any person violating the provisions of this section is guilty of a petty offense and, upon conviction thereof, shall be fined not more than \$200; and, upon a third or subsequent conviction thereof, shall be convicted of a Class 3 misdemeanor.

§61-3F-3. Payment as defense.

Payment of a dishonored check, draft, or order, made to the magistrate clerk within 10 days after the notice mailed to the defendant pursuant to §61-3F-8 of this code, constitutes a complete defense or ground for dismissal of charges brought under §61-3F-1 or §61-3F-2 of this code.

§61-3F-4. Reason for dishonor; duty of drawee.

The drawee of any check, draft, or order, before refusing to pay the same to the holder thereof upon presentation, shall cause to be written, printed, or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or refusal to pay same. In all prosecutions under §61-3F-1 or §61-3F-2 of this code, the introduction in evidence of any unpaid and dishonored check, draft, or other written order, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid shall be prima facie evidence of :

(a) The making or uttering of said check, draft or other written order, and the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped, or attached by the drawee on such dishonored checks, drafts, or orders; and

(b) As against the maker or drawer thereof, of the withdrawing from deposit with the drawee named in the check, draft, or other written order, of the funds on deposit with such drawee necessary to ensure payment of said check, draft or other written order upon presentation within a reasonable time after negotiation; and

(c) The drawing, making, uttering, or delivering of a check, draft or written order with the knowledge of insufficient funds in or credit with such drawee.

§61-3F-5. Prima facie evidence of knowledge; identity; penalty for providing false information.

(a) In any prosecution under §61-3F-1 of this code, the making, drawing, uttering or delivery of a check, draft or order, the payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence that the drawer has knowledge at the time of making, drawing, issuing, uttering or delivering the check, draft or order that there is not sufficient funds or credit to pay the same, unless the check, draft or order is paid along with any charges or costs authorized by this article.

(b) In any prosecution under §61-3F-2 of this code, it shall constitute prima facie evidence of the identity of the drawer of a check, draft order if at the time of acceptance of the check, draft, or order there is obtained the following information: Name and residence, business or mailing

address and either a valid motor vehicle operator's number or the drawer's home or work phone number or place of employment. This information may be recorded on the check, draft or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means.

(c) Any person who provides false information when information is requested prior to accepting a check, draft or order either at the time the check, draft or order is presented or for the purpose of obtaining a check cashing identification card or similar check cashing privilege is guilty of a Class 3 misdemeanor.

§61-3F-6. Notice of dishonor by payee; service charge.

The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft, or order. The payee or holder of any dishonored check may impose a fee of up to \$25 per worthless check. This fee shall not be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of the notice shall be substantially as follows:

'You are hereby notified that a check, number....., issued by you on (date of check), drawn upon (name of bank), and payable to....., has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of the check plus a fee of \$..... (not to exceed \$25 a worthless check) to the undersigned at..... You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated....., 20....

.....

(Signed).'

The provisions of this section do not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of the dishonored check, draft or order.

The holder or payee of any check, draft or order shall relinquish the check, draft, or order to the maker upon tender of the full amount due at any time before a complaint for warrant has been presented to magistrate court. If a complaint for warrant has been presented to magistrate court, payment may be made only through the court and any holder or payee unlawfully accepting payment after that time shall be liable for all costs which may be imposed by the magistrate court in the matter, including all costs which may have accrued by the time the magistrate court is notified of the payment.

§61-3F-7. Manner of filing complaint for warrant; form.

(a) Notwithstanding §62-1-1 of this code, a complaint for warrant for violations of §61-3F-1 or §61-3F-2 of this code need not be made upon oath before a magistrate but may be made upon oath before any magistrate court clerk or other court officer authorized to administer oaths or

before a notary public in any county of the state and may be delivered by mail or otherwise to the magistrate court of the county wherein venue lies: *Provided*, That nothing in this section changes the authority and responsibility of the prosecuting attorney to prosecute any person or persons for violations of §61-3F-1 or §61-3F-2 of this code.

(b) A complaint for warrant for violations of §61-3F-2 of this code shall be considered sufficient if it is in form substantially as follows:

'State of West Virginia

County of....., to wit:

....., upon oath complains that:

(a) Within one year past, on the..... day of....., 20..., in the county stated above,..... (?the maker') unlawfully issued and delivered to..... a check, draft or order with the following words and figures:

..... 20... No.....

.....

(Name of Bank)

Pay to the Order of..... \$..... Dollars

For..... when the maker did not have funds on deposit in or credit with this bank with which to pay the check, draft or order upon presentation against the peace and dignity of the State of West Virginia. The complainant therefore prays a warrant issue and that the maker be apprehended and held to answer the warrant and dealt with in relation thereto according to the law.

(b) At the time the check, draft or order was delivered and before it was accepted there was either on the check or on a record in the possession of the complainant the following information regarding the identity of the maker:

(1) Name.....

(2) Residence address.....

(3) Business address.....

(4) Mailing address.....

(5) Motor vehicle operator's number.....

(6) Home phone.....

(7) Work phone.....

(8) Place of employment.....

That since the time the check, draft or order was delivered the complainant has ascertained to the best of his or her knowledge and belief the following facts concerning the maker:

Full name.....

Home address.....

Home phone no..... Business phone no.....

Place of employment.....

Race..... Sex..... Height.....

Date of birth.....

Day Month Year

....., Complainant

.....

Address Phone No.

(c) The complainant's bank or financial institution has imposed on or collected from the complainant a service charge in the amount of \$..... in connection with the check, draft or order described above.

Taken, subscribed and sworn to before me, this..... day of....., 20....

.....

.....

(Title)

My commission expires the..... day of....., 20....'

(c) The failure to supply information indicated in parts (b) or (c) of the foregoing complaint for warrant shall not affect the sufficiency of the complaint.

§61-3F-8. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

After receipt of a complaint for warrant for a violation of §61-3F-1 or §61-3F-2 of this code, the magistrate court shall proceed with the issuance of the warrant as is provided by law: *Provided*, That no warrant may issue for an offense under §61-3F-1 or §61-3F-2 of this code which, upon conviction, would be punishable as a misdemeanor, unless the payee or holder of the check, draft or order which has been dishonored has sent notice thereof to the drawer of the check, draft or order in accordance with §61-3F-6 of this code, or unless notice has been sent by the magistrate as hereinafter provided. Proof that the notice was sent by the payee or holder may be evidenced by presentation of a return receipt indicating that the notice was mailed to the drawer by certified mail, or, if the mailed notice was not received or was refused by the drawer, by presentation of the mailed notice itself. The magistrate court shall receive and hold the check, draft, or order.

Upon receipt of a complaint for a misdemeanor warrant unaccompanied by proof that notice was sent by the payee or holder, the magistrate court shall immediately prepare and mail to the drawer of the check, draft or order a notice in form substantially as follows. The magistrate court shall impose any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order and additional court costs in the amount of \$25. This notice shall be mailed to the drawer by United States mail, first class and postpaid, at the address provided at the time of presenting the check, draft or order. Service of this notice is complete upon mailing. The notice shall be in form substantially as follows:

'You are hereby notified that a complaint for a warrant for your arrest has been filed with this office to the following effect and purpose by..... who upon oath complains that on the..... day of....., 20...., you did unlawfully issue and deliver unto him or her a certain check, draft or order in the amount of..... drawn on..... (name of bank or financial institution)..... where you did not have funds on deposit in or credit with the bank or financial institution with which to pay the check, draft or order upon presentation and pray that a warrant issue and that you be apprehended wherever you may be found by an officer authorized to make an arrest and dealt with in accordance with the laws of the State of West Virginia.

A warrant for arrest will be issued on or after the..... day of....., 20.....

You can nullify the effect of this complaint and avoid arrest by paying to the magistrate court clerk at..... the amount due on the check, draft or order; service charges imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order in the amount of.....; and the costs of this proceeding in the amount of \$25 on or before the..... day of....., 20....., at which time you will be given a receipt with which you can obtain the check, draft or order from the magistrate court. The complainant is forbidden by law to accept payment after the complaint is filed.

Magistrate Court of..... County

.....

Date:.....'

This notice shall give the drawer of any such check, draft, or order 10 days within which to make payment to magistrate court. In the event the drawer pays the total amount set forth in the notice to the magistrate court within the ten-day period, no warrant may issue. The payment may be made to the magistrate court in person or by mail by cash, certified check, bank draft or money order and, in the event the payment is made by mail, the magistrate court clerk shall immediately mail to the maker of the check, draft or order the receipt required by this section. In the event the total amount is not so paid the court shall proceed with the issuance of the warrant as is provided by law.

Upon receipt of payment of the total amount the magistrate court clerk shall issue to the drawer a receipt sufficiently describing the check, draft, or order with which receipt the drawer is entitled to receive the dishonored check, draft or order from the magistrate court holding it. The magistrate court clerk shall forward the amount of the check, draft, or order, together with any service charge reflected on the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order, to the payee or holder thereof, along with a description of the check, draft or order sufficient to enable

the person filing the complaint to identify it and the transaction involved. Costs collected shall be dealt with as is provided by law for other criminal proceedings.

The drawer of a check, draft, or order against whom a warrant has been issued may at any time prior to trial pay to the court the amount of the check, draft or order; any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order; and the court costs which would be assessed if the person were found guilty of the offense charged. These costs shall be imposed in accordance with §50-3-2 of this code.

§61-3F-9. Payment of costs in worthless check cases; disposition of certain costs.

(a) In any prosecution under §61-3F-1 or §61-3F-2 of this code, the costs that may otherwise be imposed against the drawer of any check, draft or order shall be imposed on the person initiating the prosecution if:

(1) Payment of the check, draft or order is accepted by the payee or holder thereof after the filing of a complaint for warrant and the charge is subsequently withdrawn or dismissed at the request of the complainant: *Provided*, That the provisions of this subdivision do not apply where a charge is dismissed, and restitution is paid as a condition of a plea agreement. The defendant shall be assessed costs for the prosecution of each charge of which he or she stands convicted and the fee for court costs assessed pursuant to §61-3F-8 of this code for each charge dismissed as a result of the plea agreement;

(2) The payee or holder had reason to believe that the check, draft, or order would be dishonored;

(3) The check, draft or order was postdated; or

(4) The matter is dismissed for failure to prosecute.

(b) Costs collected by magistrate court for issuance of notice as authorized by §61-3F-8 of this code shall not be paid into the special county fund created by §50-3-4 of this code but shall be accounted for separately and retained by the county in a fund designated the Worthless Check Fund until the sheriff issues warrants in furtherance of the allowable expenses specifically provided for by this section. These costs shall not be included in any calculation of the amount of funds to be retained by the county under §50-3-4 of this code.

(c) A county may, after agreement with the court administrator's office of the Supreme Court of Appeals, appropriate and spend from the Worthless Check Fund herein established such sums as are necessary to pay or defray the expenses of providing a deputy sheriff to serve warrants for worthless check offenses and to pay or defray the expenses of providing additional deputy clerks in the office of the magistrate court clerk. After payment of these expenses, or after a determination that these services are not necessary, a county may appropriate and spend from the fund the sums necessary to defray:

(1) The expenses of providing bailiff and service of process services by the sheriff;

(2) The cost of acquiring or renting magistrate court offices and providing utilities and telephones and telephone service to such offices;

(3) The cost of complying with §61-3F-10 of this code; and

(4) The expenses of other services are provided to magistrate courts by the county.

§61-3F-10. Preparation of list of worthless check warrants.

Beginning on July 1, 2021, the magistrate court clerk of every county shall, between the first and fifth day of each month thereafter, prepare a cumulative list of all check warrants issued by the magistrates of the county during the preceding 12 calendar months and after the effective date of this section: *Provided*, That upon completion of each cumulative list, the list which was completed for the next preceding month and any copy thereof shall be destroyed by the magistrate court clerk. The persons charged in the warrants shall be listed alphabetically. The list shall also contain the total number of warrants issued against each named person for the period covered by the report, the number assigned to each warrant, and the date each such warrant was issued. A copy of the cumulative list of worthless check warrants shall be forthwith forwarded to each magistrate in the county and to the prosecuting attorney thereof. Upon the request of magistrates or prosecutors in other counties of this state, the lists shall be regularly forwarded to them.

§61-3F-11. Use of worthless check list upon receipt of complaint for warrant.

On and after July 1, 2021, when a complaint for worthless check warrant is received by a magistrate court, the person receiving the complaint shall consult the current list of worthless check warrants for the county and any current lists of other counties in his or her possession to determine whether the defendant named in the complaint for warrant is also named on the list or lists as a person who has had worthless check warrants issued against him or her during the period covered by the lists. If the list or lists consulted indicate that the person named in the complaint has had no more than one worthless check warrant issued against him or her within the time period covered by the lists, the person receiving the complaint for warrant shall proceed to have a warrant issued or a notice served, as may be appropriate, in accordance with §61-3F-8 of this code. If the list or lists consulted indicate that the person named in the complaint has had two or more worthless check warrants issued against him or her within the time period covered by the lists, the person receiving the complaint for warrant shall not cause a warrant to be issued, but shall instead forthwith prepare a 'Notice of Multiple Worthless Check Warrants,' which shall be in a form substantially as follows:

'NOTICE OF MULTIPLE WORTHLESS CHECK WARRANTS

THIS NOTICE IS TO BE ISSUED ONLY WHEN AN INDIVIDUAL HAS HAD TWO OR MORE WORTHLESS CHECK WARRANTS ISSUED IN THE PRECEDING TWELVE MONTHS

To: prosecuting attorney of..... County From: Magistrate Court of..... County

This is to notify you that..... who resides at..... has issued worthless checks during the preceding twelve months for which warrants have been issued.

In accordance with the provisions of §61-3-10 of the code of West Virginia you have 10 days to advise this court on how to proceed in this matter.'

A list of the worthless check warrants shall be attached to said notice, along with information concerning the check which is the subject of the pending complaint for worthless check warrant. Warrant numbers, check numbers, dates of checks, amounts of checks, payees, and drawee financial institutions for the checks listed shall be set forth.

Immediately upon preparation of the said notice, a copy thereof shall be forwarded to the prosecuting attorney of each county upon whose list of worthless check warrants the defendant's name appears.

§61-3F-12. Duties of prosecuting attorney upon receipt of notice of multiple worthless check warrants; magistrate court clerk to advise complainant.

(a) Within 10 days after receiving a notice of multiple worthless check warrants forwarded in accordance with the provisions of the preceding section, a prosecuting attorney shall review the information contained therein, may consult additional current lists of worthless check warrants, and make other investigation, and shall make a written recommendation to the magistrate court which forwarded the notice that:

(1) A warrant should be issued, or a notice should be forwarded, as may be appropriate, in accordance with the provisions of section eight of this article, or

(2) A warrant should be issued for an offense defined under §61-3-24 of this code, or

(3) No action should be taken by the magistrate court pending a presentation to the appropriate grand jury of a bill seeking an indictment for an offense defined under §61-3-24 of this code.

(b) Upon receipt of the recommendation of the prosecuting attorney, the magistrate court clerk of the magistrate court holding the pending complaint for worthless check warrant shall forward a copy of the prosecuting attorney's recommendation to the complainant, shall inform the complainant that the prosecuting attorney's recommendation is advisory only, and shall request the complainant to advise the court in what manner he or she desires to proceed.

§61-3F-13. Creation and operation of a program for worthless check offenders; acceptance of person in program.

(a) A prosecuting attorney may create within his or her office a worthless check restitution program for persons who have violated §61-3F-1 or §61-3F-2 of this code. This program may be conducted by the prosecuting attorney in conjunction with a law-enforcement agency or by a private entity under contract with the prosecuting attorney.

(b) The prosecuting attorney may adopt standards to determine the appropriateness of an individual case for the program. In developing these standards, the prosecuting attorney shall consider the following factors:

(1) The amount of the check, draft or order made, drawn, issued, uttered, or delivered;

(2) The person's criminal record;

(3) The number of times the person has participated in the program; and

(4) The number of warrants or cases pending against the person for violations of §61-3F-1 or §61-3F-2 of this code.

(c) Except as provided in §61-3F-15 of this code, nothing in this section may preclude the prosecuting attorney from prosecuting violations of §61-3F-1 or §61-3F-2 of this code.

(d) Nothing in this section may be construed or interpreted to mandate funding for any worthless check restitution program created in a prosecuting attorney's office or to require any appropriation by the Legislature.

(e) Notwithstanding any other provision of law to the contrary, no case is appropriate for referral to the program unless notice has been provided pursuant to §61-3F-6 or §61-3F-8 of this code.

§61-3F-14. Notice to persons accepted to the worthless check restitution program.

(a) Upon approval of an individual case for referral to the worthless check restitution program, a representative of the program shall send a notice by registered or certified mail to the person named in the complaint or warrant.

(b) This notice shall contain:

(1) The date and amount of the check, draft, or order;

(2) The name of the payee or holder;

(3) The date by which the individual shall contact the designated representative of the worthless check restitution program;

(4) A demand for full restitution of the face amount of the check, draft or order and any fees reflected in the complaint or warrant as having been imposed on the payee or holder by the payee's or holder's bank or financial institution; and

(5) A statement that failure to pay restitution and fees may result in criminal prosecution.

§61-3F-15. Agreement to suspend prosecution of a person accepted into the restitution program.

(a) The prosecuting attorney may enter into an agreement with a participant of the worthless check restitution program to suspend prosecution for a period to be determined by the prosecuting attorney.

(b) To remain eligible for the worthless check restitution program, the participant shall:

(1) Contact a representative of the program before the date required by the notice sent pursuant to §61-3F-14 of this code;

(2) Agree to comply with all the program terms;

(3) Complete a class conducted by the prosecuting attorney, his or her designee, or a private entity under contract with the prosecuting attorney, which offers offender education and instruction;

(4) Pay a fee in the amount of \$10 to be deposited in the 'worthless check fund' established pursuant to the provisions of section nine of this article;

(5) Pay the fee required to participate in the class;

(6) Pay full victim restitution; and

(7) Pay all fees for participation in the program, unless those fees are waived.

(c) The prosecuting attorney shall agree not to file criminal charges if the participant in the program completes the conditions of the agreement.

§61-3F-16. Fees for participation in the worthless check restitution program.

(a) The prosecuting attorney, his or her designee, or a private entity under contract with the prosecuting attorney may collect a fee not to exceed \$100 from any person participating in the worthless check restitution program: *Provided*, That the prosecuting attorney shall waive the fee if he or she determines that the person is indigent and unable to pay the fee.

(b) All fees collected pursuant to subsection (a) of this section by the prosecutor shall be remitted to the sheriff. The sheriff shall establish a special fund in the county treasury, designated the worthless check restitution program fund, in which the sheriff shall deposit all fees remitted by the prosecutor. The county commission shall appropriate money from the fund for the administration of the worthless check restitution program. The county commission shall also appropriate any excess money from the fund to supplement the annual operation expense appropriation of the office of the prosecuting attorney, if the prosecuting attorney certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

§61-3F-17. Statements by individuals referred to or participating in the worthless check restitution program.

Any statement made by a person referred to the worthless check restitution program in connection with the determination of his or her eligibility for participation in the program and any statement made or information given by that person while participating in the program is inadmissible in any civil or criminal action or proceeding.

ARTICLE 4. FORGERY AND CRIMES AGAINST THE CURRENCY.

§61-4-1. Forgery of public record, certificate, return or attestation of court or officer; penalty.

~~If Any person who forges forges a public record, or a certificate, returns or attestation of a clerk of a court, notary public, judge, justice, magistrate, or any public officer, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or utters or attempts to employ as true such forged record, certificate, return or attestation, knowing the same to be forged, he or she shall be is guilty of a Class 5 felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more than ten years.~~

§61-4-2. Forgery of official seals; keeping or concealing instrument for forging same; penalty.

~~If Any person who forges forges, or keeps or conceals any instrument for the purpose of forging, the seal of a court, or of any public office or body politic or corporate in this state, he or she shall~~

~~be deemed is guilty of a Class 5 felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more than ten years.~~

§61-4-3. Counterfeiting; penalty.

~~If any Any person who forge forges any coin, current by law or usage in this state, or any note or bill of a banking institution, or fraudulently make makes any base coin, or a note or bill purporting to be the note or bill of a banking institution, when such banking institution does not exist; or utter utters or attempt attempts to employ as true, or sell, exchange or deliver, or offer offers to sell, exchange or deliver, or receive on sale, exchange, or delivery, with intent to utter or employ or to have the same uttered or employed as true, any such false, forged, or base coin, note or bill, knowing it to be so, ~~he or she shall be deemed is~~ guilty of a Class 5 felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more than ten years.~~

§61-4-4. Making plates, etc., for forgery; possession of same; penalty.

~~If any Any person who engrave, stamp, or cast, or otherwise makes or mends, engraves, stamps, or casts, any plate, block, press or other thing adapted and designed for the forging and false-making of any writing or other thing, the forging or false-making whereof is punishable by this article; or if such the person have has in his or her possession any such plate, block, press, or other thing, with intent to use, or cause or permit it to be used, in forging or false-making any such writing or other thing, ~~he or she shall be deemed is~~ guilty of a Class 5 felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more ten years.~~

§61-4-5. Forging or uttering other writing; penalty; creation of unauthorized demand draft.

(a) (1) If any person forge any writing, other than such as is mentioned in the first and third sections §61-4-1 and §61-4-3 of this article, to the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, in the value of \$2,500 or more, such person is guilty of a Class 6 felony and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not exceeding \$500.

(2) If any person forge any writing, other than such as is mentioned in the first and third sections of this article, to the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, the value of \$25,000 or more, such person is guilty of a Class 5 felony.

(3) If any person forge any writing, other than such as is mentioned in the first and third sections of this article, to the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, in the value of less than \$2,500, such person is guilty of a Class 1 misdemeanor.

(4) If any person forge multiple writings to the prejudice of another's right, or utter or attempt to employ as true such forged writing, knowing it to be forged, then the value of such writings may be aggregated as part of determining the offense for which the person is to be charged.

(b) It is a violation of this section to create a demand draft under the purported authority of another person for the purpose of charging the other person's account with a bank or other financial institution, or to utter or attempt to employ as true such demand draft, if the demand draft is created with the intent to defraud, and either or both of the following elements is present:

- (1) The person does not, in fact, have the authority to charge the other person's account; or
- (2) The amount of the demand draft exceeds the amount authorized to be charged.

(c) (1) If a person creates a demand draft without authority or which exceeds the amount authorized to be charged to an account, and the demand draft contains the account holder's printed or typewritten name or account number, or a notation that the account holder authorized the draft, or a statement 'No signature required', 'Authorization on file', 'Signature on file', or words to that effect, the demand draft is the equivalent of a check on which the drawer's signature is forged or altered, and the provisions of subsection (a) of this section apply.

(2) If any person creates multiple demand drafts, as specified in subsection (b) of this section, then the value of such writings may be aggregated as part of determining the offense for which the person is to be charged.

(d) For purposes of this section, the term 'demand draft' shall have the meaning ascribed to it in §46-3-104 of this code.

§61-4-6. Possession of counterfeit currency with intent to utter; penalty.

If any person have in his or her possession forged bank notes, or pieces of forged or base coin, such as are mentioned in ~~the third section §61-4-3~~ of this code, knowing the same to be forged or base, with intent to utter or employ the same as true, or to sell, exchange, or deliver them, so as to enable any other person to utter or employ them as true, he or she shall, ~~if the number of such notes or pieces of coin in his or her possession at the same time, be ten or more, be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years, and if the number thereof be less than ten, he or she shall be deemed guilty of a Class 1 misdemeanor., and, upon conviction, shall be confined in jail not less than six months nor more than one year and be fined not exceeding \$500~~

§61-4-7. Unauthorized currency; penalty.

(a) If any person shall, without authority of law, issue any note, cryptocurrency, or other security purporting that money or other thing of value is payable by or on behalf of such person, with intent thereby to create a circulating medium, he or she ~~shall be guilty of a misdemeanor, and, upon conviction, shall be is~~ guilty of a Class 2 misdemeanor, ~~and, upon conviction, shall be confined in jail not more than six months and fined not more than \$500;~~ and the acceptance of any such note, cryptocurrency, or security shall not operate as a payment of any debt or claim due or to become due to the person so accepting the same: *Provided*, That nothing in this section shall be so construed as to prevent the giving of checks, promissory notes, single bills, bonds, orders, drafts or bills of exchange for a debt or claim due or to become due.

(b) For purposes of this section, the term 'cryptocurrency' shall have the meaning ascribed to it in §61-15-1 of this code.

§61-4-8. Passing or receiving unauthorized currency knowingly; penalty.

(a) If any person not punishable under the provisions of the preceding section shall knowingly pass or receive in payment any such note, cryptocurrency, or security, he or she shall be guilty of a Class 3 misdemeanor, ~~and, upon conviction, shall be fined not less than \$10 nor more than \$100~~

(b) For purposes of this section, the term 'cryptocurrency' shall have the meaning ascribed to it in §61-15-1 of this code.

§61-4-9. Unauthorized use, transfer, acquisition, alteration, or possession of certain benefits.

(a) For the purposes of this section:

(1) 'Benefits' means any payment, allotments, money, goods, or other things of value granted pursuant to a benefit program;

(2) 'Benefit access device' means any card, plate, account number or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value that can be used to initiate a transfer of funds;

(3) 'Benefit program' includes the Federal Food Stamp Act, Supplemental Nutritional Assistance Program, Temporary Assistance to Needy Families or other similar state or federal financial assistance program; and

(4) 'Terms of the benefit program' includes all statutes, rules, regulations, or other requirements of that specific benefit program for use of the benefits.

(b) Any person who knowingly uses, transfers, acquires, alters, or possesses benefits or one or more benefit access device contrary to the terms of the benefit program ~~shall~~ is:

~~(1) If the benefits are of a value of less than \$1,000, be guilty of a misdemeanor and, upon conviction thereof, shall for a first offense be fined not more than \$1,000 or confined in a regional jail for not more than one year, or both fined and confined, and for a second and any subsequent offense shall be fined not more than \$1,000 or confined in a regional jail for not less than thirty days and not more than one year~~ If the benefits are of a value of less than \$2,500, guilty of a Class 2 misdemeanor, and for a second and any subsequent conviction guilty of a Class 1 misdemeanor;

~~(2) If the benefits are of a value of \$1,000 or more, but less than \$5,000, be guilty of a felony and, upon conviction, shall for a first offense be fined not more than \$10,000 or imprisoned in a state correctional facility for not more than three years, or both fined and imprisoned, and for a second and any subsequent offense shall be fined not more than \$10,000 or imprisoned for not less than six months nor more than five years, or both fined and imprisoned; and~~

If the benefits are of a value of \$2,500 or more, guilty of a Class 6 felony, and for a second and any subsequent conviction guilty of a Class 5 felony; and

~~(3) If the benefits are of a value of \$5,000 or more, be guilty of a felony and, upon conviction, fined not more than \$250,000 or imprisoned in a state correctional facility for not more than ten years, or both fined and imprisoned~~ If the benefits are of a value of \$25,000 or more, guilty of a Class 5 felony, and for a second or subsequent offense, guilty of a Class 4 felony.

(c) Any person who presents, or causes to be presented, benefits or one or more benefit access device for payment, allotments, money, goods, or other things of value knowing the same

to have been received, transferred, or used in any manner in violation of the terms of the benefit program is:

~~(1) If the benefits are of a value of less than \$1,000, guilty of a misdemeanor and, upon conviction, shall for a first offense be fined not more than \$1,000 or confined in a regional jail for not more than one year, or both fined and confined, and for a second and any subsequent conviction shall be fined not more than \$1,000 or confined in a regional jail for not less than thirty days and not more than one year; If the benefits are of a value of less than \$2,500, guilty of a Class 2 misdemeanor, and for a second and any subsequent conviction guilty of a Class 1 misdemeanor;~~

~~(2) If the benefits are of a value of \$1,000 or more, guilty of a felony and, upon conviction, shall for a first offense be fined not more than \$20,000 or imprisoned in a state correctional facility for not more than five years, or both fined and imprisoned, and for a second and any subsequent conviction shall be fined not more than \$20,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned. If the benefits are of a value of \$2,500 or more, guilty of a Class 6 felony, and for a second and any subsequent conviction guilty of a Class 5 felony; and~~

~~(3) If the benefits are of a value of \$25,000 or more, guilty of a Class 5 felony, and for a second or subsequent offense, guilty of a Class 4 felony.~~

(d) Notwithstanding the penalties contained in this section, in the case of any individual convicted of an offense under this section, the court may permit the individual to perform work approved by the court, in lieu of confinement, for the purpose of providing restitution for losses incurred by the United States and the state agency as a result of the offense for which the individual was convicted. If the court permits the individual to perform work and the individual agrees, the court shall withhold the imposition of the sentence on the condition that the individual perform the assigned work. Upon the successful completion of the assigned work the court shall waive any confinement from the sentence.

(e) For purposes of this section, possession of two or more benefit access devices without authorization is prima facie evidence that an individual has knowledge the possession of the benefit access devices is a violation of the terms of the benefit program.

(f) In determining the value in this section, it is permissible to cumulate amounts or values of benefits.

(g) Notwithstanding any provision of this code to the contrary, no person who knowingly acquires benefits or one or more benefit access device contrary to the terms of the benefit program may be subject to prosecution under both this section and §9-5-4 of this code for conduct arising out of the same transaction or occurrence.

§61-4-10 Payment cards; falsely making or loading the same; penalty.

(a) Any person who falsely makes or falsely stamps a purported payment card or falsely loads or causes to be falsely loaded a payment card into a digital wallet is guilty of forgery and is subject to the penalties set forth in §61-4-5 of this code. A person 'falsely makes' a payment card when such person makes or draws, in whole or in part, a device or instrument which purports to be the payment card of a named issuer, but which is not such a payment card because the issuer did not authorize the making or drawing, or when the person so alters a payment card which was

validly issued. A person 'falsely stamps' a payment card when, without the authorization of the named issuer, the person completes a payment card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the payment card before it can be used by a cardholder. A person 'falsely loads' or 'causes to be falsely loaded' a payment card into a digital wallet when that person stores or causes to be stored on a digital wallet the digital form of (1) a payment card falsely made or falsely stamped by that person, (2) a payment card taken, procured, received or retained by such person under circumstances that constitute a violation of this section or (3) a payment card that such person knows is falsely made, falsely stamped, forged, expired or revoked.

(b) For purposes of this section, 'Payment card' shall mean a credit card, charge card, debit card or any other card that is issued to an authorized card user and that allows the user to obtain, purchase or receive goods, services, money, or anything else of value from a merchant.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-1. Perjury and subornation of perjury defined; false swearing defined. Penalties for perjury, subornation of perjury, and false swearing.

(a) (1) Any person who is under an oath or affirmation which has been lawfully administered and who willfully testifies falsely regarding a material matter in a trial of any person, corporation, or other legal entity for a felony, or before any grand jury which is considering a felony indictment, shall be guilty of the felony offense of perjury.

(b) (2) Any person who induces or procures another person to testify falsely regarding a material matter in a trial of any person, corporation, or other legal entity for a felony, or before any grand jury which is considering a felony indictment, shall be guilty of the felony offense of subornation of perjury.

(b) To willfully swear falsely, under oath or affirmation lawfully administered, in a trial of the witness or any other person for a felony, concerning a matter or thing not material, and on any occasion other than a trial for a felony, concerning any matter or thing material or not material, or to procure another person to do so, is false swearing and is a misdemeanor.

(c) A person convicted of perjury or subornation of perjury is guilty of a Class 6 felony, and a person convicted of false swearing is guilty of a Class 1 misdemeanor. And in either case the person convicted shall be adjudged forever incapable of holding any office of honor, trust or profit in this state, or of serving as a juror.

§61-5-2. False swearing defined. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.

To willfully swear falsely, under oath or affirmation lawfully administered, in a trial of the witness or any other person for a felony, concerning a matter or thing not material, and on any occasion other than a trial for a felony, concerning any matter or thing material or not material, or to procure another person to do so, is false swearing and is a misdemeanor.

(a) When any adult or juvenile is lawfully detained in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center, and any other person delivers anything into the place of custody or confinement of the adult or juvenile with the intent to aid or facilitate the adult's or juvenile's escape or attempted escape therefrom, or if the other person

forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is guilty of a Class 6 felony.

(b) When any adult or juvenile is lawfully detained in custody or confinement in any jail, a state correctional facility or a juvenile facility or juvenile detention center, and any other person delivers any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to the adult or juvenile without the express authority and permission of the supervising officer and with knowledge that the adult or juvenile is lawfully detained, the other person is guilty of a Class 2 misdemeanor: *Provided*, That the provisions of this section do not prohibit an attorney or his or her employees from supplying any written or printed material to an adult or juvenile which pertains to that attorney's representation of the adult or juvenile.

(c)(1) Any person, who transports any alcoholic liquor, nonintoxicating beer, poison, implement of escape, dangerous material, weapon, or any controlled substance as defined by Chapter 60A of this code onto the grounds of any jail, state correctional facility, juvenile facility or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, is guilty of a Class 6 felony.

(2) Any person, who willfully and knowingly transports or causes to be transported any telecommunications device into or upon any portion of any jail, state correctional facility, juvenile facility or juvenile detention center within this state that is not generally open and accessible to members of the public without prior approval from the warden or administrator or designee and that person is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, is guilty of a Class 1 misdemeanor.

(d) Any person, who delivers any alcoholic liquor, nonintoxicating beer, poison, implement of escape, dangerous material, weapon, or any controlled substance as defined by chapter sixty-a of this code to an adult or juvenile in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, is guilty of a Class 6 felony.

(e) Whoever purchases, accepts as a gift or secures by barter, trade or in any other manner any article or articles manufactured at or belonging to any jail, state correctional facility, juvenile facility or juvenile detention center from any adult or juvenile detained therein is guilty of a Class 1 misdemeanor: *Provided*, That the provisions of this subsection do not apply to articles specially manufactured in any facility under the authorization of the persons supervising the facility and which are offered for sale within or outside of the facility.

(f) Whoever persuades, induces, or entices, or attempts to persuade, induce, or entice any person who is in custody, or confined in any jail, state correctional facility, juvenile facility, or juvenile detention center to escape therefrom, or to engage or aid in any insubordination to the persons supervising the facility, is guilty of a Class 6 felony.

(g) (1) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any poison, implement of escape, dangerous material, weapon, unauthorized telecommunications device, or any controlled substance as defined by Chapter 60A of this code is guilty of a Class 6 felony.

(2) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any alcoholic liquor, nonintoxicating beer, money, or other thing

of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind without the express authority and permission of the supervising officer is guilty of a Class 1 misdemeanor.

(h) As used in this section:

(1) 'Dangerous material' means any incendiary material or device, highly flammable or caustic liquid, explosive, bullet or other material readily capable of causing death or serious bodily injury.

(2) 'Delivers' means to transfer an item to an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The term includes bringing the item into a jail, correctional facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The term includes putting an item in a place where it may be obtained by an inmate.

(3) 'Inmate' means an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility, or juvenile detention center, regardless of whether the individual is temporarily absent due to medical treatment, transportation, court appearance or other reason for a temporary absence.

(4) 'Implement of escape' means a tool, implement, device, equipment, or other item which an inmate is not authorized to possess capable of facilitating, aiding or concealing an escape or attempted escape by an inmate.

(5) 'Telecommunication device' means any type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of an instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications regardless of whether the part itself is able to transmit. The term includes, but is not limited to, cellular phones, digital phones, and modem equipment devices.

(6) 'Weapon' means an implement readily capable of lethal use and includes any firearm, knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which has been modified or adapted so that it can be used as a firearm, knife, dagger, razor, other cutting or stabbing implement or club. For purposes of this definition, the term 'firearm' includes an unloaded firearm or the unassembled components of a firearm.

§61-5-3. Penalties for perjury, subornation of perjury, and false swearing. Permitting escape; refusal of custody of prisoner; penalties.

A person convicted of perjury or subornation of perjury shall be guilty of a felony, and a person convicted of false swearing shall be guilty of a misdemeanor. And in either case the person convicted shall be adjudged forever incapable of holding any office of honor, trust or profit in this state, or of serving as a juror. Any Jailer or other officer, or private correctional officer, who aids or voluntarily allows a prisoner convicted or charged with a felony or misdemeanor to escape from his or her custody, is guilty of a Class 5 felony. Any such jailer or other officer, or private correctional officer who, negligently, but not voluntarily, allows a person convicted of or charged with felony, or negligently, but not voluntarily allows a person convicted of or charged with an offense not a felony, to escape from his or her custody, or willfully refuses to receive into his or her custody any person lawfully committed thereto, is guilty of a Class 1 misdemeanor.

§61-5-4. Bribery or attempted bribery; penalty. Persons in custody of institutions or officers.

~~If any person shall bribe, by directly or indirectly giving to or bestowing upon, or shall attempt to bribe by directly or indirectly giving to or bestowing upon, any executive, legislative, judicial, or ministerial officer of this state, or any member of the Legislature, after his election or appointment and either before or after he shall have been qualified or shall have taken his seat, any gift, gratuity, money, testimonial or other valuable thing, or shall make promise thereof, in order to influence him in the performance of any of his official, public duties, or with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding, or to induce or procure him to vote or withhold his vote on any question or proceeding which is then or may thereafter be pending, or may by law come or be brought before him in his official capacity, he shall be guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not less than one nor more than ten years, and shall, moreover, be forever disqualified from holding any office or position of honor, trust or profit in this state. Whoever, escapes or attempts to escape by any means from the custody of a county sheriff, the director of the Regional Jail Authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the Division of Corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty of a Class 6 felony; and if the custody or confinement is by virtue of a charge or conviction for a misdemeanor, is guilty of a Class 1 misdemeanor.~~

§61-5-5. Demanding or receiving bribes; penalty. Escapes and aiding in escapes; terms of confinement in addition to previous sentence.

~~Any executive, legislative, judicial or ministerial officer, or member of the Legislature, who shall demand, receive or accept any gift, gratuity, money, testimonial or other valuable thing, or shall exact any promise to make such gift or to pay to him money, testimonial or other valuable thing, or to do any act beneficial to such officer or member of the Legislature, from any person, company or corporation, under an agreement or understanding that his vote, opinion, judgment or decision shall be given or withheld in any particular manner upon a particular side of any question, cause or proceeding, which is, or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, or for any vote or influence he may give or withhold as such officer or member of the Legislature, or that such officer will fail to perform or improperly perform any of his official, public duties, shall be guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years; and in addition thereto such officer or member of the Legislature shall forfeit the office then held by him and shall be forever disqualified from holding any office or position of honor, trust or profit in this state. The terms of confinement specified in §25-4-11 of this code or in §61-5-8, §61-5-9, and §61-5-10 of this code. shall be in addition to the period or periods of confinement to which any person convicted under this section may be subject to and shall commence at the expiration of any such former sentence.~~

§61-5-6. Receiving bribe by officer in delay of service of process; penalty. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

~~If any officer authorized to serve legal process receive any money or other thing of value for omitting or delaying to perform any duty pertaining to his or her office, he or she shall be guilty of~~

~~a misdemeanor, and, upon conviction, shall be confined in jail not more than six months and be fined not exceeding \$100.~~

Except where otherwise provided, any person, who abducts any person who is an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility is guilty of a Class 5 felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years. Any person, who persuades, induces, or entices, or attempts to persuade, induce or entice, any person who is an inmate or patient of any institution, private prison or facility to escape therefrom, or who conceals or harbors any such person, knowing him or her to have run away from any institution, private prison or facility, is guilty of a Class 6 felony.

Any fugitive from any state benevolent or correctional institution, private prison, or mental health facility, may, on the order of the superintendent or other officer of the institution or facility, be arrested and returned to the institution or facility, or to any officer or agent thereof, by any sheriff, police officer or other person, and may also be arrested and returned by any officer or agent of such institution, private prison or facility.

Any person, who trespasses, idles, lounges or loiters upon the grounds of any state benevolent or correctional institution, private prison or mental health facility or communicates, or attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of such institution, private prison or facility, or conveys or assists in any way in establishing communication between an inmate or patient of such institution, private prison or facility and any person or persons outside thereof, except as authorized by the rules or regulations in force by the authority governing the same, is guilty of a Class 3 misdemeanor. Any person, who, with intent to defraud, purchases, accepts as a gift, or secures by barter or trade, or in any other manner, any article of clothing from an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility issued to him or her, by any officer of the institution or facility, or by any private correctional officer of the private prison for his or her use, or, with such intent, secures any other article or articles belonging to any inmate or patient of the institution, private prison or facility or to the institution, private prison or facility from an inmate or patient thereof, is guilty of a petty offense and, upon conviction thereof, shall be fined a sum not less than double the value of the articles, except that in no case shall the fine be less than \$500. Magistrates shall have jurisdiction of all misdemeanors included in this paragraph, concurrently with the circuit court.

§61-5-7. Bribery of commissioner of court, Auditor, justice of the peace, arbitrator, umpire, juror, or other county official, either elected or appointed; penalty. Escape from custody of the commissioner of corrections.

~~Any person who gives or offers, directly or through any other person or persons, or promises, directly or indirectly, to give any money or other thing of value to a commissioner appointed by a court, Auditor, justice of the peace, arbitrator, umpire, juror (although not impaneled), or other county official, either elected or appointed, with intent to bias his or her opinion or influence his or her decision in relation to any matter in which he or she is acting or is to act; and any such commissioner, Auditor, justice of the peace, arbitrator, umpire, juror, or other county official, either elected or appointed, who corruptly takes or receives such money or other thing of value, or who agrees to take such money or other thing of value to bias or influence his or her opinion or action or both, shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years, and fined in addition thereto not exceeding \$5,000. Any person who escapes from the custody of the commissioner of corrections, regardless of where such person is confined or where the escape occurs, is guilty of a Class 5 felony. A term of~~

imprisonment imposed pursuant to the provisions of this section shall be imposed as a consecutive sentence and shall not be served concurrently with any imprisonment, confinement or detention imposed under any prior sentence being served or otherwise being discharged at the time that person commits an offense under the provisions of this section. A person charged with an offense under the provisions of this section shall not be released from the custody of the Commissioner of Corrections while the prosecution of the alleged offense is pending: *Provided*, That time served by that person after any other prior sentence has been served or otherwise discharged shall be applied to any sentence which may ultimately be imposed for an offense under this section. Venue for the prosecution of a violation of this section shall be in the county in which the escape occurs.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties. Escape from custody of the Director of Juvenile Services; penalties.

~~(a) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center, if any other person delivers anything into the place of custody or confinement of the adult or juvenile with the intent to aid or facilitate the adult's or juvenile's escape or attempted escape therefrom, or if the other person forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than ten years.~~

~~(b) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, a state correctional facility or a juvenile facility or juvenile detention center, if any other person delivers any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to the adult or juvenile without the express authority and permission of the supervising officer and with knowledge that the adult or juvenile is lawfully detained, the other person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 and confined in jail not less than three nor more than twelve months: *Provided*, That the provisions of this section do not prohibit an attorney or his or her employees from supplying any written or printed material to an adult or juvenile which pertains to that attorney's representation of the adult or juvenile.~~

~~(c)(1) If any person transports any alcoholic liquor, nonintoxicating beer, poison, implement of escape, dangerous material, weapon, or any controlled substance as defined by chapter sixty-a of this code onto the grounds of any jail, state correctional facility, juvenile facility or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in a state correctional facility not less than two years nor more than ten years, or both, or, in the discretion of the court, be confined in jail not more than one year and fined not more than \$500.~~

~~(2) If any person willfully and knowingly transports or causes to be transported any telecommunications device into or upon any portion of any jail, state correctional facility, juvenile facility or juvenile detention center within this state that is not generally open and accessible to members of the public without prior approval from the warden/administrator or designee and such person is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in jail not more than one year or both fined and confined.~~

~~(d) If any person delivers any alcoholic liquor, nonintoxicating beer, poison, implement of escape, dangerous material, weapon or any controlled substance as defined by chapter sixty-a of this code to an adult or juvenile in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in a state correctional facility not less than one year nor more than five years, or both.~~

~~(e) Whoever purchases, accepts as a gift or secures by barter, trade or in any other manner any article or articles manufactured at or belonging to any jail, state correctional facility, juvenile facility or juvenile detention center from any adult or juvenile detained therein is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 and confined in jail not less than three nor more than twelve months. *Provided*, That the provisions of this subsection do not apply to articles specially manufactured in any facility under the authorization of the persons supervising the facility and which are offered for sale within or outside of the facility.~~

~~(f) Whoever persuades, induces or entices or attempts to persuade, induce or entice any person who is in custody or confined in any jail, state correctional facility, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the persons supervising the facility is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 and confined in jail not less than three nor more than twelve months.~~

~~(g) (1) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any poison, implement of escape, dangerous material, weapon, telecommunications device or any controlled substance as defined by chapter sixty-a of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in a state correctional facility not less than one year nor more than five years, or both, or, in the discretion of the court, be confined in jail not more than one year and fined not more than \$500.~~

~~(2) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any alcoholic liquor, nonintoxicating beer, money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind without the express authority and permission of the supervising officer is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 and confined in jail not more than twelve months.~~

~~(h) As used in this section:~~

~~(1) 'Dangerous material' means any incendiary material or device, highly flammable or caustic liquid, explosive, bullet or other material readily capable of causing death or serious bodily injury.~~

~~(2) 'Delivers' means to transfer an item to an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The term includes bringing the item into a jail, correctional facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The term includes putting an item in a place where it may be obtained by an inmate.~~

~~(3) 'Inmate' means an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility or juvenile detention center, regardless of whether the individual is temporarily absent due to medical treatment, transportation, court appearance or other reason for a temporary absence.~~

~~(4) 'Implement of escape' means a tool, implement, device, equipment or other item which an inmate is not authorized to possess capable of facilitating, aiding or concealing an escape or attempted escape by an inmate.~~

~~(5) 'Telecommunication device' means any type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of an instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications regardless of whether the part itself is able to transmit. The term includes, but is not limited to, cellular phones, digital phones and modem equipment devices.~~

~~(6) 'Weapon' means an implement readily capable of lethal use and includes any firearm, knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which has been modified or adapted so that it can be used as a firearm, knife, dagger, razor, other cutting or stabbing implement or club. For purposes of this definition, the term 'firearm' includes an unloaded firearm or the unassembled components of a firearm. (a) Any person, under the age of 18 years of age, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where that person is confined or where the escape occurs, is guilty of a delinquent act and subject to the jurisdiction of the circuit court of the county in which the escape occurred, pursuant to §49-4-701 of this code: *Provided*, That upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.~~

~~(b) Any person, over the age of 18 years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where that person is confined or where the escape or attempted escape occurs, is guilty of escape and, if the person is detained or confined for an offense which is a felony or would have been a felony if committed by an adult is guilty of a Class 5 felony. Any person, over the age of 18 years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who is detained for an offense which is a misdemeanor or would have been a misdemeanor if committed by an adult is guilty of a Class 1 misdemeanor.~~

~~(c) The time to be served by such person for an offense under this section shall be consecutive to any other sentence and shall commence after any other prior sentence has been served or otherwise discharged.~~

§61-5-9. Permitting escape; refusal of custody of prisoner; penalties. Refusal of officer to make, or delay in making, arrest; penalty.

~~If a jailer or other officer, or private correctional officer aid or voluntarily suffer a prisoner convicted or charged with felony to escape from his or her custody, he or she shall be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years. If any such jailer or other officer, or private correctional officer negligently, but not voluntarily, suffer a person convicted of or charged with felony, or voluntarily or negligently suffer a person convicted of or charged with an offense not a felony, to escape from his or her~~

~~custody, or willfully refuse to receive into his or her custody any person lawfully committed thereto, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months, or be fined not exceeding \$1,000, or both such fine and confinement. If any officer willfully and corruptly refuses to execute any lawful process, requiring him or her to apprehend or confine a person convicted of or charged with an offense, or shall willfully and corruptly omit or delay to execute that process, whereby the person escapes and goes at large, the officer is guilty of a Class 2 misdemeanor.~~

§61-5-10. Persons in custody of institutions or officers. Refusal of person to aid officer; penalty.

~~Whoever escapes or attempts to escape by any means from the custody of a county sheriff, the director of the Regional Jail Authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the Division of Corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not more than five years; and if the custody or confinement is by virtue of a charge or conviction for a misdemeanor, is guilty of a misdemeanor and, upon conviction thereof, he or she shall be confined in a county or regional jail for not more than one year. If any person, who, without good cause, on being required by any sheriff or other officer, refuses or neglects to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue, is guilty of a Class 2 misdemeanor: *Provided*, that no person may be compelled to place themselves at risk of physical harm in rendering such assistance.~~

§61-5-11. Escapes and aiding in escapes; terms of confinement in addition to previous sentence. Refusal of officer to execute act or process of Legislature or order of Governor; penalty.

~~The terms of confinement specified in section eleven, article four, chapter twenty five of this code or in sections eight, nine and ten of this article shall be in addition to the period or periods of confinement to which any person convicted under this section may be subject to and shall commence at the expiration of any such former sentence. Any officer of this state whose duty it is to execute or enforce any act of the Legislature, or any legal process or proceeding arising thereunder, or any lawful order or proclamation of the Governor of the state, and who willfully neglects or refuses to execute or enforce the same, without good cause, for every such offense, is guilty of a Class 2 misdemeanor.~~

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.

~~Except where otherwise provided, whoever abducts any person who is an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years. Whoever persuades, induces or entices, or attempts to persuade, induce or entice, any person who is an inmate or patient of any such institution, private prison or facility to escape therefrom, or whoever conceals or harbors any such person, knowing him or her to have run away from any such institution, private prison or facility, is guilty of a misdemeanor, and, upon conviction~~

~~thereof, shall be fined not less than \$100 nor more than \$1,000, and in addition thereto, in the discretion of the court, may be imprisoned in the county jail not more than six months.~~

~~Any fugitive from any state benevolent or correctional institution, private prison or mental health facility, may, on the order of the superintendent or other officer of such institution or facility, be arrested and returned to such institution or facility, or to any officer or agent thereof, by any sheriff, police officer or other person, and may also be arrested and returned by any officer or agent of such institution, private prison or facility.~~

~~Whoever trespasses, idles, lounges or loiters upon the grounds of any other state benevolent or correctional institution, private prison or mental health facility or communicates, or attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of such institution, private prison or facility, or conveys or assists in any way in establishing communication between an inmate or patient of such institution, private prison or facility and any person or persons outside thereof, except as authorized by the rules or regulations in force by the authority governing the same, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$20 nor more than \$500, or imprisoned not more than thirty days in the county jail, or both, in the discretion of the court or magistrate. Whoever, with intent to defraud, purchases, accepts as a gift, or secures by barter or trade, or in any other manner, any article of clothing from an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility issued to him or her, by any officer of such institution or facility, or by any private correctional officer of such private prison for his or her use, or, with such intent, secures any other article or articles belonging to any inmate or patient of such institution, private prison or facility or to such institution, private prison or facility from an inmate or patient thereof, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined a sum not less than double the value of such articles, except that in no case shall the fine be less than \$100. Magistrates shall have jurisdiction of all misdemeanors included in this paragraph, concurrently with the circuit court.~~

(a) A person, who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a Class 1 misdemeanor.

(b) A person, who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a Class 6 felony.

(c) A person, who with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a Class 1 misdemeanor. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild, or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, 'law-enforcement officer' does not include a watchman, a member of the West Virginia State Police, or college security personnel who is not a certified law-enforcement officer.

(d) A person, who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security

officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a Class 1 misdemeanor.

(e) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a Class 1 misdemeanor.

(f) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a Class 6 felony.

(g) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a Class 6 felony.

(h) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a Class 5 felony.

(i) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a Class 3 felony. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

(j) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs, is guilty of a Class 5 felony.

(k) For purposes of this section, the term 'vehicle' includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms 'flee', 'fleeing', and 'flight' do not include a person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical service personnel.

(2) For the purpose of this subsection, the term 'interfere with or prevent' includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, the term 'emergency communication' means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a Class 3 misdemeanor.

(5) A person who is convicted of a second offense under this subsection is guilty of a Class 2 misdemeanor.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a Class 1 misdemeanor.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than 10 years prior to the offense in question.

§61-5-12a. Escape from custody of the commissioner of corrections.

[Repealed.]

§61-5-12b. Escape from custody of the Director of Juvenile Services.

[Repealed.]

§61-5-13. Refusal of officer to make, or delay in making, arrest; penalty. Officer not liable for act done under statute or executive order afterward declared unconstitutional.

If any officer wilfully and corruptly refuse to execute any lawful process, requiring him or her to apprehend or confine a person convicted of or charged with an offense, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, such officer shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than six months, and be fined not exceeding \$500. No officer in the lawful exercise or discharge of his or her official duty under any act of the Legislature, or any order or proclamation of the Governor of this state, may be held personally responsible therefor in any action, suit, prosecution or proceeding, civil or criminal, by reason of such act, order or proclamation being afterwards adjudged by any court of this state to be unconstitutional. Nor may his or her official bond be liable in any civil proceeding therefor.

§61-5-14. Refusal of person to aid officer; penalty. Compounding offenses and misprision; penalties.

If any person shall, on being required by any sheriff or other officer, refuse or neglect to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case

~~of escape or rescue, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than six months and be fined not exceeding \$100. Any person, who knowing of the commission of an offense, takes any money, or reward, or an engagement therefor, upon an agreement or undertaking, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, if the offense is a felony, is guilty of a Class 1 misdemeanor and, if the offense is not a felony, unless it is punishable merely by a forfeiture, is guilty of a Class 2 misdemeanor.~~

~~§61-5-15. Refusal of person to execute order of arrest by justice; penalty. Exacting excessive fees; penalty.~~

~~If any person, being required by a justice, on view of a breach of the peace or other offense, to bring before him or her the offender, shall refuse or neglect to obey the justice, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the preceding section; and if the justice declare himself or herself to be such, or if he or she be known to the offender, ignorance of his or her office shall not be pleaded as an excuse. If any officer, for performing an official duty for which a fee or compensation is allowed or provided by law, knowingly demand and receive a greater fee or compensation than is so allowed or provided, he or she shall be guilty of a Class 3 misdemeanor.~~

~~§61-5-16. Refusal of officer to execute act or process of Legislature or order of Governor; penalty. Issuing fraudulent fee bills; penalty.~~

~~Any officer of this state whose duty it is to execute or enforce any act of the Legislature, or any legal process or proceeding arising thereunder, or any lawful order or proclamation of the Governor of the state, and who shall wilfully neglect or refuse to execute or enforce the same, shall, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500, and may, in the discretion of the court, be imprisoned not exceeding one year. Any person, authorized by law to charge fees for services performed by him or her, and to issue fee bills therefor, fraudulently issue a fee bill for a service not performed by him or her, or for more than he or she is entitled to, is guilty of a Class 3 misdemeanor; and, in addition thereto, shall forfeit his or her office and be forever incapable of holding any office of honor, trust or profit in this state.~~

~~§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions. Alteration, concealment or destruction of public record by officer; penalty.~~

~~(a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.~~

~~(b) A person who intentionally disarms or attempts to disarm a law enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.~~

~~(c) A person who, with intent to impede or obstruct a law enforcement officer, the State Fire Marshal or a full time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, 'law enforcement officer' does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law enforcement officer.~~

~~(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.~~

~~(e) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year.~~

~~(f) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned in a state correctional facility not less than one nor more than five years.~~

~~(g) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 and shall be confined in jail for not less than six months nor more than one year.~~

~~(h) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.~~

~~(i) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,~~

~~shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.~~

~~(j) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.~~

~~(k) For purposes of this section, the term 'vehicle' includes any motor vehicle, motorcycle, motorboat, all terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.~~

~~(l) For purposes of this section, the terms 'flee', 'fleeing', and 'flight' do not include a person(s) reasonable attempt to travel to a safe place, allowing the pursuing law enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer(s) direction to stop.~~

~~(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.~~

~~(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law enforcement, fire, or emergency medical service personnel.~~

~~(2) For the purpose of this subsection, the term 'interfere with or prevent' includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.~~

~~(3) For the purpose of this subsection, the term 'emergency communication' means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.~~

~~(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.~~

~~(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and confined.~~

~~(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.~~

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than 10 years prior to the offense in question. Any clerk of a court, or other public officer, who fraudulently makes a false entry, or erases, alters or destroys any record in his or her keeping and belonging to his or her office, or who willfully secretes any such record from any person having the right to inspect the same, is guilty of a Class 6 felony; and, in addition thereto, shall forfeit his or her office and be forever incapable of holding any office of honor, trust or profit in this state.

§61-5-18. Officer not liable for act done under statute or executive order afterward declared unconstitutional. Larceny, concealment, or destruction of public record by person not officer; penalty.

No officer in the lawful exercise or discharge of his or her official duty under any act of the Legislature, or any order or proclamation of the Governor of this state, shall be held personally responsible therefor in any action, suit, prosecution or proceeding, civil or criminal, by reason of such act, order or proclamation being afterwards adjudged by any court of this state to be unconstitutional. Nor shall his or her official bond be liable in any civil proceeding therefor. Any person, other than an officer in lawful charge thereof, who steals, fraudulently secretes or destroys, a public record or any part thereof, is guilty of a Class 1 misdemeanor.

§61-5-19. Compounding offenses and misprision; penalties. Corrupt summoning of jurors to find biased verdict; penalty.

If any person, knowing of the commission of an offense, take any money, or reward, or an engagement therefor, upon an agreement or undertaking, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he or she shall, if such offense be a felony, be guilty of a misdemeanor, and, upon conviction, be confined in jail not more than one year and fined not exceeding \$500; and if such offense be not a felony, unless it be punishable merely by a forfeiture to him or her, he or she may be confined in jail not more than six months, and shall be fined not exceeding \$100. A sheriff or other officer who, corruptly, or through favor or ill will, summons a juror, with intent that such juror shall find a verdict for or against any party to an action, or shall be biased in his or her conduct as such juror, is guilty of a Class 6 felony, and shall forfeit his or her office and be forever incapable of holding any office of honor, trust or profit in this state.

§61-5-20. Exactng excessive fees; penalty. Procuring the summoning of biased juror by party other than officer; penalty.

If any officer, for performing an official duty for which a fee or compensation is allowed or provided by law, knowingly demand and receive a greater fee or compensation than is so allowed or provided, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding \$50. Any person, who procures or attempts to procure a juror to be summoned, with intent that such juror shall find a verdict for or against either party to an action or shall be biased in his or her conduct as such juror, is guilty of a Class 6 felony.

§61-5-21. Issuing fraudulent fee bills; penalty. Discrimination against employee summoned for jury duty; penalty.

If any person authorized by law to charge fees for services performed by him or her, and to issue fee bills therefor, fraudulently issue a fee bill for a service not performed by him or her, or for more than he or she is entitled to, he or she shall be guilty of a misdemeanor, and, upon

conviction, shall be fined not exceeding \$500; and, in addition thereto, he or she shall forfeit his or her office and be forever incapable of holding any office of honor, trust or profit in this state. It is unlawful for any person to terminate or threaten to terminate from employment or decrease the regular compensation of employment of an employee for time the employee was not actually away from his or her employment because an employee received, or was served with a summons for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any jury in any court of this state, the United States, or any state of the United States.

Any person violating the provisions of this section is guilty of a Class 3 misdemeanor.

§61-5-22. Alteration, concealment or destruction of public record by officer; penalty. Contempt of court; what constitutes contempt; jury trial; presence of defendant.

If any clerk of a court, or other public officer, fraudulently make a false entry, or erase, alter or destroy any record in his or her keeping and belonging to his or her office, or shall wilfully secrete any such record from any person having the right to inspect the same, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and be fined not exceeding \$1,000; and, in addition thereto, he or she shall forfeit his or her office and be forever incapable of holding any office of honor, trust or profit in this state. The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court, in his or her official character; (d) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court may, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a sentence for any such offense in excess of a Class 3 misdemeanor. But, in any such case, the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted and may give judgment according to the verdict: *Provided*, that in no such case may the penalty prescribed by that judgment exceed a Class 1 misdemeanor. Additionally, any jury trial for contempt shall be presided over a different judge than the judge against whom such contempt was alleged to have been rendered. No court may impose a fine for contempt, unless the defendant is present in court, or has have been served with a rule of the court to show cause, on some certain day, and has failed to appear and show cause.

§61-5-23. Larceny, concealment or destruction of public record by person not officer; penalty. Intimidation of and retaliation against public officers and employees, jurors, and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

If any person, other than an officer in lawful charge thereof, steal, fraudulently secrete or destroy, a public record or any part thereof, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and be fined not exceeding \$1,000.

(a) Definitions. — As used in this section:

'Fraudulent' means not legally issued or sanctioned under the laws of this state or of the United States, including forged, false, and materially misstated;

'Legal process' means an action, appeal, document instrument, or other writing issued, filed, or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person, incarcerate a person, or direct a person to appear, perform, or refrain from performing a specified act. 'Legal process' includes, but is not limited to, a complaint, decree, demand, indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena, summons, warrant, or writ;

'Official proceeding' means a proceeding involving a legal process or other process of a tribunal of this state or of the United States;

'Person' means an individual, group, association, corporation, or any other entity;

'Public official or employee' means an elected or appointed official or employee of a state or federal court, commission, department, agency, political subdivision, or any governmental instrumentality;

'Recorder' means a clerk or other employee in charge of recording instruments in a court, commission, or other tribunal of this state or of the United States; and

'Tribunal' means a court or other judicial or quasi-judicial entity, or an administrative, legislative, or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical force, harassment, or a fraudulent legal process or official proceeding, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Impede or obstruct a public official or employee from performing his or her official duties;

(2) Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;

(3) Influence, delay, or prevent the testimony of any person in an official proceeding; or

(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal a record, document, or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official proceeding summoning a person to appear as a witness or produce a record, document, or other object for an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned.

(c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Retaliate against a public official or employee for the performance or nonperformance of an official duty;

(2) Retaliate against a juror or witness for performing his or her official duties in an official proceeding; or

(3) Retaliate against any other person for attending, testifying, or participating in an official proceeding, or for the production of any record, document, or other object produced by a person in an official proceeding.

(d) Penalty. — A person convicted of an offense under subsections (b) or (c) of this section is guilty of a Class 5 felony.

(e) Civil cause of action. — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs, and other expenses incurred in defending or dismissing such action.

(1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section; and

(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:

(A) Request to release lien. — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within 21 days, then it shall be inferred that the person intended to harass the public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided in this section; or

(B) Notice of fraudulent lien. — A government attorney on behalf of the public official or employee may record a notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee may be charged for the filing of the notice.

(g) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(h)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees;

(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions, or designate group affiliation; or

(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state or prevents a person from instituting or responding to a lawful action.

§61-5-24. Corrupt summoning of jurors to find biased verdict; penalty. Fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process; impersonation of a public official, employee or tribunal; penalties.

~~A sheriff or other officer who, corruptly, or through favor or ill will, shall summon a juror, with intent that such juror shall find a verdict for or against any party to an action, or shall be biased in his or her conduct as such juror, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not exceeding six months and fined not exceeding \$500, and shall forfeit his or her office and be forever incapable of holding any office of honor, trust or profit in this state.~~

(a) Definitions. — For the purpose of this section, the following terms have the meaning ascribed to them in section twenty-seven of this article: 'Fraudulent', 'legal process', 'official proceeding', 'person', 'public official or employee', 'recorder', and 'tribunal'.

(b) Fraudulent official proceedings. — It is unlawful for a person to knowingly engage in a fraudulent official proceeding or legal process.

(c) Fraudulent filings. — It is unlawful for a person to knowingly cause a public official or employee to file, record or deliver a fraudulent claim of indebtedness, common law lien or other lien, financial statement, complaint, summons, judgment, warrant or other legal process, including those issued as the result of a fraudulent official proceeding.

(d) Fraudulent service. — It is unlawful for a person to knowingly serve a public official or employee with a fraudulent claim of indebtedness, common law lien or other lien, financial statement, complaint, summons, judgment, warrant or other legal process, including those issued as the result of a fraudulent official proceeding.

(f) First offense. — Any person who violates a provision of this section is guilty of a Class 1 misdemeanor.

(g) Second offense. — Any person convicted of a second or subsequent offense under this section is guilty of a Class 6 felony.

(h) Civil cause of action. — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs and other expenses incurred as a result of prosecuting the civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(i) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section, a fraudulent official proceeding or legal process brought in a tribunal in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs and other expenses incurred in defending or dismissing such action.

(1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other legal process against a person or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.

(2) If a fraudulent lien or other legal process against a person or his or her property is recorded then:

(A) Request to release lien. — A person may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then the person shall be presumed to have intended to have committed a violation of this section and shall be subject to the penalties provided for in this section; or

(B) Petition to circuit court. — A person may petition the circuit court of the county where the fraudulent lien or legal process was recorded for an order that may be granted ex parte directing the person who filed the lien or legal process to appear before the court and show cause why the lien or legal process should not be released or dismissed, deemed fraudulent and the person penalized as provided for in this section.

(i) The petition shall set forth a concise statement of the facts and the grounds upon which relief is requested.

(ii) No filing fee shall be charged for the filing of such petitions.

(iii) The order to show cause shall be served upon the person who filed the lien or legal process according to rule 4 of the rules of civil procedure and the date of the hearing set within twenty-one days of the order.

(iv) The order to show cause shall clearly state that if the person who filed the lien or legal process fails to appear at the time and place noticed in the order, then the lien or legal process shall be released or dismissed, deemed fraudulent and the person shall be subject to the penalties provided for in this section.

(v) If a hearing takes place or if, on its own motion, the circuit court determines that the lien or legal process is fraudulent, then the circuit court shall release or dismiss it and subject the person to the penalties provided for in this section.

(vi) If the circuit court determines that the lien or legal process is valid, then the circuit court shall issue an order stating such and may award reasonable attorney's fees, court costs and other expenses to the prevailing party.

(j) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(k)(1) Nothing in this section prohibits or in any way limits the lawful acts of a legitimate public official or employee.

(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state nor does it prevent a person from instituting or responding to a lawful action.

§61-5-25. Procuring the summoning of biased juror by party other than officer; penalty. Impersonation; penalty; subsequent offenses.

If any person shall procure or attempt to procure a juror to be summoned, with intent that such juror shall find a verdict for or against either party to an action or shall be biased in his or her conduct as such juror, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding \$500. (a) Any person who knowingly impersonates or purports to exercise any function of a public official, employee, tribunal, or official proceeding without legal authority to do so, with the intent to induce a person to submit to or rely on the fraudulent authority of the person is guilty of a Class 1 misdemeanor.

(b) Any person who falsely represents himself or herself to be a law-enforcement officer, or law-enforcement official, or to be under the order or direction of any such person, or any person not a law-enforcement officer, or law-enforcement official who wears, the uniform prescribed for such persons, or the badge or other insignia, adopted for use by such persons with the intent to deceive another person is guilty of a Class 1 misdemeanor. For purposes of this section, the terms law-enforcement officer and law-enforcement official are defined by §30-29-1 of this code, except that such terms do not include members of the Division of Public Safety and do not include individuals hired by nonpublic entities for the provision of security services.

(c) *Second offense.* — Any person convicted of a second or subsequent offense under this section is guilty of a Class 6 felony.

§61-5-25a. Discrimination against employee summoned for jury duty; penalty.

[Repealed.]

§61-5-26. Contempt of court; what constitutes contempt; jury trial; presence of defendant. Failure to perform official duties; penalty.

The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court, in his or her official character; (d) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court shall, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a fine exceeding \$50, or imprison more than ten days. But in any such case the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. No court shall impose a fine for contempt, unless the defendant be present in court, or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause. Any person holding any office or appointment in this state, who willfully fails or refuses to perform any duty required of him or her by law, is guilty of a petty offense, and, upon conviction thereof, shall, if no other punishment is prescribed by law, shall be fined not exceeding \$1000.

~~§61-5-27. Intimidation of and retaliation against public officers and employees, jurors, and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties. Failure to meet an obligation to pay support to a minor; penalties.~~

(a) Definitions. — As used in this section:

(1) ~~'Fraudulent'~~ means not legally issued or sanctioned under the laws of this state or of the United States, including forged, false, and materially misstated;

(2) ~~'Legal process'~~ means an action, appeal, document instrument, or other writing issued, filed, or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person, incarcerate a person, or direct a person to appear, perform, or refrain from performing a specified act. ~~'Legal process'~~ includes, but is not limited to, a complaint, decree, demand, indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena, summons, warrant, or writ;

(3) ~~'Official proceeding'~~ means a proceeding involving a legal process or other process of a tribunal of this state or of the United States;

(4) ~~'Person'~~ means an individual, group, association, corporation, or any other entity;

(5) ~~'Public official or employee'~~ means an elected or appointed official or employee of a state or federal court, commission, department, agency, political subdivision, or any governmental instrumentality;

(6) ~~'Recorder'~~ means a clerk or other employee in charge of recording instruments in a court, commission, or other tribunal of this state or of the United States; and

(7) ~~'Tribunal'~~ means a court or other judicial or quasi-judicial entity, or an administrative, legislative, or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) ~~Intimidation; harassment.~~ — It is unlawful for a person to use intimidation, physical force, harassment, or a fraudulent legal process or official proceeding, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) ~~Impede or obstruct a public official or employee from performing his or her official duties;~~

(2) ~~Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;~~

(3) ~~Influence, delay, or prevent the testimony of any person in an official proceeding; or~~

(4) ~~Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal a record, document, or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official proceeding summoning a person to appear as a witness or produce a record,~~

document, or other object for an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned.

~~(c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:~~

~~(1) Retaliate against a public official or employee for the performance or nonperformance of an official duty;~~

~~(2) Retaliate against a juror or witness for performing his or her official duties in an official proceeding; or~~

~~(3) Retaliate against any other person for attending, testifying, or participating in an official proceeding, or for the production of any record, document, or other object produced by a person in an official proceeding.~~

~~(d) Penalty. — A person convicted of an offense under subsections (b) or (c) of this section is guilty of a felony and shall be confined in a correctional facility not less than one nor more than 10 years, fined not more than \$2,000, or both.~~

~~(e) Civil cause of action. — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.~~

~~(f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs, and other expenses incurred in defending or dismissing such action.~~

~~(1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section; and~~

~~(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:~~

~~(A) Request to release lien. — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within 21 days, then it shall be inferred that the person intended to harass the public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided in this section; or~~

~~(B) Notice of fraudulent lien.— A government attorney on behalf of the public official or employee may record a notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee shall be charged for the filing of the notice.~~

~~(g) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.~~

~~(h)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees;~~

~~(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions, or designate group affiliation; or~~

~~(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state or prevents a person from instituting or responding to a lawful action.~~

(a) A person who: (1) repeatedly and willfully fails to pay his or her court-ordered support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor; and (2) is subject to court order to pay any amount for the support of a minor child and is delinquent in meeting the full obligation established by the order and has been delinquent for a period of at least six months duration, is guilty of a Class 1 misdemeanor.

(b) A person who repeatedly and willfully fails to pay his or her court-ordered support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor by virtue of a court or administrative order and the failure results in twelve months without payment of support that remains unpaid, is guilty of a Class 6 felony.

§61-5-27a. Fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process; impersonation of a public official, employee or tribunal; penalties.

[Repealed.]

§61-5-28. Failure to perform official duties; penalty.

[Repealed.]

§61-5-29. Failure to meet an obligation to pay support to a minor; penalties.

[Repealed.]

ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.

§61-5A-9. Penalties; disqualification to hold office; statute of limitations for misdemeanor offenses.

(a) Any person who violates any of the provisions of section three of this article shall be guilty of a Class 6 felony, and, upon conviction thereof, shall be punished, if an individual, by imprisonment in the penitentiary not less than one nor more than ten years, and, if a corporation,

~~by a fine of not exceeding \$50,000. Any person convicted of violating any of the provisions of section three of this article shall also be forever disqualified from holding any office or position of honor, trust or profit of government in this state.~~

~~(b) Any person who violates any of the provisions of section four of this article shall be guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail not less than three months nor more than one year or by a fine of not exceeding \$5,000 or, in the discretion of the court, by both such confinement and fine.~~

~~(c) Any person who violates any of the provisions of section five of this article shall be guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail not less than three months nor more than one year or by a fine of not exceeding \$5,000 or, in the discretion of the court, by both such confinement and fine, unless such person threatened to commit a crime or made a threat with the purpose to influence an administrative or judicial proceeding, in which event, he or she shall, upon conviction thereof, be guilty of a Class 6 felony and, additionally, shall also be forever disqualified from holding any office or position of honor, trust or profit of government in this state and, shall be punished as specified in subsection (a) of this section for a violation of any of the provisions of section three of this article.~~

~~(d) Any person who violates any of the provisions of section six or section seven of this article shall be guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail not less than three months nor more than one year or by a fine of not less than \$50 nor more than \$1,000 or, in the discretion of the court, by both such confinement and fine.~~

~~(e) Notwithstanding the provisions of §61-11-9 of this code or any other provision of law to the contrary, a prosecution for a misdemeanor under the provisions of this article shall be commenced within six years after the offense was committed.~~

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1. Suppression of riots and unlawful assemblages.

~~All members of the West Virginia State Police, the Division of Protective Services, all sheriffs within their respective counties and all mayors within their respective jurisdiction, may suppress riots, routs, and unlawful assemblages. It shall be the duty of each of them to go among, or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such member of the West Virginia State Police, or of the Division of Protective Services, sheriff or mayor giving the command, and any other present, shall command the assistance of all persons present, and of all or any part of other law-enforcement personnel available to him or her, as need be, in arresting and securing those so assembled. If any person present, on being required to give his or her assistance, depart, or fail to obey, he or she shall be deemed a rioter.~~

§61-6-1a. Control of riots and unlawful assemblages.

[Repealed.]

§61-6-1b. Disorderly conduct; penalty.

[Repealed.]

§61-6-2. Commitment and recognizance of rioters. Control of riots and unlawful assemblages.

~~If any person be arrested for a riot, rout or unlawful assemblage, he or she shall be taken without unreasonable delay before a justice of the county in which the arrest is made who shall commit him to jail, unless he shall enter into a recognizance, with sufficient security, to appear before the court having jurisdiction of the offense, at its next term, to answer therefor, and in the meantime to be of good behavior and to keep the peace.~~

Members of the West Virginia State Police, the Division of Protective Services, sheriffs and mayors, and those acting under their order, may, when engaged in suppressing a riot, rout or unlawful assemblage, cordon off any area or areas threatened by such riot, rout or unlawful assemblage, and may take all actions which are necessary and reasonable under the emergency to restore law and order, and such actions may be, but are not limited to, the following:

(a) Prohibit the sale, offering for sale, dispensing, furnishing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to or from such areas.

(b) Prohibit the sale, offering for sale, dispensing, furnishing, or consumption of alcoholic beverages or nonintoxicating beer in a public place in such areas, and prohibit the transportation of alcoholic beverages or nonintoxicating beer in, to, or from such areas.

(c) Impose curfews, as required, to control movement of persons in, to, and from such areas.

(d) Enter a private dwelling or other building or other private place in such areas when in fresh pursuit of a rioter, when in search of a sniper who has fired upon a person from such a dwelling or other building or place or when in search of firearms, other dangerous weapons, ammunition, dynamite, or other dangerous explosives when there is reason to believe that such items are stored in the said dwelling, building, or place and that they will be removed therefrom before a search warrant could be obtained.

No person shall willfully fail to obey a lawful order of any mayor, sheriff, deputy sheriff, municipal police officer, member of the West Virginia State Police, or the Division of Protective Services, or other officer, given pursuant to this section.

Any person who violates an order given pursuant to the authority of this section shall be guilty of a Class 2 misdemeanor.

§61-6-3. Failure of member of West Virginia State Police officer, officer of the Division of Protective Services, mayor, or sheriff to exercise powers at riots and unlawful assemblages; penalty. Disorderly conduct; penalty

~~If any member of the West Virginia State Police, the Division of Protective Services, sheriff, or mayor have notice of a riotous, tumultuous, or unlawful assemblage in his or her respective jurisdiction as provided in section one of this article, and fail to proceed immediately to the place of such assemblage, or as near as he or she may safely go, or fail to exercise his or her authority for suppressing it and arresting the offenders, he or she shall be fined not to exceed \$100.~~

(a) Any person who, in a public place, any office or office building of the State of West Virginia, or in the State Capitol complex, or on any other property owned, leased, occupied or controlled

by the State of West Virginia, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturbs the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his or her lawful capacity, is guilty of the petty offense of disorderly conduct. Nothing in this subsection should may be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

(b) For purposes of this section:

'Mobile home park' means a privately owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.

'Mobile home' means a moveable or portable unit, designed, and constructed to be towed on its own chassis (comprised of frame and wheels) and designed to be connected to utilities for year-round occupancy. The term includes: (A) Units containing parts that may be folded, collapsed, or telescoped when being towed and that may be expanded to provide additional cubic capacity; and (B) units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

'Public parking area' means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles.

§61-6-6. Destruction of building by rioters; penalty therefor and for rioting without such injury Mobs and lynching; penalties; liability of county or city.

~~If any person engaged in a riot, rout or unlawful assemblage, pull down or destroy, in whole or in part, any dwelling house, courthouse, jail, prison, asylum, hospital, school or college building, or any public building of any character, or assist therein, he or she shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years; and though no such building be injured, every rioter, and every person unlawfully or tumultuously assembled, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and fined not exceeding \$500.~~

Any collection of individuals, five or more in number, assembled for the unlawful purpose of offering violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional or regulative powers over any person or persons by violence, and without lawful authority, shall be regarded and designated as a 'mob' or 'riotous assemblage.'

The term 'serious injury,' for the purposes of this section, shall include any injury to property which shall cause damage to the owner thereof, or any injury to the person which shall temporarily or permanently disable the person injured from earning a livelihood.

The putting to death of any person within this state by a mob or riotous assemblage shall be murder, and every person participating in such mob or riotous assemblage by which a person is

put to death is guilty of murder, and, upon conviction thereof, shall be punished as the law provides in other cases of murder.

Persons who compose a mob or riotous assemblage, with the intent to inflict damage or injury to the person or property of any individual charged with crimes, or, under the pretense of exercising correctional powers over such person or persons by violence, and without lawful authority, are guilty of a Class 2 misdemeanor. Persons who compose a mob or riotous assemblage, and who inflicts damage or injury to the person or property of any individual charged with crimes, are guilty of a Class 6 felony.

Persons composing a mob or riotous assemblage under the provisions of this section, who, by violence, inflict serious injury to the property or to the person of any other person upon the pretense of exercising correctional or regulative powers over such person or persons, and without authority of the law, are guilty of a Class 5 felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not exceeding five years; and any person suffering serious injury to his or her person or his or her property by a mob, shall have an action against the county or city in which serious injury is inflicted, for such damages as he or she may sustain, to an amount not to exceed \$50,000.

The county, in which the person or persons charged with a crime are taken from a state, county, or municipal officer, and lynched and put to death, shall be subject to a forfeiture of \$500,000, which may be recovered by appropriate action therefor, in the name of the personal representative of the person put to death, for the use of his or her dependent family or estate. The action may be brought in any state court. If the forfeiture is not paid upon recovery of judgment therefor, the court rendering such judgment may enforce the payment thereof, and may compel the levy and collection of a tax therefor, or otherwise compel the payment thereof by mandamus or other appropriate process, and every officer of the county, and every other person who disobeys or fails to comply with any lawful order of the court, shall be liable to punishment according to law as for contempt and to any other penalties provided by law therefor.

The fact that any person so put to death was taken from any state, county, or municipal officer in one county, by a mob or riotous assemblage of five or more persons, and transported out of that county before the killing took place, and the fact that the killing occurred out of the county from which such person may have been taken from the state, county or municipal officer, shall not relieve the county from which he or she was taken from the liability provided by this section. If the person so taken from such officer or officers is transported from and put to death and lynched in another county outside of the county wherein he or she was taken from such officer or officers, no county through which that person was transported, or in which that person has been lynched and put to death, shall be liable to damages hereunder, unless it is clearly shown that the officers or citizens in such county or counties participated in, aided, abetted or encouraged such unlawful putting to death.

Every state, county or municipal officer having the duty or power of preservation or conservation of the peace at the time and place of any such putting to death, or the committing of serious injury to the person or to the property as prescribed in this section, who, having reasonable cause to believe that the same is to be done, or is attempted to be done, and neglects or omits to prevent the same, and every such officer from whose custody such person may be taken by the mob or riotous assemblage, and put to death by the same, or whose property or person suffers serious injury at the hands of such mob or riotous assemblage, is guilty of negligence in the discharge of his or her official duty, and the county or city which shall have been sued and

compelled to pay damages as herein provided may recover same from such negligent officer by appropriate action upon his or her official bond.

In any prosecution for any of the offenses defined herein, and any action for the forfeiture imposed as herein provided, every person who has participated in the lynching or in the putting to death of, or in the infliction of great bodily violence or serious injury to the person or the property of any person, without authority of the law, and every person who entertains or has expressed any opinion in favor of lynching or in the justification or excuse thereof, or whose character, conduct, or opinions have been or are such as, in the judgment of the court, may tend to disqualify him or her for an impartial and unprejudiced trial of the cause, shall be disqualified to serve as a juror, and in any such action or prosecution, any attorney interested in the case shall be entitled to make full inquiry thereof and to produce evidence thereon; and every person who refuses to answer any inquiry touching his or her qualifications on the ground that he or she may thereby incriminate himself or herself shall be disqualified.

§61-6-7. Conspiracy to inflict injury to persons or property; infliction of injury or death in pursuance thereof; penalties. Disturbance of religious worship; penalty

If any person willfully interrupt, molest or disturb any assembly of people met for the worship of God, or for prayer, or for any Sunday school or religious instruction, he or she shall be guilty of a Class 2 misdemeanor. Any officer may put such offender under restraint during such religious worship.

§61-6-8. Release or rescue of person in custody charged or convicted under §61-6-7; penalty. Disturbance of schools, societies, and other assemblies; penalty.

If any person, by force, or other unlawful means, shall release or rescue, or attempt to release or rescue, a person in prison or other custody, charged with, or convicted of an offense under the provisions of the preceding section of this article, he or she shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.

Any person who willfully interrupts, molests or disturbs any free school, or other school, a school exhibition, or any literary society, or any other society or meeting formed or convened for intellectual, social or moral improvement, or for improvement in music, either vocal or instrumental, or for any moral or social amusement, or any other society organized or carried on under or in pursuance of the laws of this state, or any fourth of July celebration, Christmas tree, or church festival, or any other festival, or any society, lawfully carried on, is guilty of a Class 3 misdemeanor.

§61-6-9. Intimidation of witness for state in conspiracy prosecutions; penalties. Loitering on school property; penalty; exceptions.

If any person shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the provisions of sections seven and eight of this article, for the purpose of preventing the attendance of such witness at the trial of such case, or shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at such trial, he or she shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years, or he or she may, in the discretion of the court, be confined in jail not less than three nor more than twelve months, and fined not less than \$100 nor more than \$5,000.

A person, not a student in regular attendance, may not loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal.

Any person who violates the provisions of this section is guilty of a Class 2 misdemeanor. Upon a second or subsequent conviction, any such person is guilty of a Class 1 misdemeanor.

§61-6-10 Reward for arrest in conspiracy cases; employment of special policemen and detectives. Camping upon governmental grounds or lawns; penalties; public nuisance.

~~The Governor is hereby authorized, whenever in his or her opinion it is proper to do so, to offer rewards, and employ special policemen and detectives, and to employ any and all means in his or her power, including the employment of any portion of the military forces of the state, to secure the apprehension of any and all persons belonging to any such unlawful combination or who shall be charged with the commission of any offense mentioned in the seventh, eighth and ninth sections of this article.~~

Any person who goes upon the ground or lawn surrounding or adjacent to (1) the state Capitol building or any state office building which is a part of the state Capitol complex, or (2) a county courthouse, or (3) any municipal office building where the principal business of the municipality is conducted, which ground or lawn is owned by or leased to the State of West Virginia, the county, or such municipality, as the case may be, and place, erect or construct or attempt to place, erect or construct for himself or herself or others shelter accommodations thereon or use any such erected shelter accommodations, without the written permission first had and obtained of the Governor, the county court, or the governing body of the municipality, as the case may be, is guilty of a Class 3 misdemeanor, and any such shelter accommodations are hereby constituted a public nuisance which may be abated at the expense of any such person. Each day upon which any violation of the provisions of this section continues shall constitute a separate offense.

§61-6-11. False reports concerning bombs or other explosive devices; penalties.

(a) Any person who imparts or conveys or causes to be imparted or conveyed any false information, knowing or having reasonable cause to believe the information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place or concerning an attempt or alleged attempt being made or to be made to so place or explode any bomb or other explosive device is guilty of a Class 6 felony.

(b) If any person violates any provision of this section and the violation directly causes economic harm as defined in subsection (d) of this section, in addition to any other penalty, the circuit court may order the offender to pay the victim or victims restitution, in accordance with §61-11A-1 *et seq.* of this code, for economic loss caused by the violation in an amount not to exceed the economic harm suffered. Nothing in this section may be construed to limit the authority of the circuit court to order restitution pursuant to other provisions of this code.

(c) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section whose violation of the subsection results in another suffering serious bodily injury is guilty of a Class 5 felony. Each injury resulting from a violation of subsection (a) of this section constitutes a separate offense.

(d) As used in this section, 'economic harm' means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the following:

(1) All wages, salaries or other compensation lost as a result of the criminal conduct;

(2) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(3) The cost of all wages, salaries or other compensation paid to employees for time those employees spent in reacting to the results of the criminal conduct; or

(4) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct.

§61-6-12. Mobs and lynchings; penalties; liability of county or city. Falsely reporting an emergency incident.

~~Any collection of individuals, five or more in number, assembled for the unlawful purpose of offering violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional or regulative powers over any person or persons by violence, and without lawful authority, shall be regarded and designated as a 'mob' or 'riotous assemblage.'~~

~~The term 'serious injury,' for the purposes of this section, shall include any injury to property which shall cause damage to the owner thereof, or any injury to the person which shall temporarily or permanently disable the person injured from earning a livelihood.~~

~~The putting to death of any person within this state by a mob or riotous assemblage shall be murder, and every person participating in such mob or riotous assemblage by which a person is put to death shall be guilty of murder, and, upon conviction thereof, shall be punished as the law provides in other cases of murder.~~

~~Any person or persons who shall compose a mob or riotous assemblage, with the intent to inflict damage or injury to the person or property of any individual charged with crimes, or, under the pretense of exercising correctional powers over such person or persons by violence, and without lawful authority, shall be subject to a fine of not less than \$100 nor more than \$1,000, and may be imprisoned, in the discretion of the court, in the county jail not less than thirty days nor more than twelve months for each and every offense. Any person or persons who shall compose a mob or riotous assemblage, and who shall inflict damage or injury to the person or property of any individual charged with crimes, shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years for each and every offense.~~

~~Any person or persons composing a mob or riotous assemblage under the provisions of this section, who shall, by violence, inflict serious injury to the property or to the person of any other person upon the pretense of exercising correctional or regulative powers over such person or persons, and without authority of the law, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not exceeding five years; and any person suffering serious injury to his or her person or his or her property by a mob, shall have an action against the county or city in which such serious injury is inflicted, for such damages as he or she may sustain, to an amount not to exceed \$5,000.~~

~~The county in which such person charged with a crime has been taken from a state, county or municipal officer, and lynched and put to death, shall be subject to a forfeiture of \$5,000, which may be recovered by appropriate action therefor, in the name of the personal representative of the person put to death, for the use of his or her dependent family or estate. Such action may be brought in any state court. If such forfeiture is not paid upon recovery of judgment therefor, the court rendering such judgment shall have power to enforce the payment thereof, and may compel the levy and collection of a tax therefor, or otherwise compel the payment thereof by mandamus or other appropriate process, and every officer of such county, and every other person who disobeys or fails to comply with any lawful order of the court, shall be liable to punishment according to law as for contempt and to any other penalties provided by law therefor.~~

~~The fact that any person so put to death shall have been taken from any state, county or municipal officer in one county, by a mob or riotous assemblage of five or more persons, and transported out of such county before such killing shall have taken place, and the fact that such killing occurred out of the county from which such person may have been taken from such state, county or municipal officer, shall not relieve such county from which he or she was taken from the liability provided by this section. And if the person so taken from such officer or officers shall be transported from and put to death and lynched in another county outside of the county wherein he or she was taken from such officer or officers, no county through which such person may have been transported, or in which such person has been lynched and put to death, shall be liable to damages hereunder, unless it is clearly shown that the officers or citizens in such county or counties participated in, aided, abetted or encouraged such unlawful putting to death.~~

~~Every state, county or municipal officer having the duty or power of preservation or conservation of the peace at the time and place of any such putting to death, or the committing of serious injury to the person or to the property as prescribed in this section, who, having reasonable cause to believe that the same is to be done, or is attempted to be done, and neglects or omits to prevent the same, and every such officer from whose custody such person may be taken by such mob or riotous assemblage, and put to death by the same, or whose property or person suffers serious injury at the hands of such mob or riotous assemblage, shall be guilty of negligence in the discharge of his or her official duty, and the county or city which shall have been sued and compelled to pay damages as herein provided may recover same from such negligent officer by appropriate action upon his or her official bond.~~

~~In any prosecution for any of the offenses defined herein, and any action for the forfeiture imposed as herein provided, every person who has participated in the lynching or in the putting to death of, or in the infliction of great bodily violence or serious injury to the person or the property of any person, without authority of the law, and every person who entertains or has expressed any opinion in favor of lynching or in the justification or excuse thereof, or whose character, conduct, or opinions have been or are such as, in the judgment of the court, may tend to disqualify him or her for an impartial and unprejudiced trial of the cause, shall be disqualified to serve as a juror, and in any such action or prosecution, any attorney interested in the case shall be entitled to make full inquiry thereof and to produce evidence thereon; and every person who refuses to answer any inquiry touching his or her qualifications on the ground that he or she may thereby incriminate himself or herself shall be disqualified as aforesaid.~~

A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed, or circulated is false or baseless, he or she:

(1) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency under circumstances in which

it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

(3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or

(4) Without just cause, calls, or summons by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles.

Any person who violates this section is guilty of a Class 2 misdemeanor.

§61-6-13. Disturbance of religious worship; penalty. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

~~If any person wilfully interrupt, molest or disturb any assembly of people met for the worship of God, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than six months and fined not less than \$25 nor more than \$100. Any officer may put such offender under restraint during religious worship, and the court trying the case may require bond or recognizance of him or her for not more than one year to be of good behavior.~~

(a) Any person who willfully interrupts or molests the orderly and peaceful process of any department, division, agency, or branch of state government or of its political subdivisions, is guilty of a Class 2 misdemeanor: *Provided*, That any assembly in a peaceable, lawful, and orderly manner for a redress of grievances shall not be a violation of this section.

(b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as defined in §61-7-2 of this code: *Provided*, That a person who may lawfully possess a firearm may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and the weapon is out of normal view. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork, or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair, or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: *Provided, however*, That, in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: *Provided further*, That this subsection does not apply to a law-enforcement officer acting in his or her official capacity.

Any person who violates this subsection is guilty of a Class 2 misdemeanor.

§61-6-14. Disturbance of schools, societies, and other assemblies; penalty. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.

~~If any person willfully interrupt, molest or disturb any free school, Sunday school, or other school, a school exhibition, or any literary society, or any other society or meeting formed or convened for intellectual, social or moral improvement, or for improvement in music, either vocal or instrumental, or for any moral or social amusement, or any other society organized or carried on under or in pursuance of the laws of this state, or any fourth of July celebration, Christmas tree, or church festival, or any other festival, or any society, lawfully carried on, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$10 nor more than \$50, and, at the discretion of the court, be confined in jail not more than thirty days in addition to such fine.~~

(a) As used in this section:

'Economic harm' means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the following:

(1) All wages, salaries or other compensation lost as a result of the criminal conduct;

(2) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(3) The cost of all wages, salaries or other compensation paid to employees for time those employees spent in reacting to the results of the criminal conduct; or

(4) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct.

'Hoax substance or device' means any substance or device that is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed, priced or delivered so as to cause a reasonable person to believe that the substance or device is of a nature which is capable of causing serious bodily injury or damage to property or the environment.

'Terrorist act' means an act that is:

(1) Likely to result in serious bodily injury or damage to property or the environment; and

(2) Intended to:

(A) Intimidate or coerce the civilian population;

(B) Influence the policy of a branch or level of government by intimidation or coercion;

(C) Affect the conduct of a branch or level of government by intimidation or coercion; or

(D) Retaliate against a branch or level of government for a policy or conduct of the government.

(b) Any person who knowingly and willfully threatens to commit a terrorist act, with or without the intent to commit the act, is guilty of a Class 6 felony.

(c) Any person who knowingly and willfully conveys false information knowing the information to be false concerning an attempt or alleged attempt being made or to be made of a terrorist act is guilty of a Class 6 felony.

(d) Any person who uses a hoax substance or device with the specific intent to commit a terrorist act is guilty of a Class 5 felony.

(e) The court shall order any person convicted of an offense under this section to pay the victim restitution in an amount not to exceed the total amount of any economic harm suffered.

(f) The court shall order any person convicted of an offense under this section to reimburse the state or any subdivision of the state for any expenses incurred by the state or the subdivision incident to its response to a violation of this section.

(g) The conviction of any person under the provisions of this section does not preclude or otherwise limit any civil proceedings arising from the same act.

§61-6-14a. Loitering on school property; penalty; exceptions.

[Repealed.]

§61-6-15. Prohibiting violations of an individual's civil rights; penalties.

(a) All persons within the boundaries of the State of West Virginia have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation or sex.

(b) Any person who by force or threat of force, willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, or oppresses or threatens any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of the State of West Virginia or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, political affiliation or sex, is guilty of a Class 6 felony.

(c) Any person who conspires with another person or persons to willfully injure, oppress, threaten, or intimidate or interfere with any citizen because of that other person's race, color, religion, ancestry, national origin, political affiliation or sex in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of the State of West Virginia or by the Constitution or laws of the United States, and who in willful furtherance thereof assembles with one or more persons for the purpose of teaching any technique or means capable of causing property damage, bodily injury or death when such person or persons intend to employ such techniques or means to violate this section, each such person is guilty of a Class 6 felony.

(d) The fact that a person committed a felony or misdemeanor, or attempted to commit a felony, because of the victim's race, color, religion, ancestry, national origin, political affiliation, or sex, shall be considered a circumstance in aggravation of any crime in imposing sentence.

(e) Nothing contained in this section makes unlawful the teaching of any technique in self-defense.

(f) Nothing in this section may be construed so as to make it unlawful nor to prohibit nor, in any manner, to impede or to interfere with any person in conducting labor union or labor union organizing activities.

§61-6-16. Wearing masks, hoods, or face coverings.

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, may wear any mask, hood or device whereby any portion of the face is so covered, with the intent of concealing their identity while engaged in the commission of any illegal act.

(b) The provisions of this section, additionally and specifically, do not apply to any person, not committing an illegal act, who is:

(1) Under sixteen years of age;

(2) Wearing a traditional holiday costume;

(3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;

(4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;

(5) Wearing a mask, hood or device prescribed for civil defense drills, exercises, or emergencies; or

(6) Wearing a mask, hood, or device for the sole purpose of protection from the elements or while participating in a winter sport.

(c) Any person who violates any provision of this section is guilty of a Class 3 misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than one year, or both fined and confined.

§61-6-17. ~~False reports concerning bombs or other explosive devices; penalties. Falsely reporting child abuse.~~

~~(a) Any person who imparts or conveys or causes to be imparted or conveyed any false information, knowing or having reasonable cause to believe the information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place or concerning an attempt or alleged attempt being made or to be made to so place or explode any bomb or other explosive device is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$2,000 or confined in a state correctional facility for not less than one year nor more than three years, or both.~~

~~(b) If any person violates any provision of this section and the violation directly causes economic harm as defined in subsection (d) of this section, in addition to any other penalty, the circuit court may order the offender to pay the victim or victims restitution, in accordance with the provisions of article eleven-a of this chapter, for economic loss caused by the violation in an amount not to exceed the economic harm suffered. Nothing in this section may be construed to limit the circuit court's authority to order restitution pursuant to other provisions of this code.~~

~~(c) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section whose violation of the subsection results in another suffering serious bodily injury is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than five years or fined not more than \$10,000, or both. Each injury resulting from a violation of subsection (a) of this section constitutes a separate offense.~~

~~(d) As used in this section, 'economic harm' means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the following:~~

~~(1) All wages, salaries or other compensation lost as a result of the criminal conduct;~~

~~(2) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;~~

~~(3) The cost of all wages, salaries or other compensation paid to employees for time those employees spent in reacting to the results of the criminal conduct; or~~

~~(4) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct.~~

(a) Any person who knowingly and intentionally reports or causes to be reported to a law-enforcement officer, child protective service worker, or judicial officer that another has committed child sexual abuse, child abuse, or neglect as those terms are defined in §49-1-201 of this code who when doing so knows or has reason to know the accusation is false, is guilty of a Class 6 felony, and, upon conviction, shall be fined not more than \$1,000, sentenced to not more than sixty hours of court-approved community service, or both fined and ordered to community service.

(b) In addition to any other sanctions imposed by the provisions of this section, any person convicted of a violation of this section, and who does it with the intent to influence a child custody decision, shall be required to attend and complete a court-approved parenting class.

§61-6-18. Camping upon governmental grounds or lawns; penalties; public nuisance.

[Repealed]

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

[Repealed]

§61-6-20. Falsely reporting an emergency incident.

[Repealed]

§61-6-21. Prohibiting violations of an individual's civil rights; penalties.

[Repealed]

§61-6-22. Wearing masks, hoods, or face coverings.

[Repealed]

§61-6-23. Shooting range; limitations on nuisance actions; noise ordinances.

[Repealed]

§61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.

[Repealed]

§61-6-25. Falsely reporting child abuse.

[Repealed]

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

(a) Any person under twenty-one years of age and not otherwise prohibited from possessing firearms under §61-7-7 of this code who carries a concealed deadly weapon, without a state license or other lawful authorization established under the provisions of this code, is guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and may be imprisoned in jail for not more than twelve months for the first offense; but upon conviction of a second or subsequent offense, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years and fined not less than \$1,000 nor more than \$5,000.

(b) The prosecuting attorney in all cases shall ascertain whether or not the charge made by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of such second or subsequent offense and may not be permitted to use discretion in introducing evidence to prove the same on the trial.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in §61-7-4(h) of this code, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of \$25. Concealed weapons license may only be issued for pistols and revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U.S.C. §922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide United States citizen or legal resident thereof and resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is twenty-one years of age or older;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this subsection in the five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. §921(a)(33), or a misdemeanor offense of assault or battery either under §61-2-28 of this code or §61-2-9(b) or §61-2-9(c) of this code, in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation, or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed, the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n), from receiving, possessing, or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: *Provided*, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n).

(c) Twenty-five dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: *Provided*, That the completed course includes the actual live firing of ammunition by the applicant:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States military, reserve, or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section and shall include the instructor's name, signature and NRA or state instructor identification number, if applicable.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under §39-4-1 *et seq.* of this code. Falsification of any portion of the application constitutes false swearing and is punishable under §61-5-2 of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue, or deny the license within 45 days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within 30 days of receipt. A license in effect as of the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause, be valid until the licensee's birthday during the fifth year from the date of issuance or five years from the date of issuance, whichever is later in time. Renewals of such licenses and licenses newly issued after the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause, be valid for a period of five years from the licensees' most recent birthday.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties in size, appearance and information and shall feature a photograph of the licensee.

(i) The Superintendent of the West Virginia State Police, in cooperation with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within 30 days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a concealed weapon license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the five years unless the sheriff of the new county has determined that the person is no longer eligible for a concealed weapon license under this article, and the sheriff shall issue a new license bearing the person's new address and the original expiration date for a

fee not to exceed \$5: *Provided*, That the licensee, within 20 days thereafter, notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(n) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Notwithstanding subsection (a) of this section, with respect to application by an honorably discharged veteran of the armed forces of the United States or a former law-enforcement officer honorably retired from agencies governed by §7-14-1 *et seq.* of this code; §8-14-1 *et seq.* of this code; §15-2-1 *et seq.* of this code; and §20-7-1 *et seq.* of this code, an honorably retired officer or an honorably discharged veteran of the armed forces of the United States is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this section are applicable to these applicants.

(q) Information collected under this section, including applications, supporting documents, permits, renewals or any other information that would identify an applicant for or holder of a concealed weapon license, is confidential: *Provided*, That this information may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. ~~A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense. Any person who violates this subsection is guilty of a petty offense.~~ Any person who violates this subsection is guilty of a petty offense.

(r) A person who pays fees for training or application pursuant to this article after the effective date of this section is entitled to a tax credit equal to the amount actually paid for training not to exceed \$50: *Provided*, That if such training was provided for free or for less than \$50, then such tax credit may be applied to the fees associated with the initial application.

(s) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

§61-7-4a. Provisional license to carry deadly weapons; how obtained.

(a) Any person who is at least eighteen years of age and less than twenty-one years of age who desires to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for a provisional license, and pay to the sheriff, at the time of application, a fee of \$15. Provisional licenses may only be issued for pistols or revolvers. Each applicant shall

file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. §922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is at least eighteen years of age and less than twenty-one years of age;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside, or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this section within five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery under either section twenty-eight, article two of this chapter or subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction, or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed, the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under section seven of this article or federal law, including 18 U. S. C. §922(g) or (n), from receiving, possessing, or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon;

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For provisional license applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A provisional license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available does not indicate that receipt of or possession of a firearm by the applicant would be in violation of the provisions of section seven of this article or federal law, including 18 U. S. C. §922(g) or (n).

(c) Fifteen dollars of the application fee and any fees for replacement of lost or stolen provisional licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in said fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons provisional licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

(d) All persons applying for a provisional license must complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: *Provided*, That the completed course included the actual live firing of ammunition by the applicant:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college, or private or public institution, or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any proof of current or former service in the United States armed forces, armed forces reserves or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization, or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant, or a copy of any document which shows successful completion of the course or class, is evidence of qualification under this section. Certificates, affidavits, or other documents submitted to show completion of a

course or class shall include instructor information and proof of instructor certification, including, if applicable, the instructor's NRA instructor certification number.

(e) All provisional license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under section two, article five of this chapter.

(f) The sheriff shall issue a provisional license unless the sheriff determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue, or deny the license within forty-five days after the application is filed once all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The provisional license is valid until the licensee turns twenty-one years of age, unless sooner revoked.

(h) Each provisional license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all provisional license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. Duplicate license cards issued shall be uniform across all fifty-five counties in size, appearance and information and must feature a photograph of the licensee. The provisional license shall be readily distinguishable from a license issued pursuant to section four of this article and shall state: 'NOT NICS EXEMPT. This license confers the same rights and privileges to carry a concealed pistol or revolver on the lands or waters of this state as a license issued pursuant to section four, article seven, chapter sixty-one of this code, except that this license does not satisfy the requirements of 18 U. S. C. §922(t)(3). A NICS check must be performed prior to purchase of a firearm from a federally licensed firearm dealer.'

(i) The Superintendent of the West Virginia State Police, in coordination with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for provisional licenses and license cards showing that the license has been granted and shall perform any other act required to protect the state and to enforce this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a provisional license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a provisional license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(k) If a provisional license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a provisional concealed weapon license moves from the address named in the application to another county within the state, the license remains valid until the licensee turns twenty-one years of age unless the sheriff of the new county has determined that the person is no longer eligible for a provisional concealed weapon license under this article, and the sheriff shall issue a new provisional license bearing the person's new address and the original expiration date for a fee not to exceed \$5: *Provided*, That the licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the provisional license is granted, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police, at any time so requested, a certified list of all provisional licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued provisional concealed weapon licenses.

(n) The sheriff shall deny any application or revoke any existing provisional license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon provisional license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Information collected under this section, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon provisional license, is confidential: *Provided*, That this information may be disclosed to a law enforcement agency or officer: (i) To determine the validity of a provisional license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a petty offense. ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.~~

(q) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a provisional concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

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

(a) Except as provided in this section, no person shall may possess a firearm, as such is defined in section two of this article, who:

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

(2) Is habitually addicted to alcohol;

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

(4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of Chapter 27 of this code or in similar law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: *Provided, however*, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

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

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

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

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

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

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

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

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of §61-2-28 of this code or the provisions of §61-2-29(b) or §61-2-29(c) of this code of this code or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

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

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

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

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in §§60A-2-204, 205 and 206 of this code and who possesses a firearm as such is defined §61-7-2 in section two of this code ~~shall be is guilty of a Class 6 felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than \$5,000, or both. The provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.~~

(3) The provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

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

(1) At least 21-one years of age;

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

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

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

(d) As a separate and additional offense to the offense provided for in subsection (a) of this section, and in addition to any other offenses outlined in this code, and except as provided by subsection (e) of this section, any person prohibited by subsection (a) of this section from possessing a firearm who carries a concealed firearm is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be confined in a state correctional facility for not more than three years or fined not more than \$5,000, or both.~~

(e) As a separate and additional offense to the offense described in subsection (b) of this section, and in addition to any other offenses outlined in this code, any person prohibited by subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty of a Class 5 felony ~~and, upon conviction thereof, shall be confined in a state correctional facility for not more than ten years or fined not more than \$10,000, or both.~~

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

(5) The provisions of subsection (f) of this section do not apply to persons convicted of an offense identified in this section.

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

§61-7-9. Possession of machine guns, penalties.

[Repealed]

§61-7-10. Deadly weapons for sale or hire; sale to prohibited persons; penalties.

~~(a) Any person who violates the provisions of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail for not more than one year, or both fined and confined, except that where the person violating subsection (b) is other than a natural person, the person shall be fined not more than \$10,000.~~

~~(b) (a) A person may not knowingly sell, rent, give or lend, or, where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend, any deadly weapon other than a firearm to a person prohibited from possessing a deadly weapon other than a firearm by any provision of this article. Any natural person who violates the provisions of this section is guilty of a Class 1 misdemeanor.~~

~~(c) (b) A person may not knowingly sell, rent, give, or lend, or where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend a firearm or ammunition to a person prohibited by any provision of this article or the provisions of 18 U.S.C. §922. (d) Any person who violates any of the provisions of this subsection (c) of this section is guilty of a Class 5 felony, and, upon conviction thereof, shall be fined not more than \$100,000, imprisoned in a state correctional facility for a definite term of years of not less than three years nor more than 10 years, or both fined and imprisoned, except that where the person committing an offense punishable under this subsection is other than a natural person, the person shall be fined not more than \$250,000.~~

~~(e) (c) Any person who knowingly solicits, persuades, encourages or entices A person may not knowingly solicit, persuade, encourage or entice a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate the laws of this state or the United States ~~is guilty of a felony~~. Any person who willfully procures another to engage in conduct prohibited by this subsection shall be punished as a principal. This subsection does not apply to a law-enforcement officer acting in his or her official capacity. Any person who violates the provisions of this subsection is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not more than \$5,000, imprisoned in a state correctional facility for a definite term or not less than one year nor more than five years, or both fined and imprisoned.~~

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; criminal penalties.

~~It shall be unlawful for any person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, to carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. Any person violating this section shall be guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be fined not less than \$50 nor more~~

~~than \$1,000, or shall be confined in the county jail not less than ninety days nor more than one year, or both.~~

§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.

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

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

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

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

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring.

(2) This subsection does not apply to:

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

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

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

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

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

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

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

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

(I) ~~Any person, 21 years old or older, who has a valid concealed handgun permit may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided, That:* Any person, 21 years old or older, and not otherwise prohibited, may legally possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided, That:*~~ (i) When he or she is occupying the vehicle the person stores the handgun out of view from persons outside the vehicle; or (ii) When he or she is not occupying the vehicle the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

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

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

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

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

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

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

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

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

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

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials. (2) A person violating this subsection is guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

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

(2) This subsection does not apply to:

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

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

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

(h)(4) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime. A person violating this subsection is guilty of a Class 5 felony.

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

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

§61-7-12. Wanton endangerment involving a firearm.

Any person who wantonly performs any act with a firearm which creates a substantial risk of death or serious bodily injury to another shall be guilty of a Class 5 felony, ~~and, upon conviction thereof, shall be confined in the penitentiary for a definite term of years of not less than one year nor more than five years, or, in the discretion of the court, confined in the county jail for not more than one year, or fined not less than \$250 nor more than \$2,500, or both.~~

For purposes of this section, the term 'firearm' shall have the same meaning ascribed to such term as set forth in §61-7-2 of this code.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

This section may be referred to as 'The Business Liability Protection Act'.

(a) As used in this section:

'Parking lot' means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: *Provided*, That for purposes of this section, parking lot does not include the private parking area at a business located at the primary residence of the property owner.

'Motor vehicle' means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and, which is required to be registered under state law: *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

'Employee' means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law, and

- (1) Works for salary, wages, or other remuneration;
- (2) Is an independent contractor; or
- (3) Is a volunteer, intern, or other similar individual for an employer.

'Employer' means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

'Invitee' means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

'Locked inside or locked to' means

(1) The vehicle is locked; or

(2) The firearm is in a locked trunk, glove box, or other interior compartment, or

(3) The firearm is in a locked container securely fixed to the vehicle; or

(4) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee, or other person charged with the care, custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section 'person' means an individual or any entity which may acquire title to real property: *Provided, however*, That for purposes of this section 'natural person' means an individual human being.

(c) (1) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a Class 2 misdemeanor, ~~and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*,~~

That

(2) The provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while acting in his or her official capacity: *Provided, however*, That under no circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

~~(3) *Provided, however*, That under~~ Under no circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

(d) Prohibited acts. – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is

(A) Lawfully possessed;

(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee either

(A) By verbal or written inquiry, regarding the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or

(B) By conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

(C) No owner, lessee, or other person charged with the care, custody, and control of real property may take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a motor vehicle in a parking lot for lawful purposes, except upon statements made pertaining to unlawful purposes or threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code.

(3) No employer may condition employment upon either:

(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or

(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.

(4) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the person's place of business because the customer's, employee's, or invitee's motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer's, employee's, or invitee's motor vehicle.

(e) Limitations on duty of care; immunity from civil liability. —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners,

lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.

(f) Enforcement. – The Attorney General ~~is authorized to~~ may enforce the provisions of subsection (d) of this section and may bring an action seeking either:

(1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

(2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs and attorney's fees associated with bringing the action; or

(3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this section, including costs and attorney's fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

(4) Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney's fees to the prevailing party.

§61-7-15. Persons prohibited from committing violent crime while wearing body armor; penalties.

(a) A person who wears or is otherwise equipped with body armor while committing a felony offense, an element of which is force, the threat of force, physical harm to another or the use or presentment of a firearm or other deadly weapon, is guilty of a Class 5 felony. ~~and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than ten years or fined not more than \$10,000, or both.~~

(b) As used in this section, 'body armor' means a jacket, vest, or other similar apparel or device constructed to provide ballistic resistance to penetration and deformation and intended to protect the human torso against gunfire. The term may include, but is not limited to, apparel that incorporates inserts, or variations in construction of the ballistic panel over small areas of the torso, for the purpose of increasing the basic level of protection of the armor (whether ballistic or blunt trauma) on localized areas. Body armor may be constructed of Kevlar or other similar fabric and may be reinforced with other materials. Body armor may incorporate 'threat' or 'trauma' plates

(which are inserts that fit into the vest that will stop more powerful rounds) or may, as 'threat armor', incorporate hard panels.

§61-7-15a. Use or presentation of a firearm during commission of a felony; penalties.

As a separate and distinct offense, and in addition to any and all other offenses provided for in this code, any person who, while engaged in the commission of a felony, uses, or presents a firearm shall be is guilty of a Class 4 felony, and, upon conviction, shall be imprisoned in a state correctional facility for not more than ten years.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENY.

§61-8-1. Bigamy; defined; criminal penalty.

~~Any person, being married, who, during the life of the former husband or wife, shall marry another person in this state, or, if the marriage with such other person take place out of this state, shall thereafter cohabit with such other person in this state, shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years.~~

(a) A person is guilty of bigamy if he or she intentionally marries or purports to marry another person when either person has a living spouse.

(b) In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:

(1) The person reasonably believed that the prior spouse was dead; or

(2) A court had entered a judgment purporting to terminate, void, dissolve or annul any prior disqualifying marriage and the actor did not know that the judgment was invalid; or

(3) The husband or wife by a former marriage has been absent for seven successive years without being known to be alive; or

(4) The person reasonably believed that he or she was legally eligible to marry.

(c) The criminal offense of bigamy is a Class 1 misdemeanor.

§61-8-2. Same — Effect of absence, divorce or void marriage.

[Repealed.]

§61-8-5. ~~House of ill fame and assignation; penalties; jurisdiction of courts.~~ Prostitution; definitions.

~~(a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for~~

~~any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.~~

~~(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than sixty days nor more than six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for not less than one year nor more than three years.~~

~~The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefiting financially or otherwise from the earnings of a prostitute.~~

~~(c) All leases and agreements, oral or written, for letting, subletting, or renting any house, place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution, lewdness, or assignation, shall be void from and after the date of any person who is a party to such an agreement shall be convicted of an offense hereunder. The term 'tourist camp' shall include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.~~

~~(d) In the trial of any person, charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp, or other structure, and of the person or persons who reside in or frequent same, and of the defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and determine the misdemeanors set forth and described in this section.~~

As to §§61-8-5a through 61-8-8b of this code, unless a different meaning is plainly required:

'Arranging' or 'advancing' prostitution means any act or attempt to procure or otherwise make arrangements for the purpose of prostitution, including but not limited to knowingly:

(1) causing or aiding a person to commit or engage in prostitution;

(2) procuring or soliciting a patron for prostitution;

(3) providing a person or premises for prostitution purposes;

(4) operating or assisting in the operation of a house of prostitution or a prostitution enterprise;
or,

(5) engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution;

'Domestic partner' means person with whom another person maintains a household and an intimate relationship other than a person to whom he or she is legally married.

'Spouse' means any legally married person.

'Prostitution' means the commercial act or practice of engaging in a sexual act or sexual contact with another person who is not their spouse or domestic partner in return for giving or receiving a fee, money, an equivalent of money, or a thing of value.

'Prostitution-related offenses' means those crimes and offenses defined in §§61-8-5 through 8 of this code.

'Sexual act' means:

(1) The penetration, however slight, of the anus or vulva of another by a penis;

(2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(3) The penetration, however slight, of the anus or vulva by a hand or finger or by any object.

(4) The emission of semen or an orgasm is not required for the purposes of subparagraphs (1) to (3) of this paragraph.

'Sexual contact' means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

'Solicit for prostitution' means to invite, entice, offer, persuade, or agree to engage in prostitution.

'Person' means an individual eighteen years of age or older.

'Mentally defective' means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

'Mentally incapacitated' means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

'Physically helpless' means that a person is unconscious, or for any reason is physically unable to communicate unwillingness to an act.

'Prostitution enterprise' means two or more persons engaged in an arrangement, agreement, or organization with unified operation or common control for the purpose of conducting activities involving, or in any way related to, prostitution.

§61-8-5a. Prostitution; solicitation; criminal provisions; penalties.

(a) It is unlawful for any person to engage in prostitution or to solicit for prostitution. The offense of prostitution is a Class 3 misdemeanor. If an individual arrested for engaging in prostitution produces, before or at trial, a recognized and certified physician, laboratory, or medical report indicating the individual is free of any sexually transmitted disease (STD), the offense shall be reduced to a petty offense.

(b) Any person who knowingly solicits an individual for prostitution who is not at least 18 years of age, or has reason to know they are soliciting an individual for prostitution who is not at least 18 years of age, is guilty of a Class 2 felony.

(c) Any person who knowingly solicits an individual for prostitution who is mentally defective or mentally incapacitated or has reason to know they are soliciting an individual for prostitution who is mentally defective or mentally incapacitated, is guilty of a Class 2 felony.

(d) In addition to any other sentence authorized by this section, a person who violates subsection (a) of this section, upon conviction may be ordered to pay a fine of up to \$500 to be deposited into the Crime Victims Compensation Fund as defined in §14-2A-4 of this code.

(e) In addition to any other sentence authorized by this section, a person who violates subsection (b) of this section, upon conviction may be ordered to pay a fine of up to \$5,500 to be deposited into the Crime Victims Compensation Fund as defined in §14-2A-4.

§61-8-6. Detention of person in place of prostitution; pandering, inducing, or causing a person to engage in prostitution; criminal provisions; penalty.

(a)(1) ~~Whoever shall~~ Any person who by any means keep, hold, detain or restrain keeps, holds, detains or restrains any person in a house of prostitution or other place where prostitution is practiced or allowed; or ~~whoever shall who~~ directly or indirectly, keep, hold, detain or restrain, keeps, holds, detains or restrains or attempt attempts to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person shall, upon conviction for the first offense under this section, subsection, is guilty of a Class 1 misdemeanor. Any person convicted of a second or subsequent offense under this subsection, is guilty of a Class 6 felony. ~~be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than one hundred not more than five hundred dollars, and upon conviction for any subsequent offense under this section, shall be punished by imprisonment in the penitentiary for not less than one nor more than three years: Provided, That in any offense under this section where the person is so kept, held, detained or restrained is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two years nor more than five years or fined not more than five thousand dollars, or both.~~

(2) In any offense under this section where the person so kept, held, detained, or restrained is a minor, any person violating the provisions of this subsection is guilty of a Class 5 felony.

(b)(1) It is unlawful for any person to recruit or attempt to recruit any individual to engage in prostitution. An offense of this subsection is a Class 1 misdemeanor. Each subsequent offense of this subsection is a Class 6 felony.

(2) If the recruitment or attempt to recruit any individual to engage in prostitution involves any element of coercion, detention, physical force, force of will, or compulsion, the offense is a Class 6 felony.

(3) If the recruitment or attempt to recruit involves any individual under the age of 18, the offense is a Class 4 felony

(c) It is unlawful for any parent, guardian, or other person having legal custody of an individual under 18 years of age to consent to the individual being taken, detained, or used by any person, for the purpose of prostitution. Any person who violates this subsection is guilty of a Class 5 felony.

(d) It is unlawful for any parent, guardian, or other person having legal custody of an individual who is mentally defective, mentally incapacitated, or physically helpless, to permit or consent to the individual being recruited, taken, compelled, detained, or used by any person for the purpose of prostitution. Any person who violates this subsection is guilty of a Class 5 felony.

(e) Any person who receives any money or other thing of value for or on account of arranging or advancing an act of prostitution is guilty of a Class 1 misdemeanor.

(f) Any person who by force, fraud, intimidation, or threats causes a spouse or domestic partner of that person to engage in an act of prostitution, shall be guilty of a Class 5 felony.

§61-8-6a. Abducting, enticing, or harboring a child for purposes of prostitution; penalties.

(a) It is unlawful for any person, for purposes of prostitution, to:

(1) Knowingly coerce, persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual place of residence, or from the custody and control of the child's parents or legal guardian; or

(2) Knowingly secrete or harbor any child so coerced, persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child's parents or guardian.

(b) A person who violates or attempts or conspires to violate subsection (a)(1) or (a)(2) of this section is guilty of a Class 2 felony.

§61-8-7. Procuring for house of prostitution; penalty; venue; competency as witness; marriage no defense. Promoting or permitting prostitution; house of prostitution; evidence; and penalty.

~~Any person who shall procure an inmate for a house of prostitution, or who, by promises, threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a~~

~~house of prostitution for a person; or any person who shall, by promises, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into or leave this state for the purpose of prostitution, or who shall procure any person to become an inmate of a house of ill fame within this state or to come into or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this state, or to come into or leave this state for the purpose of prostitution, shall be guilty of pandering, and, upon a first conviction for an offense under this section, shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 nor more than \$500, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than five years: *Provided*, That where the inmate referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction shall be confined in the penitentiary not less than two years nor more than five years or fined not more than \$5,000, or both.~~

~~It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this state, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in any county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.~~

~~Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.~~

(a)(1) A person commits the offense of promoting prostitution if he or she knowingly advances prostitution or profits from prostitution by managing, supervising, controlling, procuring an individual for a house of prostitution or for an individual, having a possessory or proprietary interest in, or owning, either alone or in association with another, a house of prostitution or a prostitution enterprise involving two or more prostitutes.

(2) For the purpose of this section, a house of prostitution includes any house, place, building, hotel, other structure, conveyance, and all affiliated premises used by persons for the purpose of prostitution. Any oral or written lease or agreement to let, rent or sublet any house of prostitution is void from the date of conviction of this section.

(3) Evidence concerning the reputation or character of the place in question is admissible.

(b) The first offense of promoting prostitution is a Class 1 misdemeanor. Any subsequent offense is a Class 6 felony.

(c) In addition to any other sentence authorized by this section, a person who violates this section, upon conviction, shall be ordered to pay a fine of \$2,500 to be deposited into the Crime Victims Compensation Fund as defined in §14-2A-4 of this code.

§61-8-8. Sexual Solicitation; penalty. Receiving support from prostitution; pimping; penalty; prostitute may testify

~~Any person who, knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution, shall be guilty of pimping, and, upon the first conviction for such offense, shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 nor more than \$500; and, upon a conviction for any subsequent offense hereunder, shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than three years: *Provided*, That where the prostitute referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction shall be confined in the penitentiary not less than two years or fined not more than \$5,000, or both. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.~~

(a) A person commits the offense of sexual solicitation if he or she knowingly advances prostitution by:

(1) Offering or agreeing to pay a fee to a person to engage in sexual activity with him or her or another person; or

(2) Soliciting or requesting a person to engage in sexual activity with him or her in return for a fee.

(b) The offense of sexual solicitation is a Class 3 misdemeanor.

(c) It is an affirmative defense to prosecution under this section that the person engaged in an act of sexual solicitation as a result of being a victim of human trafficking, as defined in §61-14-1(6) of this code.

(d) In addition to any other sentence authorized by this section, a person who violates this section upon conviction shall be ordered to pay a fine of \$500 to be deposited into the Crime Victims Compensation Fund as defined in §14-2A-4 of this code.

§61-8-8a. Affirmative defense to prostitution.

(a) It is an affirmative defense to prostitution that:

(1) The person engaged in an act of prostitution because they were a victim of human trafficking, as defined in §61-14-1(6) of this code, and in good faith cooperated with law enforcement in the investigation and prosecution of that offense of human trafficking; or,

(2) The person engaged in an act of prostitution was secreted away or abducted against their will for the purpose of prostitution, as addressed in §61-2-14 of this code; or,

(3) The person engaged in an act of prostitution was physically helpless, mentally defective, or mentally incapacitated.

§61-8-8b. Separate offenses; aggravating circumstances; restitution; Compensation Award to Victims of Crimes; law enforcement notification; forfeiture, and debarment.

(a) Separate violations. — For purposes of §§61-8-5 to 61-8-8 of this code, each adult or minor victim constitutes a separate offense.

(b) Aggravating circumstance. —

(1) Notwithstanding any provision of this code to the contrary, if an individual is convicted of an offense under §61-8-6 or §61-8-6a of this code, and the trier of fact makes a finding that the offense involved an aggravating circumstance, the individual shall not be eligible for parole before serving one-third of the period of confinement adjudged in the sentence.

(2) For purposes of this subsection, 'aggravating circumstance' means the individual recruited, enticed, or obtained the victim of the offense from a shelter or facility that serves runaway youths, children in foster care, the homeless or victims of human trafficking, domestic violence or sexual assault.

(c) Restitution. —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with §61-11A-4 of this code, including filing a lien against the person, firm or corporation against whom restitution is ordered.

(3) The court shall order restitution under subdivision (1) of this subsection even if the victim is unavailable to accept payment of restitution.

(4) If the victim does not claim restitution ordered under subdivision (1) of this subsection within five years of the entry of the order, the restitution shall be paid to the Crime Victims Compensation Fund created under §14-2A-4 of this code.

(d) Eligibility for Compensation Award to Victims of Crimes, §14-2A-1, et seq. — Notwithstanding the definition of victim in §14-2A-3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-1, et seq of this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

(e) Law Enforcement Notification. — If a law-enforcement officer encounters a child who reasonably appears to be a victim of an offense under this article, the officer shall notify the

Department of Health and Human Resources. If available, the Department of Health and Human Resources may notify the Domestic Violence Program serving the area where the child is found.

(f) Forfeiture; Debarment. –

(1) The following are declared to be contraband and no person may have a property interest in them:

(A) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article; and

(B) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.

(2) In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) Forfeiture actions under this section shall use the procedure set forth in §§60A-7-704 to 708 of this code.

(4) Any person or business entity convicted of a violation of this article shall be debarred from state or local government contracts.

§61-8-9. Indecent exposure.

(a) A person is guilty of indecent exposure when such person, without permission of the victim, intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: *Provided*, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c) of this section, any person who violates the provisions of this section shall be guilty of a Class 3 misdemeanor and, ~~upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than \$250, or both fined and confined.~~

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a Class 1 misdemeanor. ~~and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a Class 6 felony. and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not less than one year nor more than five years.~~

§61-8-9a. Child abuse; education; curriculum.

[Repealed.]

§61-8-10. Administering anesthetics to female save in presence of third person; penalty.

[Repealed.]

§61-8-11. Breathing, inhaling, or drinking certain intoxicating compounds; penalty.

(a) No person shall ~~may~~ intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl 'cellosolve' acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichloroethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the Auditory, visual, or mental processes. For the purposes of this section, any condition so induced shall be ~~deemed~~ considered to be an intoxicated condition.

(b) This section does not apply to:

(1) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or

(2) To any alcoholic liquor or nonintoxicating beer as defined in section five, article one, chapter sixty of this code.

(c) Any person who violates the provisions of this section is guilty of a Class 3 misdemeanor, and, ~~upon conviction thereof, shall be fined not more than \$100 or be confined in a county or regional jail for not more than sixty days, or both fined and imprisoned.~~

§61-8-12. Incest; penalty.

a) For the purposes of this section:

(1) 'Aunt' means the sister of a person's mother or father;

(2) 'Brother' means the son of a person's mother or father;

(3) 'Daughter' means a person's natural daughter, adoptive daughter, or the daughter of a person's husband or wife;

(4) 'Father' means a person's natural father, adoptive father, or the husband of a person's mother;

(5) 'Granddaughter' means the daughter of a person's son or daughter;

(6) 'Grandfather' means the father of a person's father or mother;

(7) 'Grandmother' means the mother of a person's father or mother;

(8) 'Grandson' means the son of a person's son or daughter;

(9) 'Mother' means a person's natural mother, adoptive mother, or the wife of a person's father;

(10) 'Niece' means the daughter of a person's brother or sister;

(11) 'Nephew' means the son of a person's brother or sister;

(12) 'Sexual intercourse' means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) 'Sexual intrusion' means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) 'Sister' means the daughter of a person's father or mother;

(15) 'Son' means a person's natural son, adoptive son, or the son of a person's husband or wife; and

(16) 'Uncle' means the brother of a person's father or mother;

(17) 'Step-relative' means a relative by marriage.

(b) (1) A person is guilty of incest when such that person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle, or aunt.

(2) For the purposes of this section, sexual intercourse between two consenting adult step-relatives is not prohibited.

(c) Any person who violates the provisions of this section shall be guilty of a Class 3 felony, and, ~~upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor more than 15 years, or fined not less than \$500 nor more than \$5,000 and imprisoned in the penitentiary not less than five years nor more than fifteen years.~~

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under §§61-11A-1, *et seq.* of this code, the court may order any person convicted under the provisions of this section, where the victim is a minor, to pay all or any portion of the cost of medical, psychological, or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(e) In any case where a person is convicted of an offense described in this section against a child and further has or may have custodial, visitation, or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of §49-4-601 through §49-4-610 of this code, and shall take further action in accord with the provisions of those sections.

§61-8-14. Disinterment or displacement of dead body or part thereof; damage to cemetery or graveyard; penalties; damages in civil action.

(a) Any person who unlawfully and intentionally disinters or displaces a dead human body, or any part of a dead human body, placed or deposited in any vault, mausoleum or any temporary or permanent burial place, removes personal effects of the decedent removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a Class 6 felony, ~~and, upon conviction thereof, shall be confined in a state correctional facility for a determinate sentence of not more than five years.~~

(b)(1) Any person who intentionally desecrates any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery, graveyard, mausoleum, or other designated human burial site is guilty of a Class 1 misdemeanor, ~~and, upon conviction thereof, shall be fined not more than \$2,000, or confined in jail not more than one year, or both fined and confined.~~

(2) Any person who intentionally and without legal right destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, landscape contents, including a tree, shrub, flower, or plant, within the limits of a cemetery, is guilty of a Class 1 misdemeanor, ~~and, upon conviction thereof, shall be fined not more than \$2,000, or confined in jail not more than one year, or both fined and confined.~~

(3) For the purposes of this subsection, 'desecrate' means destroying, cutting, mutilating, effacing, injuring, tearing down, removing, defacing, damaging or otherwise physically mistreating in a way that a reasonable person knows will outrage the sensibilities of persons likely to observe or discover his or her actions.

§61-8-15. Prohibition on certain demonstrations at funerals.

(a) No person may carry out, with respect to any cemetery or building at which a funeral or memorial service or ceremony is to be held, a demonstration within 500 feet of the cemetery or building that:

(1) Is conducted during the period beginning 60 minutes before and ending 60 minutes after the funeral or memorial service or ceremony is held; and

(2) Includes, as a part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.

(b) For purposes of this section, the term 'demonstration' includes the following:

(1) Any picketing or similar conduct.

(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony.

(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral or memorial service or ceremony.

(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral or memorial service or ceremony.

(c) Any person who violates the provisions of subsection (a) is guilty of a Class 1 misdemeanor and, ~~upon conviction thereof, shall be confined in jail for an indeterminate sentence of not more than one year and fined not less than \$200 nor more than \$5.~~

§61-8-16. Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty.

(a) It is unlawful for any person with intent to harass or abuse another by means of telephone to:

(1) Make any comment, request, suggestion, or proposal which is obscene; or

(2) Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or

(3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or

(5) Threaten to commit a crime against any person or property.

(b) ~~It shall be~~ is unlawful for any person to knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be ~~deemed~~ considered to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

(d) Any person who violates any provision of this section is guilty of a Class 1 misdemeanor; ~~and, upon conviction thereof, shall be fined not more than \$500, or confined in jail not more than six months, or both fined and confined.~~

§61-8-19. Cruelty to animals; penalties; exclusions.

(a)(1) It is unlawful for any person to intentionally, knowingly, or recklessly,

(A) Mistreat an animal in cruel manner;

(B) Abandon an animal;

(C) Withhold;

(i) Proper sustenance, including food or water;

(ii) Shelter that protects from the elements of weather; or

(iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;

(D) Abandon an animal to die;

(E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;

(F) Ride an animal when it is physically unfit;

(G) Bait or harass an animal for the purpose of making it perform for a person's amusement;

(H) Cruelly chain or tether an animal; or

(I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(2) Any person in violation of subdivision (1) of this subsection is guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined in jail not more than six months, or both.

(b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures, or authorizes any other person to torture, mutilate or maliciously kill an animal, is guilty of a Class 6 felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than five years and be fined not less than \$1,000 nor more than \$5,000. For the purposes of this subsection, 'torture' means an action taken for the primary purpose of inflicting pain.

(c) A person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$2,000.

(d) Any person convicted of a violation of this section forfeits his or her interest in any animal and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(e) For the purpose of this section, the term 'controlled substance' has the same meaning ascribed to it by §60A-1-100(d) of this code.

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et seq.*, and

the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of subsection (a) is guilty of a Class 1 misdemeanor ~~and, shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than \$500 nor more than \$3,000, or both.~~ The incarceration set forth in this subsection is mandatory unless the provisions of subsection (h) of this section are complied with.

(h)(1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the evaluation.

(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

(i) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning, or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a petty offense including misdemeanor punishable by a fine not exceeding \$2,000 and forfeiture of the animal.

§61-8-19a. Animal fighting ventures prohibited.

(a) For the purpose of this article, 'animal fighting venture' means any event that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment: *Provided*, That it shall not be deemed to include any lawful activity the primary purpose of which involves the use of one or more animals in racing or in hunting another animal: *Provided, however*, That 'animal fighting venture' does not include the lawful use of livestock as such is defined in §19-10B-2 of this code or exotic species of animals bred or possessed for exhibition purposes when such exhibition purposes do not include animal fighting or training therefor.

(b) It is unlawful for any person to conduct, finance, manage, supervise, direct, engage in, be employed at, or sell an admission to any animal fighting venture or to knowingly allow property under his care, custody or control to be so used.

(c) It is unlawful for any person to possess an animal with the intent to engage the animal in an animal fighting venture.

(d) Any person who violates the provisions of this section is guilty of a Class 6 felony misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or confined in the county jail not exceeding one year, or both so fined and confined:~~ *Provided*, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person

~~who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,500 and not more than \$5,000, and imprisoned in a state correctional facility for not less than two nor more than five years, or both fined and imprisoned.~~

(e) Any person convicted of a violation of this section shall be divested of ownership and control of such animals and liable for all costs of their care and maintenance pursuant to §7-10-4 of this code.

§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.

(a) It is unlawful for any person to knowingly attend or knowingly cause an individual who has not attained the age of ~~eighteen~~ 18 to attend, an animal fighting venture involving animals as defined in §61-8-19a of this code.

(b) Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor and, ~~upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or confined in the county or regional jail not more than one year, or both fined and imprisoned.~~

(c) ~~Notwithstanding the provisions of subsection (b) of this section, any person convicted of a third or subsequent violation of subsection (a) of this section is guilty of a felony and, shall be fined not less than \$2,500 and not more than \$5,000, imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.~~

§61-8-19c. Wagering at animal fighting venture prohibited; penalty.

(a) It is unlawful for any person to bet or wager money or any other thing of value in any location or place where an animal fighting venture occurs.

(b) Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor and, ~~upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or confined in jail not more than one year, or both fined and imprisoned.~~

(c) ~~Notwithstanding the provisions of subsection (b) of this section, any person who is convicted of a third or subsequent violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,500 and not more than \$5,000, or imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.~~

§61-8-20. Keeping or using live birds to be shot at; penalty.

[Repealed.]

§61-8-21. Search warrants relating to cruelty to animals.

(a) If a complaint is made that complainant has reason to believe that an animal has been or is being cruelly treated, or that the laws related to cruelty to animals have been or are being violated in any particular building or place, a warrant may be issued under this article to search such building or place intended for use or which is or has been used as a means of committing the criminal offense of cruelty to animals.

(b) A warrant may issue only upon complaint or affirmation setting forth the facts establishing the grounds for issuing the warrant, supported by affidavit sworn to or affirmed before the judge or magistrate.

(c) If the judge or magistrate is satisfied there is probable cause to believe that grounds therefor exist, he shall issue a search warrant. ~~has reasonable cause to believe there are reasonable made to a court or magistrate which is authorized to issue warrants in criminal cases that the complainant believes, and, such court or magistrate, if satisfied that cause for such belief, they shall issue a search warrant~~

(d) The search warrant shall:

(1) Note that evidence exists to believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in a particular location, building or place;

(2) Particularly describe and identify the subject property, the location, the name of any person to be searched or particularly describe any person to be searched, and authorize any sheriff, deputy sheriff, constable, or police officer, natural resources police officers as established in §20-7-4 of this code, or any other duly authorized law enforcement officer to search such person, building or place;

(3) Authorize any law enforcement officer to make a search of said building and arrest any person found violating §61-8-19, §61-8-19a, §61-8-19b, or §61-8-19c of this code, and any other criminal offenses in plain view;

(4) Authorize any law enforcement officer to seize and take custody of any animal believed to be cruelly treated; and,

(5) Reflect that no search may be made after sunset, unless specially authorized by the judge or magistrate upon satisfactory cause shown.

(e) This section may not be construed as a limitation on the power of law enforcement officers to seize animals as evidence at the time of the arrest.

§61-8-22. Search warrants relating to birds and animals kept for fighting.

If complaint is made to a court judge or magistrate authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that preparations are being made for an exhibition of the fighting of birds, dogs, or other animals, or that such exhibition is in progress, or that birds, dogs, or other animals are kept shall, in accordance with §61-8-21 of this code, issue a search warrant authorizing any sheriff, deputy sheriff, constable, or police officer, or natural resources police officers as denoted and established in §20-7-4 of this code, to search such place, building, or tenement at any hour of the day or night, and take possession of all such birds, dogs or other animals there found, and any animal fighting paraphernalia such as, but not limited to, hanging scales, treadmills, spring poles, electrocution cords, gaffs –blades attached to rooster legs for cockfighting, breaking sticks –used to pry open dogs’ jaws in dogfights, first aid (‘go’) kits, deceased animals, pedigrees, registration papers, fight records, cash, guns, calendars, date books, business cards, magazines, photos, trace evidence such as wound tissue, feathers or blood, as well as objects used for training animals to fight such as treadmills and hot walkers, and to arrest all persons there present at any such exhibition or where preparations for

such an exhibition are being made, or where birds, dogs, or other animals are kept or trained for fighting.

§61-8-23. Search without warrant where there is an exhibition of the fighting of birds or animals.

Any officer authorized to serve criminal process may, without warrant, enter any property, place, building, or tenement in which there is an exhibition of the fighting of birds, dogs, or other animals, or in which preparations are being made for such an exhibition and arrest all persons there present and take possession of and remove from the place of seizure the birds, dogs, or other animals engaged in fighting or there found and intended to be used or engaged in fighting, or kept or trained for fighting and hold the same in custody subject to the order of the court as hereinafter provided.

§61-8-25. Requiring children to beg, sing, or play musical instruments in streets; penalty.

[Repealed.]

§61-8-26. Permitting children to sing, dance or act in a dance house, etc.; penalty.

[Repealed.]

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a petty offense; misdemeanor and, ~~on conviction thereof, shall be punished by a fine not exceeding \$200.~~ *Provided*, That there is exemption from this prohibition for: (a) A private hotel, private nine-hole golf course, private resort hotel, and private golf club licensed pursuant to §60-7-1 *et seq.* of this code and in compliance with §60-7-2(g)(8), §60-7-2(h)(7), §60-7-2(i)(7), and §60-7-2(j)(7) of this code; (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan; or (c) a private fair and festival that is in compliance with §60-7-2(f)(7) of this code, by utilizing a mandatory carding or identification program whereby all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and must provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.

§61-8-27a. Use of false identification, etc., by person underage; penalty.

Any person who exhibits or displays a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or who exhibits or displays any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment, from which he or she would otherwise be barred by reason of age, shall be guilty of a petty offense; misdemeanor, and, ~~on conviction thereof, shall be punished by a fine of not less than \$25 nor~~

~~more than \$100, and, in the discretion of the court, may be imprisoned in the county jail not exceeding thirty days.~~

§61-8-28. Criminal invasion of privacy; penalties.

(a) For the purposes of this section, the words or terms defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context:

(1) 'A person fully or partially nude' means a male or female who is either clothed or unclothed so that:

(A) All or any part of his or her genitals, pubic area or buttocks is visible; or

(B) in the case of a female only, a part of a nipple of her breast is visible and is without a fully opaque covering;

(2) 'To visually portray' a person means to create a reproducible image of that person by means of:

(A) A photograph;

(B) A motion picture;

(C) A video tape;

(D) A digital recording; or

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person; and

(3) 'Place where a reasonable person would have an expectation of privacy' means a place where a reasonable person would believe that he or she could, in privacy, be fully or partially nude without expecting that the act of exposing his or her body was being visually portrayed by another person.

(b) It is unlawful for a person to knowingly visually portray another person without that other person's knowledge, while that other person is fully or partially nude and is in a place where a reasonable person would have an expectation of privacy. A person who violates the provisions of this subsection is guilty of a Class 1 misdemeanor, ~~and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than \$5,000, or both.~~

(c) Any person who displays or distributes visual images of another person with knowledge that said visual images were obtained in violation of subsection (b) of this section is guilty of a Class 1 misdemeanor, ~~and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than \$5,000, or both.~~

(d) A person who is convicted of a second or subsequent violation of subsection (b) or (c) of this section is guilty of a Class 6 felony, ~~and, upon conviction, shall be confined in a state correctional facility for not less than one year nor more than five years or fined not more than \$10,000, or both.~~

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

(a) As used in this section:

'Disclose' means to publish, publicly display, distribute, deliver, circulate, or disseminate by any means, including, but not limited to, electronic transmission.

'Image' means a photograph, videotape, motion picture film, digital recording, or any product of any mechanical or electronic recording process or device that can preserve, for later viewing, a visual image.

'Intimate parts' means a person's genitalia, pubic area, anus or female post-pubescent breasts.

To 'publicly disclose' means to disclose an image to one or more persons other than those persons whom the person depicted understood would view the image at the time it was captured.

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed.

(c) (1) A person convicted of a violation of subsection (b) of this section is guilty of a Class 6 felony, ~~misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not less than \$1,000 nor more than \$5,000, or both confined and fined.~~

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted of a second or subsequent violation of subsection (b) of this section is guilty of a Class 5 felony and, ~~upon conviction thereof, shall be imprisoned in a state correctional facility for not more than three years, fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.~~

(d) The provisions of this section do not apply to:

(1) Images disclosed with the prior written consent of the person depicted;

(2) Images depicting the person voluntarily exposing himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceeding, or medical treatment.

(e) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service as defined by 47 U.S.C. §230(f)(2), an information service as defined by 47 U.S.C. §153(24), or telecommunications service as defined by 47 U.S.C. §153(53), for content provided by another person.

§61-8-29. Criminal loitering by persons on supervised release.

(a) Any person serving a period of supervised release of 10 years or more pursuant to ~~the provision of~~ §62-12-26 of this code who loiters within 1,000 feet of the property line of the residence or workplace of a victim of a sexually violent offense for which the person was convicted

~~shall be is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days.~~

~~(b) Any person serving a period of supervised release of 10 years or more pursuant to the provisions of §62-12-26 of this code for an offense where the victim was a minor who loiters within 1,000 feet of the property line of a facility or business the principal purpose of which is the education, entertainment or care of minor children, playground, athletic facility or school bus stop shall be guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not more than thirty days.~~

(c) A person does not violate the provisions of subsection (a) or (b) of this section unless he or she has previously been asked to leave the proscribed location by an authorized person and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

(d) As used in this section:

'Authorized person' means:

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

(2) A security officer employed by a business or facility to protect persons or property acting in his or her employment capacity;

(3) An owner, manager or employee of a facility or business having a principal purpose the caring for, education or entertainment of minors;

(4) A victim or parent, guardian or lawful temporary or permanent custodian thereof;

(5) An employee of a county Board of Education acting in his or her employment capacity.

'Facility or business, the principal purpose of which is the education, entertainment or care of minor children' means:

(1) A pre-school, primary, intermediate, middle, or high school, either public or private;

(2) A childcare facility;

(3) A park;

(4) An athletic facility used by minors;

(5) A school bus stop.

'Loitering' means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

(e) Nothing in this section ~~shall~~ may be construed to prohibit or limit a person's presence within one thousand feet of a location or facility referenced in this section if the person is there present for the purposes of supervision, counseling, or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present.

§61-8-30. Photography of a corpse or person being provided medical care or assistance; prohibitions; exceptions; Jonathan's Law.

(a) As used in this section:

'Disclose' means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, offer or otherwise make available or make known to any third party.

'First responder' means law-enforcement officers, firefighters, emergency medical services personnel and other similar individuals authorized to respond to calls for public safety services or emergency medical assistance.

(b)(1) A first responder who is present at a motor vehicle accident or other emergency situation for the purpose of providing public safety services or medical care or assistance shall not photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or a person being provided medical care or assistance, except for a legitimate law-enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(2) A first responder shall not knowingly disclose any photograph, film, videotape, record or other reproduction of the image of a human corpse or a person being provided medical care or assistance at the scene of a motor vehicle accident or other emergency situation without prior written consent of the injured person, the person's next-of-kin if the injured person cannot provide consent, or personal representative under law of a deceased person, unless that disclosure is for a legitimate law enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(3) Any person who violates subdivision (1) or (2) of this subsection is guilty of a petty offense. ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500.~~ For a second offense, the person is guilty of a Class 3 misdemeanor. ~~and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than \$100 nor more than \$750.~~ For a third or subsequent offense, the person is guilty of a Class 2 misdemeanor. ~~and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months and shall be fined not less than \$1,000 nor more than \$5,000.~~

(c) This section shall be known as 'Jonathan's Law'.

§61-8-31. Therapeutic deception; penalties.

(a) In this section, unless a different meaning plainly is required:

'Client' or 'patient' means a person who is being treated clinically or medically by a psychotherapist for more than one session or initial visit.

'Psychotherapist' means any of the following:

(1) A psychiatrist licensed pursuant to §30-3-1, *et seq.*, of this code;

(2) A psychologist licensed pursuant to Psychologists: School Psychologists, in §30-21-1, et seq., of this code, or a medical psychologist licensed pursuant to §30-3-1, et seq. of this code;

(3) A licensed clinical social worker licensed pursuant to §30-30-1, et seq. of this code; or

(4) A mental health counselor licensed pursuant to §30-31-1, et seq. of this code.

(3) 'Sexual contact' has the same meaning as provided in §61-8B-1, et seq. of this code.

(4) 'Sexual intercourse' has the same meaning as provided in §61-8B-1, et seq. of this code.

(5) 'Therapeutic deception' means a representation by the psychotherapist to the patient or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or part of the treatment of the patient or client.

(b) It is unlawful for any psychotherapist, or any person who fraudulently represents himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a client or patient by means of therapeutic deception.

(c) For purposes of this section, consent of the patient or client is not a defense, regardless of the age of the patient or client.

(d) Any person who violates subsection (b) of this section is guilty of a Class 6 felony, and, upon conviction thereof, shall be fined not more than \$10,000.00 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-1. Definitions.

When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

'Adult' means a person 18 years of age or older.

'Computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic or storage functions ~~and includes~~ including remote cloud based data storage, and any other data storage facility or communication facility directly related to or operating in conjunction with such device. As used in this article, computer includes file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any electronic data storage device or equipment. The term 'computer' includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer, or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

'Computer network' means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

'Display' means to show, exhibit, or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

'Distribute' means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

'Employee' means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his or her salary or wages.

'Internet' means the international computer network of both federal and nonfederal interoperable packet switched data networks.

'Knowledge of the character of the matter' means having awareness of or notice of the overall sexual content and character of matter as depicting, representing, or describing obscene matter.

'Matter' means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two- or three-dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more.

'Minor' means an unemancipated person under 18 years of age.

'Obscene matter' means matter that:

(1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political, or scientific value.

'Parent' includes a biological or adoptive parent, legal guardian, or legal custodian.

'Person' means any adult, partnership, firm, association, corporation, or other legal entity.

'Sexually explicit conduct' means an ultimate sexual act, normal or perverted, actual, or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

§61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses.

(a) Any adult, with knowledge of the character of the matter, who knowingly and intentionally distributes, offers to distribute, or displays to a minor any obscene matter, is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be fined not more than \$25,000, or confined in a state correctional facility for not more than five years, or both.~~

(b) It is a defense to a prosecution under the provisions of this section that the obscene matter:

(1) Was displayed in an area from which minors are physically excluded and the matter so located cannot be viewed by a minor from nonrestricted areas; or

(2) Was covered by a device, commonly known as a 'blinder rack,' such that the lower two thirds of the cover of the material is not exposed to view; or

(3) Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material was not exposed to view; or

(4) Was displayed or distributed after taking reasonable steps to receive, obtain or check an adult identification card, such as a driver's license or other technically or reasonably feasible means of verification of age.

(c) It is a defense to an alleged violation under this section that a parent had taken reasonable steps to limit the minor's access to the obscene matter.

§61-8A-4. Use of obscene matter with intent to seduce minor.

Any adult, having knowledge of the character of the matter, who knows or believes that a person is a minor at least four years younger than the adult, and distributes, offers to distribute or displays by any means any obscene matter to the person who is known or believed to be a minor at least four years younger than the adult, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a Class 5 felony ~~and, upon conviction thereof, shall be fined not more than \$25,000, or imprisoned in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than \$50,000 or imprisoned in a state correctional facility for not more than ten years, or both.~~

§61-8A-5. Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties.

Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable care in ascertaining the age of a minor, hires, employs. or uses such minor to produce obscene matter or to do or assist in doing any sexually explicit conduct, is guilty of a Class 5 felony ~~and, upon conviction thereof, shall be fined not more than \$50,000 or confined in a state correctional facility for not more than ten years, or both.~~

ARTICLE 8B. SEXUAL OFFENSES.**§61-8B-3. Sexual assault in the first degree.**

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being 14 years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than 12 years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a Class 2 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is 18 years of age or older and whose victim is younger than 12 years of age, is a Class 1 felony shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than \$5,000 nor more than \$25,000.

§61-8B-4. Sexual assault in the second degree.

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless; or,

(b) Any person who violates the provisions of this section shall be guilty of a Class 3 felony; and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in the penitentiary not less than ten nor more than twenty-five years.

§61-8B-4a. Sexual extortion.

(a) For the purposes of this section,

'Recording' includes without limitation an image, photograph, or video;

'Sexually explicit conduct' means sexual conduct, sexual intercourse, or sexual intrusion;

'State of nudity' means:

(1) The appearance of a human anus, human genitals, or female breast below a point immediately above the top of the areola; or

(2) A state of dress that fails to opaquely cover a human anus, human genitals, or a female breast below a point immediately above the top of the areola;

(b) A person is guilty of sexual extortion if:

(1) With purpose to coerce another person to engage in sexual contact or sexual intercourse, the person communicates a threat to:

(A) Damage the property or harm the reputation of the other person; or

(B) Produce or distribute a recording of the other person engaged in sexually explicit conduct or depicted in a state of nudity; or,

(2) With purpose to produce or distribute a recording of a person in a state of nudity or engaged in sexually explicit conduct, the person communicates a threat to:

(A) Damage the property or harm the reputation of the other person; or

(B) produce or distribute a recording of the other person engaged in sexually explicit conduct or depicted in a state of nudity; or,

(3) The person knowingly causes another person to engage in sexual contact, sexually explicit conduct, or to produce or distribute a recording of a person in a state of nudity or engaged in a sexually explicit conduct by communicating a threat to:

(A) Damage the property or harm the reputation of the other person; or

(B) Produce or distribute a recording of the other person depicted in a state of nudity or engaged in sexually explicit conduct.

(c) Any person who violates the provisions of this section is guilty of a Class 5 felony.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a Class 6 felony and, ~~upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility not less than one year nor more than five years.~~

§61-8B-7. Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being 14 years old or more, subjects another person to sexual contact who is younger than 12 years old.

(b) Any person who violates the provisions of this section shall be guilty of a Class 6 felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is 18 years of age or older and whose victim is younger than 12 years of age, shall be is guilty of a Class 3 felony shall be imprisonment for not less than five nor more than twenty-five years and fined not less than \$1,000 nor more than \$5,000.

§61-8B-8. Sexual abuse in the second degree.

(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

(b) Any person who violates the provisions of this section shall be is guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than \$500 and confined in the county jail not more than twelve months.

§61-8B-9. Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than 16 years old.

(b) In any prosecution under this section it is a defense that:

(1) The defendant was less than 16 years old; or

(2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section shall be is guilty of a Class 3 misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than \$500 and confined in the county jail not more than ninety days.

§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually violent offense, as defined in §15-12-2 of this code, against a victim under the age of 12 years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:

(1) For a violation of §61-8B-3 of this code, the penalty shall be a Class 1 felony; ~~imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty years;~~

(2) For a violation of §61-8B-4 of this code, the penalty shall be a Class 2 felony; ~~imprisonment in a state correctional facility for not less than thirty nor more than one hundred years;~~

(3) For a violation of §61-8B-5 of this code, the penalty shall be a Class 4 felony; ~~imprisonment in a state correctional facility for not less than five nor more than twenty five years;~~

(4) For a violation of §61-8B-7 of this code, the penalty shall be a Class 3 felony; ~~imprisonment in a state correctional facility for not less than ten nor more than thirty five years; and~~

(5) Notwithstanding the penalty provisions of §61-8B-8 of this code, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in §15-12-2 of this code, shall be a Class 4 felony ~~and, the penalty therefor shall be imprisonment in a state correctional facility for not less than three nor more than fifteen years.~~

(b) Notwithstanding the provisions of §62-12-2 of this code, any person sentenced pursuant to this section shall not be eligible for probation.

(c) Notwithstanding the provisions of §62-11A-1a, §62-11B-4, and §62-12-2 of this code, a person sentenced under this section shall not be eligible for home incarceration or an alternative sentence.

§61-8B-10. Imposition of sexual acts on persons incarcerated or under supervision.

(a) Any person employed by the Division of Corrections and Rehabilitation, any person working at a correctional facility managed by the Commissioner of Corrections and Rehabilitation pursuant to contract or as an employee of a state agency or as a volunteer or any person employed by, or acting pursuant to, the authority of any sheriff, county commission, or court to ensure compliance with the provisions of §62-11B-1 *et seq.* of this code who engages in sexual intercourse, sexual intrusion, or sexual contact with a person who is incarcerated in this state is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years or both fined and imprisoned.~~

(b) Any person employed by the Division of Corrections and Rehabilitation as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer, who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in~~

~~a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.~~

(c) Any person working or volunteering in an alternative sentence program authorized by the provisions of §62-11C-1, *et seq.*, of this code who, as part of his or her employment or volunteer duties, supervises program participants, engages in sexual intercourse, sexual intrusion, or sexual contact with a program participant is guilty of a Class 6 felony ~~and upon conviction, shall be fined not more than \$5,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.~~

(d) The term 'incarcerated in this state' for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article §62-11B-1, *et seq.*, of this code.

(e) Authorized pat-down, strip search or other security related tasks do not constitute sexual contact pursuant to this section.

§61-8B-12. Ignorance of victim incapacity to consent; defense. Same — Defense.

(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant at the time he or she engaged in the conduct constituting the offense did not know of the facts or conditions responsible for such incapacity to consent, unless the defendant is reckless in failing to know such facts or conditions.

§61-8B-18. Rule-making authority.

[Repealed]

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-1. Definitions.

For the purposes of this article:

'Minor' means any child under eighteen years of age.

~~Knowledge~~ 'Knowingly' means knowing or having reasonable cause to know which warrants further inspection or inquiry.

'Sexually explicit conduct' includes any of the following, whether actually performed or simulated:

- (1) Genital to genital intercourse;
- (2) Fellatio;
- (3) Cunnilingus;
- (4) Anal intercourse;

- (5) Oral to anal intercourse;
- (6) Bestiality;
- (7) Masturbation;
- (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;
- (9) Excretory functions in a sexual context; or
- (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context.

'Person' means an individual, partnership, firm, association, corporation or other legal entity.

'Coerces' means:

(1) The use or threat of force against, abduction of, serious harm to or physical restraint of an individual;

(2) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, physical restraint of or deportation of an individual;

(3) The abuse or threatened abuse of law or legal process;

(4) The destruction or taking of, or the threatened destruction or taking of, an individual's identification document or other property; or

(5) The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function.

(6) As used in this section, 'coercion' does not include statements or actions made by a duly authorized state or federal law-enforcement officer as part of a lawful law enforcement investigation or undercover action.

'Visual portrayal' has the same meaning as defined at §61-8C-3b(b)(2) of this code;

§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct ~~shall be is~~ guilty of a Class 5 felony ~~when such person has knowledge that any such act is being photographed or filmed. Upon conviction thereof, such person shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.~~

(b) Any person who produces a visual portrayal, photographs, or films such minor engaging in any sexually explicit conduct ~~shall be is~~ guilty of a Class 5 felony, ~~and, upon conviction thereof,~~

~~shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.~~

(c) ~~(1) Any parent, legal guardian or person having custody and control of a minor, who produces a visual portrayal, photographs, or films such minor in any sexually explicit conduct, or causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor child to engage in or assist in any sexually explicit act shall be is guilty of a Class 5 felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such person shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned one, article fourteen. Chapter sixty one.~~

(2) If any parent, legal guardian, person in a position of trust, or any person with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays, or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit conduct the sentence in this subsection the court may impose up to an additional two years of confinement.

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.

(a) Any person who, knowingly and willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view, or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a Class 5 felony.

(b) Any person who violates the provisions of subsection (a) of this section when the conduct involves fifty or fewer images is guilty of a Class 6 felony. ~~shall, upon conviction, be imprisoned in a state correctional facility for not more than two years or fined not more than \$2,000 or both.~~

(c) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than 50 but fewer than 600 images is guilty of a Class 5 felony. ~~shall, upon conviction, be imprisoned in a state correctional facility for not less than two nor more than ten years or fined not more than \$5,000, or both.~~

(d) Notwithstanding the provisions of subsections (b) and (c) of this section any person who violates the provisions of subsection (a) of this section when the conduct involves 600 or more images or depicts violence against a child or a child engaging in bestiality is guilty of a Class 3 felony. ~~shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than fifteen years or fined not more than \$25,000, or both.~~

(e) For purposes of this section each video clip, movie or similar recording of five minutes or less shall constitute 75 images. A video clip, movie, or similar recording of a duration longer than five minutes shall be ~~deemed~~ considered to constitute 75 images for every two minutes in length it exceeds five minutes.

§61-8C-3a. Prohibiting child erotica; penalties.

(a) Any person age 18 or over who knowingly and intentionally produces, possesses, displays or distributes, in any form, any visual portrayals of minors who are partially clothed, where the visual portrayals are: (1) Unrelated to the sale of a commercially available legal product; and (2) used for purely prurient purposes, is guilty of a Class 1 misdemeanor ~~and, upon conviction thereof,~~

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

(b) As used in this section only:

(1) 'Purely prurient purposes' means for the specific purpose of sexual gratification or sexual arousal from viewing the visual portrayals prohibited by this section; and

(2) 'Commercially available' means for sale to the general public.

(3) A 'minor' is a child under the age of 16 years, or a person who is 16 years of age or older but less than 18 years old and who is mentally defective or mentally incapacitated.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing, and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

(b) As used in this section:

'Posing in an inappropriate sexual manner' means exhibition of bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual titillation.

~~(2) 'Visual portrayal' means:~~

~~(A.1) A photograph;~~

~~(B.2) A motion picture;~~

~~(C) A digital image;~~

~~(D) A digital video recording; or~~

~~(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices;~~

'Visual portrayal' means: a reproducible image of a person by means of a visual depiction, including but not limited to a photograph, motion picture, digital image, computer image, computer generated image, video tape, digital recording, digital video recording, undeveloped film or videotape, data stored on a computer, computer disk, cellphone, personal digital assistance, transmitting devices, or by electronic means which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format, data which is capable of conversion into a visual image that has been transmitted by any means whether or not stored in a permanent format, or any other mechanical or electronic recording process or

device that can preserve, for later viewing, a visual image of a person including, but not limited to computers, cellphones, personal digital assistance, and other digital storage or transmitting devices;

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual depiction did neither solicit its receipt nor distribute, transmit, or present it to another person by any means.

(d) Notwithstanding the provisions of §15-12-1, *et seq.* of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of that article and chapter.

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

In this article, unless a different meaning is plainly required:

'Abuse' means the infliction upon a minor child of physical injury by other than accidental means.

'Child' means any person under eighteen years of age not otherwise emancipated by law.

'Controlled substance' means controlled substance as that term is defined in §61A-1-101(d) of this code.

'Custodian' means a person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement, or legal proceeding. 'Custodian' shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian, or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian, or custodian.

'Guardian' means a person who has care and custody of a child as the result of any contract, agreement, or legal proceeding.

'Gross neglect' means reckless or intentional conduct, behavior or inaction by a parent, guardian or custodian that evidences a clear disregard for a minor child's health, safety, or welfare.

'Neglect' means the unreasonable failure by a parent, guardian, or custodian of a minor child to exercise a minimum degree of care to assure the minor child's physical safety or health. For purposes of this article, the following do not constitute 'neglect' by a parent, guardian, or custodian:

(1) Permitting a minor child to participate in athletic activities or other similar activities that if done properly are not inherently dangerous, regardless of whether that participation creates a risk of bodily injury;

(2) Exercising discretion in choosing a lawful method of educating a minor child; or

(3) Exercising discretion in making decisions regarding the nutrition and medical care provided to a minor child based upon religious conviction or reasonable personal belief.

'Parent' means the biological father or mother of a child, or the foster or adoptive mother or father of a child, or a stepparent of a child or legal guardian.

'Sexual contact' means sexual contact as that term is defined in §61-8B-1. of this code.

'Sexual exploitation' means an act whereby:

(1) A parent, custodian, guardian, or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices, or coerces the child to engage in sexually explicit conduct as that term is defined in §61-8C-1. of this code; or

(2) A parent, guardian, custodian or other person in a position of trust in relation to a child persuades, induces, entices or coerces the child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, custodian or other person in a position of trust knows such display is likely to be observed by others who would be affronted or alarmed.

'Sexual intercourse' means sexual intercourse as that term is defined in §61-8B-1 of this code.

'Sexual intrusion' means sexual intrusion as that term is defined in §61-8B-1-one of this code.

A 'person in a position of trust in relation to a child' refers to any person who is acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child's welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

§61-8D-2. Murder of a child by a parent, guardian or custodian or other person by refusal or failure to supply necessities, or by delivery, administration, or ingestion of a controlled substance; tenets and practices of a recognized religious denomination or order; penalties.

(a) If any parent, guardian, or custodian shall maliciously and intentionally cause the death of a child under his or her care, custody, or control by his or her failure or refusal to supply such child with necessary food, clothing, shelter, or medical care, then such parent, guardian or custodian ~~shall be is~~ guilty of a Class 1 felony. murder in the first degree.

(b) If any parent, guardian, or custodian ~~shall cause~~ causes the death of a child under his or her care, custody, or control by knowingly allowing any other person to maliciously and intentionally fail or refuse to supply such child with necessary food, clothing, shelter, or medical care, then such other person and such parent, guardian or custodian shall each be guilty of a Class 1 felony. murder in the first degree.

(c) The penalty for offenses defined by this section shall be that which is prescribed for murder ~~in~~ of the first degree under the provisions of §61-2-1 of this code.

(d) The provisions of this section shall not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody or control of such parent, guardian, or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian is an adherent or member.

(e) Without in any manner excluding any other method of establishing a recognized method of religious healing, if the fees and expenses incurred in connection with treatment are deductible pursuant to the regulations or rules promulgated by the United States Internal Revenue Service, the treatment is presumed to constitute a recognized method of religious healing.

§61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child abuse; criminal penalties.

(a) If any parent, guardian, or custodian maliciously and intentionally inflicts upon a child under his or her care, custody or control substantial physical pain, illness, or any impairment of physical condition by other than accidental means, thereby causing the death of such child, then such parent, guardian or custodian is guilty of a Class 1 felony.

(b) If any parent, guardian, or custodian knowingly allows any other person to maliciously and intentionally inflict upon a child under the care, custody or control of ~~such~~ the parent, guardian or custodian substantial physical pain, illness or any impairment of physical condition by other than accidental means, which thereby causes the death of ~~such~~ the child, then such other person and ~~such~~ parent, guardian or custodian are each guilty of a Class 1 felony.

(c) Any person convicted of a felony described in subsection (a) or (b) of this section ~~shall be imprisoned in a state correctional facility for a period of fifteen years to life. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of 15 years of his or her sentence.~~

§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.

(a) If Any parent, guardian, or custodian ~~who shall abuse~~ abuses a child and by ~~such~~ the abuse ~~cause~~ such ~~causes~~ the child bodily injury as such term is defined in §61-8B-1 of this code, then ~~such~~ parent, guardian or custodian shall be is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If Any parent, guardian, or custodian ~~who shall abuse~~ abuses a child and by ~~such~~ the abuse ~~cause~~ said ~~causes~~ the child serious bodily injury as such term is defined in §61-8B-1 of this code, then ~~such~~ parent, guardian or custodian shall be is guilty of a Class 5 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections not less than two nor more than ten years.

(c) Any parent, guardian or custodian who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not

~~more than \$3,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both.~~

(d)(1) If a parent, guardian or custodian who has not previously been convicted under this section, §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a Class 2 misdemeanor and, upon conviction thereof, ~~shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.~~

(2) For a second offense under this subsection or for a person with one prior conviction under this section, §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a Class 1 misdemeanor and, upon conviction thereof, ~~shall be fined not more than \$1,500 and confined in jail not less than thirty days nor more than one year, or both.~~

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a Class 6 felony. ~~felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both.~~

(e) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to §15-13-1 *et seq.* of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation, or parental rights automatically restricted.

(f) Nothing in this section shall preclude a parent, guardian, or custodian from providing reasonable discipline to a child.

§61-8D-3a. Female genital mutilation; penalties; definitions.

(a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of a female under the age of 18, or any parent, guardian or custodian of a female under the age of eighteen who allows the circumcision, excision or infibulation, in whole or in part, of such female's labia majora, labia minora or clitoris, ~~shall be is guilty of a Class 5 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and fined not less than \$1,000 nor more than \$5,000.~~

(b) A surgical procedure is not a violation of this section if the procedure:

(1) Is necessary to preserve the health of the child on whom it is performed and is performed by a licensed medical professional authorized to practice medicine in this state; or

(2) The procedure is performed on a child who is in labor or has just given birth and is performed for legitimate medical purposes connected with that labor or birth by a licensed medical professional authorized to practice medicine in this state.

(c) A person's belief that the conduct described in subsection (a) of this section: (i) is required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female on which the circumcision, excision or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

(a) If a parent, guardian, or custodian neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian or custodian is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian, or custodian neglects a child and by such neglect cause the child serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, then the parent, guardian or custodian is guilty of a Class 5 felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than ten years, or both.

(c) If a parent, guardian, or custodian grossly neglects a child and by that gross neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, of the child then the parent, guardian or custodian is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian, or custodian who has not been previously convicted under this section, §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in §61-8B-1 of this code, to the child, then the parent, guardian or custodian, is guilty of a Class 2 misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.

(2) For a second offense under this subsection or for a person with one prior conviction under this section, §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian, or custodian is guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than thirty days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, §61-8D-3 of this code, or a law of another state or the federal

government with the same essential elements, the parent, guardian, or custodian is guilty of a Class 6 felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian is due primarily to a lack of financial means on the part of such parent, guardian, or custodian.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of §15-13-1, *et seq.* of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

§61-8D-4a. Child neglect resulting in death; medical treatment; recognized method of religious healing; criminal penalties.

(a) If Any parent, guardian, or custodian ~~shall neglect who neglects~~ a child under his or her care, custody, or control and by such neglect cause the death of said child, then such parent, guardian or custodian shall be is guilty of a Class 4 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or committed to the custody of the Division of Corrections for not less than three nor more than fifteen years, or both such fine and imprisonment.

(b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall ~~may~~, for that reason alone, be considered to have been neglected within the provisions of this section. Without in any manner excluding any other method of establishing a recognized method of religious healing, if the fees and expenses incurred in connection with treatment are deductible pursuant to the regulations or rules promulgated by the United States Internal Revenue Service, such treatment shall be presumed to constitute a recognized method of religious healing. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as 'medical expenses' pursuant to regulations or rules promulgated by the United States Internal Revenue Service.

(c) A child whose parent, guardian or legal custodian has inhibited or interfered with the provision of medical treatment in accordance with a court order may be considered to have been neglected for the purposes of this section.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual

abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust ~~shall be~~ is guilty of a Class 2 felony and, ~~upon conviction thereof, shall be imprisoned in a correctional facility not less than ten nor more than twenty years, or fined not less than \$500 nor more than \$5,000 and imprisoned in a correctional facility not less than ten years nor more than twenty years.~~

(b) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than 16 years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust ~~shall be~~ guilty of a Class 3 felony and, ~~upon conviction thereof, shall be imprisoned in a correctional facility not less than five years nor more than fifteen years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a correctional facility not less than five years nor more than fifteen years.~~

(c) (1) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is 16 years of age or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust ~~shall be~~ guilty of a Class 6 felony and, ~~upon conviction thereof, shall be imprisoned in a correctional facility not less than one year nor more than five years.~~

(2) If any parent, legal guardian, person in a position of trust, or any person with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays, or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit conduct the court may impose up to an additional two years of confinement to a sentence under this subsection.

(d) The provisions of this section shall not apply to a custodian or person in a position of trust whose age exceeds the age of the child by less than four years.

§61-8D-5a. Verbal abuse of noncommunicative child; penalties.

(a) Any person, 18 years of age or older, who has supervisory responsibility over a noncommunicative minor child, who repeatedly engages in verbal conduct toward the child in an insulting, demeaning or threatening manner, is guilty of a Class 2 misdemeanor ~~and, upon~~

~~conviction thereof, shall be fined not less than \$500 nor more than \$2,500 or confined in jail not more than six months, or both fined and confined.~~

(b) As used in section (a) of this section:

'Noncommunicative child' means a child who, due to physical or developmental disabilities is unable to communicate verbally, in writing, or through a recognized sign language;

'Repeatedly' means on two or more occasions;

'Supervisory responsibility' means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility can occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct; penalty.

[Repealed]

§61-8D-7. Presentation of false information regarding child's injuries; penalty.

Any person who knowingly presents false information concerning acts or conduct which would constitute an offense under the provisions of this article to attending medical personnel ~~shall be is guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, and shall be confined in the county jail not more than one year.~~

§61-8D-8. Spousal testimony; spousal privilege. ~~Testimony of husband and wife.~~

Husband and wife are competent witnesses in any proceeding under this article and cannot refuse to testify on the grounds of their marital relationship or the privileged nature of their communications.

§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.

(a) Any person 18 years of age or older who knowingly contributes to or encourages the delinquency of a child is guilty of a Class 1 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined for a period not exceeding one year or both.~~

(b) As used in this section, 'delinquency' means the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian, or custodian.

(c) In addition to any penalty provided under this section and any restitution which may be ordered by the court pursuant to §61-11A-5 of this code, the court may order any person convicted of a violation of subsection (a) of this section to pay all or any portion of the cost of medical,

psychological, or psychiatric treatment provided the child resulting from the acts for which the person is convicted.

(d) This section does not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order of which parent, guardian or custodian is an adherent or member.

(e) It is not an essential element of the offense created by this section that the minor actually be delinquent.

(f) Upon conviction, the court may suspend the sentence of a person found guilty under this section. A suspended sentence may be subjected to the following terms and conditions:

(1) That offender pay for ~~any~~ and all treatment, support, and maintenance while the child is in the custody of the state or person that the court determines reasonable and necessary for the welfare of the child; and,

~~(2) That the offender post a sufficient bond to secure the payment for all sums ordered to be paid under this section, as long as the bond does not exceed \$5,000; and~~

(2) That the offender participate in any program or training that will assist the child in correcting the delinquent behavior or, in the case of neglect, that will assist the offender in correcting his or her behavior that led to violation of this section.

~~(g)(1) The penalty of a bond given upon suspension of a sentence which becomes forfeited is recoverable without a separate suit. The court may cause a citation or a summons to issue to the principal and surety, requiring that they appear at a time named by the court, not less than ten days, from the issuance of the summons, and show cause why a judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and the surety.~~

~~(2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which the bond was given. The money shall be applied first to the payment of all court costs and then to the treatment, care, or maintenance of the child who was at issue when the offender was convicted of this section.~~

~~(h)~~ (g) If the guilty person had custody of the child prior to conviction, the court or judge may, on suspending sentence, permit the child to remain in the custody of the person, and make it a condition of suspending sentence that the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency.

ARTICLE 8E. DISPLAY OF VIDEO RATINGS OR LACK THEREOF.

§61-8E-1. Legislative purpose.

[Repealed]

§61-8E-2. Definitions.

[Repealed]

§61-8E-3. Labeling of video movies designated for sale or rental; penalties

[Repealed]

**ARTICLE 9 EQUITABLE REMEDIES IN AID OF CHASTITY, MORALITY AND DECENCY;
NUISANCE.****§61-9-1. Definition of terms.**

For the purposes of this article the following terms 'place,' 'person,' 'nuisance' are defined as follows: ~~': 'Place' shall include any building, structure, erection or place, or any separate part or portion thereof, or the ground itself; 'person' shall include any individual, corporation, association, partnership, trustee, lessee, agent or assignee; 'nuisance' shall mean any place as above defined in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued or exists, and the personal property and contents used in conducting or maintaining any such place for any such purpose.~~

'Place' means any building, structure, premises, erection, or any separate part or portion thereof, including the ground itself, all fixtures, personal property and contents used in conducting or in any way maintaining such place;

'Person' means any individual, corporation, association, partnership, trustee, lessee, agent, or assignee; and,

'Nuisance' means any place used by, or kept for the purpose of :

(1) Delivery, possession, manufacture, or use of a controlled substance prohibited by § 60A - 4-401, et seq. of this code;

(2) Gambling, gambling promotion, or communicating gambling information as prohibited by §61-10-1 to §61-10-11b of this code;

(3) Preparation, distribution, or exhibition of obscene matter to minors prohibited by §61-8A-1 to §61-8A-5 of this code;

(4) Committing a 'qualifying offense' during an 'organized criminal enterprise', as defined, and prohibited by §61-13-1 to §61-13- 6 of this code;

(5) Prostitution, as defined and prohibited in §61-8-5 to §61-8- 8 of this code.

A person 'maintains a nuisance' if that place is where:

(1) Acts listed in §61-9-1(c) of this code are committed;

(2) The person is aware of those acts; and,

(3) The person fails to make reasonable efforts to abate those acts.

§61-9-2. Maintenance of nuisance.

~~Any person who shall use, occupy, establish or conduct a nuisance as defined in section one, or aid or abet therein, and the owner, agent, or lessee of any interest in any such nuisance, together with the person employed in or in control of any such nuisance, by any such owner, agent, or lessee, shall be guilty of maintaining a nuisance and shall be enjoined as hereinafter provided.~~

(a) The following are guilty of maintaining a nuisance as defined in §61-9-1 of this code and may be enjoined as provided in §61-9-3 of this code:

(1) Any person who uses, occupies, establishes, conducts, or assists in the nuisance;

(2) The owner, agent, or lessee of any interest in the place or the purpose of the nuisance;

(3) Any person in control of the nuisance; or

(4) Any person employed by any owner, agent, or lessee of any interest in the place or the purpose of the nuisance.

(b) For purposes of this article, the grantee or vendee of the last recorded deed or contract that describes the place, or any part of the place, where a nuisance exists is considered the owner of the premises.

§61-9-3. Suit to abate and enjoin a nuisance; by whom instituted.

~~Whenever a nuisance exists, the Attorney General of the state, the prosecuting attorney of the county wherein the same exists, or any person who is a citizen, resident or taxpayer of the county, may bring suit in equity in the name of the State of West Virginia, upon the relation of such Attorney General, prosecuting attorney, or any person, to abate such nuisance and to perpetually enjoin the person or persons maintaining the same from further maintenance thereof.~~

(a) The following individuals have standing to bring an action to abate the nuisance and perpetually enjoin the person or persons from further maintaining any such nuisance:

(1) The Attorney General;

(2) The prosecuting attorney of the county where the place is located;

(3) A commissioner of the county where the place is located; or,

(4) Any person who is a citizen, resident or taxpayer of the county where the place is located.

(b) Any injunction granted under this section is binding on the defendant throughout the State of West Virginia.

§61-9-4. Venue; procedure; temporary injunction; order closing place; redemption; vacation of orders; bond.

~~Such suit shall be brought in the circuit court of the county in which the property is located, or in any other court of the county having equity jurisdiction. The bill of complaint and other pleadings, and all proceedings in the case, shall conform to the law of the state with respect to~~

~~equity procedure and to the rules and principles governing courts of equity, except so far as otherwise herein provided.~~

~~At the time of the commencement of the suit, or at any time during the pendency thereof, the plaintiff or his attorney may file in the office of the clerk of the county court of the county in which such property is located a memorandum or notice setting forth the title of the case, the court in which it is pending, the general object of the suit, a brief description of the property to be affected thereby, and the name of the person or persons whose estate is intended to be affected by such suit. Such notice shall immediately be recorded by the clerk of the county court in the deed book, and he shall index the same in the name of all the parties whose interest in such property is to be affected; and such notice shall, from and after its recordation, be notice to all purchasers of such property of the pendency of such suit.~~

~~Upon the application for an injunction in such suit, the court or judge may, in his discretion, enjoin the defendants and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the final decision of the case. A copy of such injunction order may be posted in a conspicuous place upon the premises proceeded against, and any person thereafter removing or interfering with such property shall be guilty of a violation of such injunction, and any person removing or mutilating such copy of the order so posted, while the same remains in force, shall be guilty of contempt of court, provided such posted notice or order contains thereon or therein a notice to that effect. The officer serving such injunction order shall forthwith make and return into court an inventory of the personal property and contents situated in the building or place proceeded against and used in conducting or maintaining such nuisance.~~

~~If, at the time of granting a temporary injunction, the same shall appear proper, the court or judge granting the same may order the place proceeded against to be closed and not used for any purpose until the final decision of the case: *Provided, however,* That the owner of any property so closed or restrained may appear at any time before final hearing and decision, and upon payment of all the costs incurred, and upon the filing of a bond, with sureties to be approved by the clerk, in the amount of the full value of the property, to be ascertained by the court or judge, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept until final decision of the case, then and in that case the court or judge, if satisfied of the good faith of the owner of the real or personal property and of his innocence of any knowledge of the use of such property as a nuisance, and that with reasonable care and diligence such owner could not have known thereof, may deliver such property to the owner thereof and vacate any order theretofore made for the closing of such real property, or restraining the removal or interference with such personal property. The release of any real or personal property under the provisions of this section, however, shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.~~

(a) Any suit to enjoin shall be brought in the circuit court of the county where the place is located.

(b) At the time of the commencement of the suit, or at any time during the pendency thereof, the plaintiff or his attorney may file notice of lis pendens in accordance with § 55-11-1, et seq. of this code.

(c) In an action under this article:

(1) Evidence of the general reputation of the place, is admissible for the purpose of proving the existence of the nuisance;

(2) Proof of knowledge of the existence of the nuisance on the part of one or more of the defendants is not required;

(3) It is not necessary for the court to find the place involved was being used as and for a nuisance at the time of the hearing, or for the plaintiff to prove that the nuisance was continuing at the time the complaint was filed, if the complaint is filed within 90 days after any act, any violation, or the existence of a condition described in §61-9-1(c) of this code, as a nuisance.

(d) The court may enjoin the defendants and all other persons from removing or in any manner interfering with the personal property and contents of the place until the final decision of the case. A copy of the injunction order may be posted in a conspicuous location at the place. Anyone who removes or mutilates a copy of the posted injunction order is guilty of contempt, if the posted order contains notice to that effect. Any person thereafter removing or interfering with the place or any property therein, is guilty of a violation of the injunction.

(e) The officer serving such injunction order shall immediately make and return to the court an inventory of the personal property and contents situated in the place proceeded against and used in conducting or maintaining such nuisance.

(f) Any time before final decision the court may order a temporary injunction, to close the place for any use: *Provided*, That until the final decision of the court, the owner of the place may appear at any time to redeem and recover the property after compliance with the following:

(1) Full payment of all related costs incurred;

(2) Filing a bond, with appropriate sureties in the amount of the full value of the property ascertained by the court or judge, and,

(3) Sworn written assurances that the owner will immediately abate the nuisance and prevent the same from being established again.

(g) If the court is satisfied of (1) the good faith of the place's owner; (2) the owner's innocence of any knowledge of the use of the place as a nuisance; and, (3) that with reasonable care and diligence the owner could not have known or ascertained the use of the place as a nuisance, the court may deliver the place to the owner and vacate any order to close the place or restrict, remove or interfere with personal property.

(h) The release of any real or personal property under the provisions of this section, however, may not release the owner from any judgment, lien, penalty, or liability to which it may otherwise be subject by law.

§61-9-5. Prima facie evidence of nuisance; prosecution of complaint; dismissal; costs; permanent injunction.

~~In such suit evidence of the general reputation of the place, or an admission or finding of guilt of any person under the criminal laws against prostitution, lewdness or assignation at any such place, shall be admissible for the purpose of proving the existence of such nuisance, and shall be prima facie evidence of such nuisance and of knowledge thereof and acquiescence and~~

participation therein on the part of the person or persons charged with maintaining such nuisance as herein defined. If the complaint is filed by a person who is a citizen, resident or taxpayer of the county, it shall not be dismissed except upon a sworn statement by the complainant and his or its attorney, setting forth the reasons why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the court or judge is of opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment at the expense of the county, and if any such action is continued more than one term of court, any person who is a citizen, resident or taxpayer of the county, or the Attorney General, or the prosecuting attorney, may be substituted for the complainant and prosecute such suit to final decree. If the suit is brought by any person who is a citizen, resident or taxpayer of the county and the court finds and enters of record in the case that there were no reasonable grounds or cause for such suit, the costs may be taxed to such person. If the existence of the nuisance be established upon the trial, a decree shall be entered which shall perpetually enjoin the defendants and any other person or persons from further maintaining the nuisance at the place complained of and the defendants from maintaining such nuisance elsewhere within the county.

(a) Evidence of the general reputation of the place, or an admission or finding of guilt of any person for offenses identified in §61-9-1(c) of this code, are admissible prima facie to prove knowledge, acquiescence, and participation in the nuisance.

(b) If the complaint is filed by a citizen, resident or taxpayer of the county, it may not be dismissed except upon a filed sworn statement by the complainant and his or its attorney, setting forth the satisfactory reasons why the action should be dismissed. Any dismissal shall be approved by the prosecuting attorney, either in writing, or in open court.

(c) If the court determines the action may not be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment at the expense of the county.

(d) If the court finds no reasonable grounds or cause for the suit, costs may be awarded to the prevailing party.

(e) If the existence of the nuisance is established in an action under this article the court shall enter an order to:

(1) Permanently enjoin the defendants and any other person or persons from further maintaining the nuisance at the place; and,

(2) Permanently enjoin the defendants from maintaining any nuisance elsewhere within the court's jurisdiction.

§61-9-6. Order of abatement; sale of personal property; renewal of bond or continuance of closing order; release of property; breaking in or entering closed property; sheriff's fees.

If the existence of such nuisance be admitted or established in a suit as provided in this article, an order of abatement shall be entered as part of the decree in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released by and under the authority of the court as provided in section four of this article, and shall direct the sale of such thereof as belongs to the defendants notified or appearing in the manner provided for the sale of personal property under execution. Such order shall also require the renewal for one year of any bond furnished by the owner of the real property as

~~provided in section four, or, if not so furnished, shall continue for one year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose, and so keeping it closed for a period of one year unless sooner released: *Provided, however,* That the owner of any place so closed and not released under bond as hereinbefore provided may then or thereafter appear and obtain such release in the manner and upon fulfilling the requirements as hereinbefore provided. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability, to which it may be subject by law. Owners of unsold personal property and contents so seized shall appear and claim the same within ten days after such order of abatement is made, and if it has not been proved to the satisfaction of the court that such owner had knowledge of such use thereof, or, that with reasonable care and diligence, he could not have known thereof, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as hereinbefore provided. If any person shall break and enter or use any place so directed to be closed, he shall be punished as for contempt as provided hereinafter, in addition to any other penalties imposed by law. For removing and selling personal property and contents, the sheriff shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court.~~

(a) If the existence of the nuisance is established in an action under this article, the court shall, in addition to the terms of §61-9-5(e) of this code, enter an order of abatement as a part of the judgment in the action. The order of abatement may order any or all of the following:

(1) The removal from the building or place of all furniture, fixtures, and contents;

(2) The sale of the furniture, fixtures, and contents in the manner provided for the sale of goods under execution;

(3) The effectual closing of the building or place for any purpose, and so keeping it closed for a period of one year, unless sooner released as provided in this article;

(4) Execution of a bond or renewal of any bond ordered under §61-9-4 of this code; and,

(5) Any other equitable relief the court considers necessary.

(b) Any vehicle, boat, or aircraft found by the court to be a nuisance under this article is subject to the same order and judgment as any furniture, fixtures, and contents under subsection (1) of this section.

§61-9-6a. Removal and sale of property; fees; loss of property exemptions; liability of officers.

(a) For removing and selling the movable property, the sheriff is entitled to charge and receive the same fees as he would for levying upon and selling like property upon execution.

(b) For closing the building or place and keeping it closed, a reasonable sum shall be allowed the sheriff by the court.

(c) Any officer taking and disposing of any property of the defendant or defendants by virtue of court order or judgment is not liable either civilly or criminally therefor, if a proper accounting for such property is made to the court within 10 days after the order or judgment is executed.

§61-9-7. Nuisance disclosed in criminal proceedings; proceeds from sale of personal property.

~~In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the prosecuting attorney to proceed promptly under this article to enforce the provisions and penalties thereof, and the finding of the defendant guilty in such criminal proceedings of any offense herein declared to be a nuisance, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. The proceeds of the sale of the personal property, as provided in the preceding section of this article, shall be applied in payment of the costs of the suit and abatement, including the complainant's costs, or so much of the proceeds as may be necessary, except as hereinafter provided.~~

(a) A guilty finding for any offense declared to be a nuisance, unless reversed or set aside, is conclusive evidence of the existence of the nuisance. Where the existence of a nuisance is established the prosecuting attorney shall, as appropriate, proceed promptly to enforce the provisions and penalties of this article.

(b) Unless the court provides otherwise the sale of any personal property, including but not limited to, furniture, fixtures, contents, vehicle, boat, or aircraft as provided in this section, the officer executing the order of the court shall:

(1) Deduct the expenses of keeping the property and the costs of the sale;

(2) Pay all secured interests and liens according to their priorities as established at court hearing or in other proceedings addressing the rights of a bona fide secured party or lien holder who did not have knowledge or notice that the property was being used or was to be used for the maintenance of a nuisance;

(3) Pay any other costs incurred in the prosecution of the action, including reasonable attorney fees for necessary services as determined by the court. Any remaining balance shall be paid to the persons entitled to them as ordered by the court or, if applicable, under §61-9-6 of this code.

(4) Unsold personal property and contents may be delivered to the owner at the court's discretion.

§61-9-8. Violation of injunction or closing order; trial; penalty.

~~In case of the violation of any injunction or closing order granted under the provisions of this article, or the commission of any contempt of court in proceedings under this article, the court, or a judge thereof in vacation, may summarily try and punish the offender. The proceedings shall conform to the practice in other suits in equity for violations of injunctions, and proceedings for contempt of court. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this article shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.~~

If any person violates any injunction or order granted under the provisions of this article or commits any contempt of court in proceedings under this article, the court may try and punish the offender for contempt. Any person found guilty of contempt under the provisions of this article is guilty of a Class 2 misdemeanor.

§61-9-9. Permanent injunction; tax imposed on property.

[Repealed]

§61-9-10. Notice to collect tax.

[Repealed]

§61-9-11. Effect of holding any part of article unconstitutional.

[Repealed]

ARTICLE 10 CRIMES AGAINST PUBLIC POLICY; GAMING AND GAMBLING.**~~§61-10-1. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine, or device; forfeiture of money used in such gaming. Definitions.~~**

~~Any person who shall keep or exhibit a gaming table, commonly called A.B.C. or E.O. table, or faro bank, or keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination, or which has no name, whether the game, table, bank, machine or device be played with cards, dice or otherwise, or shall be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not less than \$100 nor more than \$1,000. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table, or upon such gaming device, may be seized by order of a court, or under the warrant of a justice, and the money so seized shall be forfeited to the county and paid into the treasury of the county in which such seizure is made, and the table, faro bank, machine or gaming device shall be completely destroyed. *Provided, however,* That the provisions of this section shall not extend to coin-operated nonpayout machines with free play feature or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.~~

For purposes of this article the following terms mean:

'Wager' is a sum of money, or other thing of value or consideration risked on an uncertain event; a bet, or gamble.

(1) A wager does not include:

(A) Any charity game conducted pursuant to the provisions of law;

(B) Offers of purses, prizes or compensation to the actual participants in public and semipublic events, such as: rodeos, animal shows, hunting, fishing or shooting competitions, expositions, fairs, athletic events, tournaments and other shows and contests where the participants qualify for a monetary prize or other recognition;

(C) An offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest; or

(D) An offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest if the person to receive the merchandise from the proprietor is the person who performs the carnival contest.

'Gambling device' is:

(1) A contrivance designed primarily for gambling purposes which for consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance;

(2) Gambling device includes any table games, roulette wheels, wheels of fortune, video lottery terminals, slot machines, cards, dice, chips, tokens, markers, paper, receipt or other document which evidences, purports to evidence, or is designed to evidence participation in a lottery or the making of a wager, including any electronic, electromechanical, or mechanical contrivance that for consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

(3) Gambling device also includes, but is not limited to versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, including facsimiles, that operate by chance;

(4) For the purposes of this article 'gambling device' does not include:

(A) Any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than \$5;

(B) Any gambling device permitted, used, and authorized for gambling under the laws of the State of West Virginia;

(C) A device 25 years or older that is not used for gambling purposes;

(D) A device used solely for the purpose of teaching machine repair; or,

(E) Any gaming systems, games or any tangible evidence of participation in on-line gambling, games or gaming systems authorized under the laws of the State of West Virginia.

(5) The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

'Gambling premises' is any real estate, place, room, building, boat, tent, vehicle or other property, which is used for making and settling wagers, bookmaking, receiving, holding, recording or forwarding bets or offers to wager; conducting unauthorized lotteries; or playing gambling devices. Evidence that the place has a general reputation as gambling premises, was frequently visited by persons known to be gamblers or known as frequenters of gambling premises is admissible on the issue of whether it is a gambling premises. Gambling premises does not include any place, room, building, or location permitted, used and authorized for gambling under the laws of the State of West Virginia.

'Person' means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.

'Commercial gambling' includes:

- (1) Operating or receiving all or part of the earnings of gambling premises;
 - (2) Receiving, recording, or forwarding wagers or offers to wager or, with intent to receive, record or forward wagers or offers to wager, possessing facilities to do so;
 - (3) Becoming a custodian of anything of value wagered or offered to be wagered;
 - (4) Conducting wagering, or with intent to conduct wagering or a lottery, possessing facilities to do so;
 - (5) Setting up for use or collecting the proceeds of any gambling device; or,
 - (6) Alone or with others, owning, controlling, managing, or financing a gambling premises, gambling machine, or other activity involving unlawful wagers.
- (f) For the purposes of this article, commercial gambling does not include any gambling activities authorized under the laws of the State of West Virginia.

§61-10-1a. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine, or device; forfeiture of money used in such gaming.

(a) Any person who:

- (1) Knowingly possesses, keeps, or exhibits an unlicensed gambling device;
- (2) Knows or has reason to know these unlicensed gambling devices will be used in making or settling commercial gambling transactions; or,
- (3) Deals in unlicensed gambling devices with the intent to facilitate commercial gambling transactions, is guilty of a Class 1 misdemeanor.

(b) Any gambling device and all money staked or exhibited to allure persons to engage in gambling to wager upon a gambling device, may be seized by order of a court. All money so seized shall be forfeited to the county in which such seizure is made. Upon completion of any criminal or civil proceedings related to a gambling device, said device shall be destroyed.

(c) The provisions of this section do not extend to coin-operated non-payout machines with free play feature, or to automatic weighing, measuring, musical and vending machines designed, intended, and constructed to provide uniform and fair return in value or services for each coin deposited therein with no element of chance.

§61-10-2. Permitting gaming table or device on premises; penalty.

If any Any person who knowingly permits a gaming table, bank or device, such as is mentioned in the preceding section, a gambling device to be kept or exhibited on any premises in his occupation ownership, leasehold, occupation, or possession he shall be guilty of a misdemeanor,

~~and, upon conviction, shall be confined in jail not more than one year, and be fined not less than \$100 nor more than \$1,000. is guilty of a Class 1 misdemeanor.~~

§61-10-3. Unlawful to act as doorkeeper, guard or watch for keeper of gaming table or device gambling premises; interfere in lawful arrest or seizure; penalty.

If any person shall act:

~~(1) Acts as doorkeeper, guard or watch, for gambling premises, or employs another person to act as such, for a keeper or exhibitor of any such gaming table, bank or device, or shall resist, or by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, or shall unlawfully take the same from the person seizing it, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and be fined not exceeding \$1,000 or~~

~~(2) Resists, prevents, hinders or delays the lawful arrest of a gambling premise's owner, manager, employees, or patrons; or~~

~~(3) Resists, prevents, hinders or delays the seizure of a gambling device, or money exhibited or staked at the gambling premises; or~~

~~(4) Unlawfully takes or secures any gambling device, slot machine, money or other evidence from those lawfully arresting individuals;~~

~~(5) That person is guilty of a Class 1 misdemeanor.~~

§61-10-4. Playing or betting at gaming tables and devices; playing or betting on games or events; at hotels, public places; penalty.

~~If any person bet or play at any such gaming table, bank or device as is mentioned in the first section of this article, or if, at any hotel or tavern, or other public place, or place of public resort, he play at any game except bowls, chess or backgammon, draughts or a licensed game, or bet on the sides of those who play at any game, whether the game be permitted or licensed or not, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than \$100, and shall, if required by the court, give security for his good behavior for one year, or, in default thereof, may be imprisoned in the county jail not more than three months.~~

~~(a) A person commits an offense if he or she:~~

~~(1) Makes a wager on the partial or final result of a game or contest or on the performance of a participant in a game, a contest, or an uncertain event;~~

~~(2) Makes a wager on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or,~~

~~(3) Plays and wagers for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.~~

~~(b) It is a defense to prosecution under this section that:~~

~~(1) The actor engaged in gambling in a private place;~~

(2) No person received any economic benefit other than personal winnings; and

(3) Except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that a person played for something of value other than money using an electronic, electromechanical, or mechanical contrivance excluded from the definition of 'gambling device'.

(d) Any person who wagers or plays at any prohibited games, or who wagers or plays at any games, whether cards, dice or any other device which may be adapted to or used in playing any game of chance, or in which chance is a material element, for money, property, checks, credits or other representatives of value is guilty of a Class 1 misdemeanor.

§61-10-5. Betting on games of chance; furnishing money or thing of value therefor; penalty.

(a) If any Any person who wagers at any place, public or private, where gambling activities are not authorized under the laws of the State of West Virginia, by betting or wagering money or other thing of value on any game of chance, or shall who knowingly furnish furnishes any money or other thing of value to any other person to bet or wager on any such game, he shall be guilty of a petty offense misdemeanor, and, upon conviction, shall be fined not less than five nor more than three hundred dollars, and shall, if required by the court, give security for his good behavior for one year, and in default of the payment of such fine and the costs and the execution of such bond, if such bond be required, shall be imprisoned in the county jail not less than ten nor more than thirty days.

§61-10-6. Permitting gaming at hotels; premises used for commercial gambling; penalty.

(a) If the The keeper of an establishment, such as a hotel or tavern, who:

(1) Permits unlawful gaming at his house, or at any outhouse, booth, arbor, commercial gambling on the premises or other place appurtenant thereto; thereto or held therewith, allows the use or continued use of that place as gambling premises; hires or permits another to set up a gambling device; or permits commercial gambling for use in a place under the keeper's control, he shall be is guilty of a Class 3 misdemeanor, and, upon conviction, be fined not less than \$20 nor more than \$100, and shall forfeit his license, and shall give security for his good behavior for one year, or, in default of such security, be imprisoned in the county jail not more than four months.

(b) In a prosecution under this section, it shall be presumed commercial gambling was permitted by the keeper of the hotel, unless it appears the hotelkeeper or tavernkeeper did not:

(1) Know of or suspect commercial gambling, or

(2) That the keeper endeavored to prevent it, or

(3) Gave information of the gambling, with the names of the players, to law enforcement officials, or to the prosecuting attorney.

(c) Any person found guilty of a second offense under this section is guilty of a Class 1 misdemeanor. Any person found guilty of any subsequent offense under this section is guilty of a Class 6 felony.

§61-10-7. Presumption against hotelkeeper.

[Repealed]

§61-10-8. Gaming at outhouse of hotel; penalty.

[Repealed]

§61-10-9. Cheating at gaming; penalty.

~~If any~~ Any person playing at any game, ~~or gambling device,~~ or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game, ~~gambling device,~~ or making a wager, ~~shall cheat who cheats,~~ or by fraudulent means win or acquire for himself, or another, money or other valuable thing, ~~he shall be~~ is guilty of a Class 1 misdemeanor, ~~and, upon conviction, shall be confined in jail not more than one year and fined not less than five times the value of the money or thing won or acquired.~~

§61-10-9a. Dealing in gambling devices; penalty.

Dealing in gambling devices is manufacturing, transferring, or possessing with intent to transfer any unauthorized gambling device, subassembly, or essential part thereof. Unless duly authorized by law, any person dealing in gambling devices is guilty of a Class 6 felony.

§61-10-9b. Permitting gambling devices on premises; penalty.

Every person who permits any gaming device prohibited by this article, to be set up or used for the purpose of gambling in any house, building, shed, shelter, booth, lot or other premises belonging to or occupied by him, of which he has, at the time, possession or control, is guilty of a Class 3 misdemeanor. Any subsequent offense is a Class 6 felony.

§61-10-10. ~~Poolroom defined;~~ Selling tickets and chances in lottery; penalty.

~~The word 'poolroom,' wherever the same is used in this section, shall be held and construed to mean any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science, or other sport or contest.~~

(a) Any person who shall set up or promote, or be sets up or is connected with or interested in the management or operation of any poolroom place where a chance voucher or certificate is sold entitling, or purporting to entitle, the holder, promise thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science, or other sport or contest, his agents, servants or employees, they, and each of them, shall be is guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 for each offense, and may, in the discretion of the court, be confined in jail not to exceed one year.

(b) The buying, selling, or transferring of tickets or chances in any lottery shall be and the same is hereby prohibited.

§61-10-10a. Gambling premises; nuisance; abatement.

Premises used for commercial gambling are hereby declared a public nuisance, and the same may be abated in the manner provided under §61-9-1 et seq. of this code.

§61-10-11. Lotteries or raffles; penalty.

~~If any person shall set up or promote or be concerned in managing or drawing a lottery or raffle, for money or other thing of value, or knowingly permit such lottery in any house under his control, or knowingly permit money or other property to be raffled for in such house, or to be won therein, by throwing or using dice, or by any other game of chance, or knowingly permit the sale in such house of any chance or ticket, or share of a ticket, in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person, or to entitle him to a prize, or a share of, or interest in, a prize to be drawn in a lottery, or shall, for himself or any other person, buy, sell, or transfer, or have in his possession for the purpose of sale, or with intent to exchange, negotiate, or transfer, or shall aid in selling, exchanging, negotiating, or transferring a chance or ticket, or a share of a ticket, in a lottery, or any such writing, certificate, bill, token or device, he shall be guilty of a misdemeanor, and, upon conviction, shall, in the discretion of the court, be confined in jail not more than one year or be fined not exceeding \$1,000, or both: *Provided, however,* That this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as 'policy' or 'numbers.'~~

(a) As used in this section:

'Lottery' is a scheme for the distribution of prizes by chance. For the purposes of this section, the essential elements of a lottery are consideration, prize and chance;

'Raffle' does not include a 'charitable raffle' as addressed in §47-21-1, et seq., of this code.

(b) Any person who knowingly: (1) sets up, promotes, permits, uses, has a concern in, or manages a lottery or raffle for any form of compensation; (2) permits a lottery in any premises under their control; or (3) permits money or other property to be raffled for or won in premises under his control or to be won therein by any related scheme or device purporting or intended to assure any person a prize, or interest in a prize to be drawn in a lottery, is guilty of a Class 1 misdemeanor.

§61-10-11a. 'Policy' or 'numbers'; possession of 'policy' or 'numbers' slips unlawful; penalty.

~~Any person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for 'policy' or 'numbers' playing or for the sale of what are commonly called 'lottery policies,' or who delivers or receives money or other valuable consideration in playing 'policy' or 'numbers,' or in aiding in the playing thereof, or for what is commonly called a 'lottery policy,' or for any writing, or document in the nature of a bet, wager, or insurance upon the drawing or selection, or the drawn or selected numbers of any 'policy' or 'numbers' lottery; or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or selected, or to be drawn or selected in what is commonly called 'policy' or 'numbers,' or in the nature of a bet, wager or insurance, upon the drawing or selection, or the drawn or selected numbers of any 'policy' or 'numbers' lottery; or any paper, print, writing, number, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game~~

~~commonly called 'policy' or 'numbers'; or who is the owner, agent, superintendent, janitor or caretaker of any place, building, or room where 'policy' or 'numbers' playing or the sale of what are commonly called 'lottery policies' is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, shall be guilty of a felony and, upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than one year nor more than five years, or be confined in jail not less than six nor more than twelve months and fined not less than \$200 nor more than \$1,000. Upon commission of a second or subsequent offense under this section, he shall be guilty of a felony and, upon conviction shall be confined in the penitentiary of this state for a period of not less than two years nor more than ten years.~~

Any person who knowingly:

(a) Keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for 'policy' or 'numbers' playing or for the sale of what are commonly called 'lottery policies,' or

(b) Delivers or receives money or other valuable consideration in playing 'policy' or 'numbers,' or

(c) In any way aids the playing of what is commonly called a 'lottery policy,' or for any writing, or document in the nature of a bet, wager, or insurance upon the drawing or selection, or the drawn or selected numbers of any 'policy' or 'numbers' lottery, or,

(d) Possesses:

(1) Any writing, paper or document, representing or being a record of what is commonly called 'policy' or 'numbers,' or in the nature of a bet, wager or insurance, upon the drawing or selection, or the drawn or selected numbers of any 'policy' or 'numbers' lottery; or,

(2) Any paper, print, writing, number, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called 'policy' or 'numbers'; or,

(3) Any chance, share or interest in numbers sold, drawn or selected; or

(e) Is the owner, agent, superintendent, janitor or caretaker of any place, building, or room where 'policy' or 'numbers' playing or the sale of what are commonly called 'lottery policies' is carried on:

(1) With knowledge of the owner, or after notification that the premises are so used; or,

(2) Permits such use to be continued, or,

(3) Who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named;

(f) Is guilty of a Class 3 misdemeanor. Commission of a second or subsequent offense under this section, is a Class 6 felony.

§61-10-11b. Possession of 'policy' or 'numbers' slips unlawful Seizure of gambling devices and equipment.

~~The possession, by any person other than a public officer acting in his official capacity, of any writing, paper, or document representing or being a record of any chance, share or interest in numbers, sold, given away, drawn, or selected, or to be drawn or selected, in what is commonly called 'policy' or 'numbers,' or in the nature of a bet, wager or insurance upon the drawing or selection, or the drawn or selected numbers of any 'policy' or 'numbers' lottery, or any paper, print, writing, numbers of device, policy slip, or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called 'policy' or 'numbers,' is presumptive evidence of possession thereof knowingly and in violation of the provisions of section eleven a of this article.~~

Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this article, is equally authorized and enjoined to seize any table, cards, dice, or other articles or apparatus suitable to be used for gambling purposes found in the possession or under the control of the person so arrested, and to deliver the same to the judicial officer or magistrate before whom the person so arrested is required to be taken.

§61-10-13. Associations and companies trading as bank without authority of law.

[Repealed.]

§61-10-14. Laws on gaming, lotteries and uncharted banks remedial.

[Repealed.]

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

~~(b) Any person who violates the provisions of subsection (a) of this section is guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.~~

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: *Provided*, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a Class 1 misdemeanor and, ~~upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500 and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.~~

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director, or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or Board of Education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to §6B-2-5 (d) of this code for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f), (g) or (h) of this section.

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: *Provided*, That the member of a county commission whose spouse is employed or to be employed may not:

(1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

(2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

(l) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: *Provided*, That the elected county official may not:

(1) Directly supervise the spouse employee; or

(2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

§61-10-16. Picture or theatrical act reflecting upon any race or class of citizens; penalty.

It ~~shall be~~ is unlawful for any person, corporation or company to advertise, exhibit, display or show any picture or theatrical act in any theater or other place of public amusement or entertainment within this state, which shall in any manner injuriously reflect upon the proper and rightful progress, status, attainment or endeavor of any race or class of citizens, calculated to result in arousing the prejudice, ire or feelings of one race or class of citizens against any other race or class of citizens. Any person, corporation or company violating any of the provisions of this section ~~shall be~~ is guilty of a Class 3 misdemeanor, ~~and, upon conviction, shall be fined not less than \$100 nor more than \$1,000, and may, in the discretion of the court, be confined in jail not more than thirty days.~~

§61-10-17. Lobbying on floor of Legislature; ejection of lobbyist; penalty; jurisdiction.

It ~~shall be~~ is unlawful for any person to lobby for or against any measure on the floor of either house of the Legislature while the same is in session. If any person be found so lobbying in violation of this section, it shall be the duty of the sergeant at arms to eject such person from the floor of either house of the Legislature, upon his own knowledge, or upon the complaint of any member. Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 3 misdemeanor, ~~and, upon conviction thereof, shall be fined not less than \$50 nor more than \$200, and in addition thereto he shall be imprisoned in the county jail of the county where such conviction is had, for not less than ten days nor more than six months.~~ Any of the circuit courts, or magistrate courts ~~criminal courts, or justices of the peace~~ within the county of Kanawha are hereby given jurisdiction of the offense herein set forth, and the proceedings hereunder shall be conducted as for other offenses.

§61-10-19. Cornering market on food or other necessities of life; penalty.

[Repealed.]

§61-10-20. Failure of employers to provide certain benefits for employees.

(a) In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement to pay or provide benefits or wage supplements and who without reasonable justification willfully fails or refuses to pay the amount or amounts necessary to provide the benefits or furnish the supplements within 30 days after the payments are required to be made, is guilty of a petty offense, misdemeanor and, ~~upon conviction thereof, shall be fined not less than \$100 nor more than \$500.~~ When the employer is a corporation, the president, secretary, treasurer, or officer exercising responsibility for the nonpayment is guilty of the offense prohibited by this section.

(b) Any person who is responsible for ensuring that an entity complies with the requirements of a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1, *et seq.* of this code, who knowingly and willfully fails to make employee or employer contributions to the retirement plan for a period of 60 days after the payment is due is guilty of a Class 2 misdemeanor and, ~~upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or shall be confined in jail for not more than six months, or both fined and confined.~~

(c) Conviction of a violation of subsection (b) of this section is prima facie evidence of official misconduct.

§61-10-21. Unlawful use of prefix 'Doctor' or 'Dr.' penalty.

~~It shall be~~ is unlawful for any person to use the prefix 'Doctor' or 'Dr.' in connection with his their name in any letter, business card, advertisement, sign or public display of any nature whatsoever, without affixing thereto suitable words or letters designating the accredited degree which they hold. he holds. Any person who ~~shall violate~~ violates the provisions of this section ~~shall be~~ is guilty of a Class 1 misdemeanor and, ~~upon conviction thereof shall be fined for each such offense not less than \$10 nor more than \$500, or imprisoned in the county jail not more than twelve months, or both fined and imprisoned, in the discretion of the court.~~

§61-10-22. Bribery of participants in professional or amateur games and horse racing; penalty.

(a) Whoever gives, promises or offers a bribe or any valuable thing to any professional or amateur ~~baseball, football, basketball, hockey player or boxer or any player who participates in any professional or amateur game or sport~~ athlete, player, manager, coach, referee, umpire, or any other participant or official of any athletic contest, or to any jockey, driver, groom or any person participating in any horse race, including owners of racetracks and their employees, stewards, trainers, judges, starters, special policemen, ~~any valuable thing,~~ with intent to influence him or her to:

(1) ~~Lose, try to lose, cause a loss, or try to limit the margin of victory or defeat in any horse race or athletic contest, or to aid or abet or assist in any manner whatsoever in any such bribe; or, lose or try to lose or cause to be lost a baseball, football, basketball or hockey game, boxing match or a horse race or any professional or amateur sport, or game, in which such player or participant or jockey or driver is taking part or expects to take part, or has any duty or connection~~

~~therewith, or who, being either a professional or amateur baseball, football, basketball, hockey player, boxer, or jockey, driver, or groom or participant in any sport or game whoever~~

(2) Solicits or accepts a bribe or any valuable thing to influence him or her to lose, try to lose, cause a loss, or try to limit the margin of victory or defeat in any horse race or athletic contest; or,

(3) Aids, abets, or assists in any manner whatsoever in any such bribe, lose or cause to be lost a baseball, football, basketball, hockey or boxing match, or horse race or any professional or amateur game or any professional or amateur sport in which he is taking part, or expects to take part, or has any duty or connection therewith; shall be guilty of a felony and, punishable by imprisonment for not less than one year, nor more than three years, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

(b) Any person who violates any provision of this section is guilty of a Class 6 felony.

§61-10-23. Debt pooling; definition; offenses; penalty; jurisdiction; pleading and proof.

(a) 'Debt pooling' shall mean means providing the rendering in any manner of advice or services of any and every kind in the establishment or operation of a plan pursuant to which for a debtor would deposit or does to deposit funds for the purpose of distributing such funds among his creditors.

(b) It shall be is unlawful:

(1) for any person to solicit in any manner a debt pooling To solicit a debt pooling in any manner;

(2)It shall further be unlawful For any person, except licensed attorneys, to make any charge for a debt pooling by way of fee, reimbursement of costs, or otherwise;

(3) For any charge for a debt pooling service or advice to exceed in excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling; Provided, That

(c) Any nonprofit firm, corporation or voluntary association may make an additional charge not to exceed exceeding five percent of the total amount of money actually deposited pursuant to a debt pooling, to defray costs of counseling services furnished for the benefit of its clientele of debtors generally with respect to personal money management.

(d) Any person, whether acting as agent or otherwise, who violates any provision of this section shall be is guilty of a Class 3 misdemeanor, and, upon conviction, shall be fined not less than \$100 nor more than \$250 or confined in jail not less than thirty nor more than sixty days or both. Justices of the peace and other competent courts shall have concurrent jurisdiction of offenses under this section It shall not be necessary in any warrant issued or indictment returned under this section to allege exceptions or provisos contained in this section but in the trial of an offense subject thereto it shall be the duty of the state to negative such exceptions and provisos.

§61-10-30. Open water wells prohibited.

It shall be is unlawful for any person to keep, maintain or allow any abandoned or currently used water well upon any land in which such person has any right to possession as owner, tenant

or otherwise, which does not have affixed thereto a cover of sufficient strength to prevent any person from accidentally falling into such well. Any person who violates this section is guilty of a Class 3 misdemeanor.

§61-10-31. Conspiracy; construction of section; penalties.

(a) It ~~shall be~~ is unlawful for two or more persons to conspire (1) to:

(1) Commit any offense against the state; or (2) to

(2) Defraud the state, the state or any county board of education, or any county or municipality of the state, if, in either case, one or more of such persons does any act to effect the object of the conspiracy.

(b) Nothing in this section ~~shall~~ may be construed to supersede, limit, repeal or affect the provisions of §3-9-8; §5-1-2; §5A-3-38; §20-7-7; §60-6-16; ~~§§61-6-7, 8, 9 and 10;~~ or §62-8-1, all of this code. It ~~shall not be~~ is not a defense to any prosecution under this section ~~that~~ thirty-one that the conduct charged or proven is also a crime under any other provision or provisions of this code or the common law.

(c) Any person who violates the provisions of this section by conspiring to commit an offense against the state which is a felony, ~~or by conspiring to defraud the state, the state or any county board of education, or any county or municipality of the state, shall be guilty of a felony, and, upon conviction thereof, shall be~~ is guilty of a Class 6 felony, punished by imprisonment in the penitentiary for not less than one nor more than five years or by a fine of not more than \$10,000, or, in the discretion of the court, by both such imprisonment and fine.

(d) Any person who violates the provisions of this section by conspiring to commit an offense against the state which is a misdemeanor ~~shall be~~ is guilty of a Class 1 misdemeanor, and, upon conviction thereof, shall be punished by confinement in the county jail for not more than one year or by a fine of not more than \$1,000, or, in the discretion of the court, by both such confinement and fine.

§61-10-32. Unlawful contact with a Division of Corrections employee or member of the parole board; penalty.

(a) It ~~shall be~~ is unlawful for a former inmate of the Division of Corrections to make a telephone call to a Division of Corrections employee or member of the parole board when the employee has requested in writing to that former inmate that he or she not call and the former inmate has actually been served with a copy of the written request.

(b) It ~~shall be~~ is unlawful for a former inmate of the Division of Corrections to willfully and repeatedly follow a Division of Corrections employee or member of the parole board with whom he or she seeks to establish a personal or social relationship when the Division of Corrections employee or member of the parole board has expressed to the former inmate that he or she wishes not to have contact with the former inmate.

(c) It ~~shall be~~ is unlawful for a former inmate of the Division of Corrections to harass or make credible threats against a Division of Corrections employee or member of the parole board.

(d) Any offense committed under subsection (a) may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

(e) Any person who violates any provision of this section ~~shall be~~ is guilty of a petty offense, misdemeanor and, upon conviction thereof, shall, for a first offense, be fined not more than five hundred dollars. Any person violating this section for a second offense ~~shall be~~ is guilty of a Class 2 misdemeanor, imprisoned not less than ten days nor more than six months, or both fined and imprisoned.

(f) For purposes of this section:

'Harass' means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress;

'Credible threat' means a threat of bodily injury made with apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat would be carried out;

'Bodily injury' means substantial physical pain, illness or any impairment of physical condition;

'Immediate family' means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household.

Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(h) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal, or physical with the alleged victim.

§61-10-33. Prohibition against selling a pure caffeine product.

(a)'Pure caffeine product' means a product that is comprised of 90 percent or more caffeine and is manufactured into a crystalline, liquid, or powdered form. 'Pure caffeine product' does not include any of the following that contains caffeine and is formulated, manufactured, and labeled in accordance with the laws and regulations enforced by the United States Food and Drug Administration:

(1) Coffee, tea, soft drink, energy drink, or any other caffeine-containing beverage;

(2) Any energy product.

(b) Except as provided in subsection (c), no person shall knowingly possess, sell, or offer for sale a pure caffeine product.

(c) Subsection (b) does not prohibit a person from possessing, selling, or offering for sale any product manufactured in a unit-dose form such as a pill, tablet, or caplet, but only if each unit dose of the product contains not more than 250 milligrams of caffeine.

(d) Nothing in this section prohibits either of the following:

(1) Possession of a product described in subsection (c);

(2) Possession of a pure caffeine product by any of the following:

(A) A food processing establishment;

(B) A manufacturer of a drug that is available without a prescription;

(C) A laboratory that is licensed by the Board of Pharmacy;

(D) A laboratory of any agency or department of this state that performs testing, analysis, and other laboratory services on behalf of the state; and

(E) A postal or delivery service that transports or delivers a pure caffeine product to an entity specified in subsections (A) to (D) of this section.

(e) A person who violates subsection (b) of this section is guilty of a petty offense-misdemeanor and, ~~upon conviction thereof, shall be fined not more than \$100.~~

§61-10-34. Critical Infrastructure Protection Act; prohibiting certain acts, including trespass and conspiracy to trespass against property designated a Critical Infrastructure facility; criminal penalties; and civil action.

[Repealed]

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES

§61-11-1. Classification of crimes.

[Repealed]

§61-11-1a. Sentence of female felons.

Upon conviction of a female for a felony and, subsequent sentence of confinement, the trial court shall sentence her to the custody of the ~~state department of corrections~~ West Virginia Division of Corrections and Rehabilitation.

§61-11-3. Punishment for common law offense.

[Repealed]

§61-11-6. Punishment of principals in the second degree and accessories before and after the fact.

(a) In the case of every felony, every principal in the second degree and every accessory before the fact shall be punishable as if he or she were the principal in the first degree; and every accessory after the fact , upon conviction, is guilty of a Class 1 misdemeanor. ~~shall be confined in jail not more than one year and fined not exceeding \$500.~~

~~(b) But no~~ No person in the relation of husband and wife, parent or grandparent, child or grandchild, brother, or sister, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, ~~shall aid or assist~~ aids or assists a principal felon, or accessory before the fact, to avoid or escape from prosecution or punishment may be ~~deemed~~ determined an accessory after the fact.

~~(b) (c)~~ (c) Notwithstanding the provisions of subsection (a) of this section, any person who knowingly harbors, conceals, maintains or assists the principal felon after the commission of the underlying offense violating the felony provisions of §61-2-1, §61-2-4 or §61-2-9 of this code, or gives ~~such~~ the offender aid knowing that he or she has committed such felony, with the intent that the offender avoid or escape detention, arrest, trial or punishment, shall be considered an accessory after the fact and, upon conviction, ~~be~~ is guilty of a Class 6 felony and, ~~confined in a state correctional facility for a period not to exceed five years, or a period of not more than one half of the maximum penalty for the underlying felony offense, whichever is the lesser maximum term of confinement.~~

~~(d) But no~~ No person related to the offender who is a person in the relation of husband and wife, parent, grandparent, child, grandchild, brother, or sister, whether by consanguinity or affinity, or servant to the offender ~~shall~~ may be considered an accessory after the fact.

§61-11-8. Attempts; classification and penalties therefor.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall, where it is not otherwise provided, be punished as follows:

(1) If the offense attempted ~~be~~ is punishable with life imprisonment, the person making such attempt ~~shall be~~ is guilty of a Class 4 felony and, ~~upon conviction, shall be imprisoned in the penitentiary not less than three nor more than fifteen years.~~

(2) If the offense attempted ~~be~~ punishable by imprisonment in the penitentiary for a term less than life, such person ~~shall be~~ is guilty of a Class 6 felony and, ~~upon conviction, shall, in the discretion of the court, either be imprisoned in the penitentiary for not less than one nor more than three years, or be confined in jail not less than six nor more than twelve months, and fined not exceeding \$500.~~

(3) If the offense attempted ~~be~~ punishable by confinement in jail, such person ~~shall be~~ is guilty of a Class 2 misdemeanor and, ~~upon conviction, shall be confined in jail not more than six months, or fined not exceeding \$100.~~

§61-11-8a. Solicitation to commit certain felonies; classification; defenses.

(a) Any person who solicits another to commit a violation of the law which constitutes a felony crime of violence against the person is guilty of a Class 4 felony. If the offense solicited is punishable for a term of less than life imprisonment, a person so convicted may be determined guilty of a Class 1 misdemeanor.

~~(1) Confined in a state correctional facility for not less than three nor more than fifteen years if the offense solicited is punishable by life imprisonment;~~

~~(2) Imprisoned in the state correctional facility for not less than one nor more three years or fined not more than \$5,000, or both, if the offense solicited is punishable by incarceration in the~~

~~state correctional facility for a term of less than life imprisonment. In the circuit court's discretion a person so convicted may be ordered confined in jail for a term not to exceed one year in lieu of incarceration in a state correctional facility;~~

(b)(1) As used in this section, 'solicitation' means the willful and knowing instigation or inducement of another to commit a felony crime of violence against the person of a third person; and

(2) As used in this section, 'felony crime of violence against the person' means the felony offense set forth in §61-2-1, §61-2-9, §61-2-10b, and §61-2-12 of this code.

(c) In a prosecution under the provisions of this section, it is not a defense:

(1) That the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(2) That a person whom the defendant solicits could not be guilty of a crime that is the object of the solicitation.

(d) It is an affirmative and complete defense to a prosecution under the provisions of this section that the defendant under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a felony, prevented the commission of the crime.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-7. Severability.

[Repealed.]

ARTICLE 12. POSTMORTEM EXAMINATION.

§61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.

(a) When any person dies in this state from violence, or by apparent suicide, or suddenly when in apparent good health, or when unattended by a physician, or when an inmate of a public institution, or from some disease which might constitute a threat to public health, or in any suspicious, unusual or unnatural manner, the chief medical examiner, or his or her designee or the county medical examiner, or the coroner of the county in which death occurs shall be immediately notified by the physician in attendance, or if no physician is in attendance, by any law-enforcement officer having knowledge of the death, or by the funeral director, or by any other person present or having knowledge. Any physician or law-enforcement officer, funeral director or embalmer who willfully fails to comply with this notification requirement is guilty of a petty offense. ~~misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$500.~~

(b) Upon notice of a death under this section, the chief medical examiner, or his or her designee or the county medical examiner, shall take charge of the body and any objects or articles which, in his or her opinion, may be useful in establishing the cause or manner of death, and

deliver them to the law-enforcement agency having jurisdiction in the case. In the course of an investigation of a death required to be reported by this section, the chief medical examiner shall, upon written request to any law-enforcement agency or any state or regional correctional facility, be provided with all records of the investigation of decedent's death and all records of decedent's incarceration. Where a decedent received therapeutic, corrective or medical treatment prior to death, the chief medical examiner may request in writing that any person or other entity which rendered the treatment promptly provide all records within its possession or control pertaining to the decedent and the treatment rendered: *Provided, That* nothing contained in this section may be construed as precluding the chief medical examiner from directly inspecting or obtaining investigation records, incarceration records or medical records related to the case. Where records of a decedent become part of the chief medical examiner's file, they are not subject to subpoena or a request for production directed to the chief medical examiner.

(b) (c) A county medical examiner, or his or her assistant, shall make inquiries regarding the cause and manner of death, reduce his or her findings to writing, and promptly make a full report thereof to the chief medical examiner on forms prescribed by the chief medical examiner, retaining one copy of the report for his or her own office records and providing one copy to the prosecuting attorney of the county in which the death occurred.

(e) (d) A county medical examiner or assistant medical examiner shall receive a fee for each investigation performed under the provisions of this article, including the making of required reports, which fee shall be determined by the chief medical examiner and paid out of funds appropriated therefor.

§61-12-9. Permits required for cremation; fee.

(a) It is the duty of any person cremating, or causing or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for the cremation from the Chief Medical Examiner, the county medical examiner or county coroner of the county wherein the death occurred. Any person who willfully fails to secure a permit for a cremation, is guilty of a ~~petty offense, misdemeanor and, upon conviction thereof, shall be fined not less than \$200.~~ A permit for cremation shall be acted upon by the Chief Medical Examiner, the county medical examiner or the county coroner after review of the circumstances surrounding the death, as indicated by the death certificate. The person requesting issuance of a permit for cremation shall pay a reasonable fee, as determined by the Chief Medical Examiner, to the county medical examiner or coroner or to the Office of the Chief Medical Examiner, as appropriate, for issuance of the permit.

(b) Any person operating a crematory who does not perform a cremation pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within 21 days of receipt of the deceased person's remains by the crematory, whichever time is less, is guilty of a Class 2 misdemeanor.

(c) Any person operating a crematory who fails to deliver the cremated remains of a deceased person, pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within 35 days of receipt of the deceased person's remains by the crematory, whichever time is less, is guilty of a Class 2 misdemeanor.

~~(d) Any person convicted of a violation of the provisions of subsection (b) or (c) of this section shall be fined not less than \$1,000 nor more than \$5,000 or confined in jail for a period not to exceed six months, or both.~~

~~(e)~~ (d) In any criminal proceeding alleging that a person violated the time requirements of this section, it is a defense to the charge that a delay beyond the time periods provided for in this section were caused by circumstances wholly outside the control of the defendant.

~~(f)~~ (e) For purposes of this section, 'cremation contract' means an agreement to perform a cremation, as a 'cremation' is defined in §30-6-3(g) of this code. A cremation contract is an agreement between a crematory and any authorized person or entity, including, but not limited to, the following persons in order of precedence:

(1) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in §45-14-2 of this code;

(2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent's death;

(3) An individual previously designated by the deceased as the person with the right to control disposition of the deceased's remains in a writing signed and notarized by the deceased: *Provided*, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;

(4) The deceased person's next of kin;

(5) A public official charged with arranging the final disposition of an indigent deceased person or an unclaimed corpse;

(6) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science;

(7) A public officer required by statute to arrange the final disposition of a deceased person;

(8) Another funeral establishment; or

(9) An executor, administrator, or other personal representative of the deceased.

§61-12-13. Reports and records received as evidence; copies.

(a) Reports of investigations and autopsies, and the records thereof, on file in the office of the chief medical examiner or in the office of any county medical examiner, ~~shall~~ may be received as evidence in any court or other proceeding, and where:

(1) The performing medical examiner, pathologist, or other employee of the Chief Medical Examiner or office of any county medical examiner, is unavailable to testify at trial; and,

(2) An accused has had prior opportunity to cross-examine the performing medical examiner, pathologist, or other employee of the Chief Medical Examiner or office of any county medical examiner.

~~(b) Copies of records, photographs, laboratory findings and records on file in the office of the chief medical examiner or in the office of any county medical examiner, when duly attested by the chief medical examiner or by the county medical examiner, assistant county medical examiner or coroner in whose office the same are filed, shall may be received as evidence in any court or other proceeding for any purpose for which the original could be received without any proof of the official character of the person whose name is signed thereto unless objected to by counsel.;~~
~~Provided, That statements~~

~~(c) Admissibility of witnesses or other persons and conclusions upon evidence regarding extraneous matters is not affected by this section. are not hereby made admissible.~~

ARTICLE 13. ANTI-ORGANIZED CRIMINAL ENTERPRISE ACT

§61-13-3. Offenses.

(a) Any person who knowingly and willfully becomes a member of an organized criminal enterprise and who knowingly promotes, furthers, or assists in the commission of any qualifying offense himself or herself or in combination with another member of an organized criminal enterprise ~~shall be~~ is guilty of a Class 5 felony ~~and, upon conviction, shall be confined in a state correctional facility for not more than ten years or fined not more than \$25,000, or both.~~ The offense set forth in this subsection is separate and distinct from that of any qualifying offense and may be punished separately.

(b) Any person who knowingly solicits, invites, recruits, encourages, or causes another to become a member of an organized criminal enterprise or to assist members of an organized criminal enterprise to aid or assist in the commission of a qualifying offense by one or more members of an organized criminal enterprise ~~shall be~~ is guilty of a Class 6 felony ~~and, upon conviction, shall be confined in a state correctional facility for not more than five years or fined not more than \$10,000, or both.~~

(c) Any person who shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the provisions of this article, for the purpose of preventing the attendance of such witness at the trial of such case or to change testimony, or shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at such trial, ~~shall be~~ is guilty of a Class 5 felony, ~~and, upon conviction, shall be confined not more than ten years.~~

ARTICLE 14. HUMAN TRAFFICKING.

§61-14-2. Human trafficking of an individual; penalties.

(a) Any person who knowingly and willfully traffics an adult is guilty of a Class 4 felony ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$200,000, or both imprisoned and fined.~~

(b) Any person who knowingly and willfully traffics a minor is guilty of a Class 3 felony ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than twenty years, fined not more than \$300,000, or both imprisoned and fined.~~

§61-14-3. Use of forced labor; penalties.

(a) Any person who knowingly uses an adult in forced labor is guilty of a Class 3 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both imprisoned and fined.

(b) Any person who knowingly uses a minor in forced labor is guilty of a Class 2 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.

§61-14-4. Use of persons in debt bondage; penalties.

(a) Any person who knowingly uses an adult in debt bondage is guilty of a Class 4 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both imprisoned and fined.

(b) Any person who knowingly uses a minor in debt bondage is guilty of a Class 3 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.

§61-14-5. Sexual servitude; penalties.

(a) Any person who knowingly uses coercion to compel an adult to engage in commercial sexual activity is guilty of a Class 2 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$200,000, or both imprisoned and fined.

(b) Any person who knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity is guilty of a Class 1 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ten nor more than twenty years, fined not more than \$300,000, or both imprisoned and fined.

(c) It is not a defense in a prosecution under subsection (b) of this section that the minor consented to engage in commercial sexual activity, or that the defendant believed the minor was an adult.

§61-14-6. Patronizing a victim of sexual servitude; penalties.

(a) Any person who knowingly patronizes another in commercial sexual activity and who knows that such person patronized is a victim of sexual servitude, is guilty of a Class 5 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both imprisoned and fined.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who knowingly patronizes a minor to engage in commercial sexual activity and who knows or has reason to know that said minor is a victim of sexual servitude, is guilty of a Class 3 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.

§61-14-7. General provisions and other penalties.

(a) Separate violations. — For purposes of this article, each adult or minor victim constitutes a separate offense.

(b) Aggravating circumstance. —

(1) Notwithstanding any provision of this code to the contrary, if an individual is convicted of an offense under this article and the trier of fact makes a finding that the offense involved an aggravating circumstance, the individual shall not be eligible for parole before serving three years one-third of the individual's sentence in a state correctional facility.

(2) Notwithstanding any provision of this code to the contrary, if an individual is convicted of an offense under this article and is sentenced to life without mercy, that individual is not eligible for parole.

(3) ~~(2)~~ For purposes of this subsection, 'aggravating circumstance' means the individual recruited, enticed, or obtained the victim of the offense from a shelter or facility that serves runaway youths, children in foster care, the homeless or victims of human trafficking, domestic violence, or sexual assault.

(c) Restitution. —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with §61-11A-4 of this code, including filing a lien against the person, firm, or corporation against whom restitution is ordered.

(3) The court shall order restitution under subdivision (1) of this subsection even if the victim is unavailable to accept payment of restitution.

(4) If the victim does not claim restitution ordered under subdivision (1) of this subsection within five years of the entry of the order, the restitution shall be paid to the Crime Victims Compensation Fund created under §14-2A-4 of this code.

(d) Eligibility for Compensation Fund. — Notwithstanding the definition of victim in §14-2A-3 of this code, a victim of any offense under this article is a victim for all purposes of article two-a, chapter fourteen of this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

(e) Law Enforcement Notification. — ~~Should~~ If a law-enforcement officer ~~encounter~~ encounters a child who reasonably appears to be a victim of an offense under this article, the officer shall notify the Department of Health and Human Resources. If available, the Department of Health and Human Resources may notify the Domestic Violence Program serving the area where the child is found.

(f) Forfeiture; Debarment. —

(1) The following are declared to be contraband and no person shall ~~shall~~ may have a property interest in them:

(A) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article; and

(B) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.

(2) In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) Forfeiture actions under this section shall use the procedure set forth in §60A-7-1 *et seq.* of this code.

(4) Any person or business entity convicted of a violation of this article shall be debarred from state or local government contracts.

§61-14-8. Immunity for minor victim of sex trafficking.

(a) In a prosecution or a juvenile proceeding ~~prosecution~~ for an offense of prostitution in violation of §61-8-5(b) of this code, a minor shall not be held criminally liable if the Court determines that the minor is a victim of an offense under this article: *Provided*, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

(b) This section does not apply in a prosecution or a juvenile proceeding for any of the other offenses under §61-8-5(b) of this code, including specifically soliciting, inducing, enticing, or procuring another to commit an act or offense of prostitution, unless it is determined by the court that the minor was coerced into the criminal behavior.

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in §49-1-201 of this code, and may be eligible for services under Chapter 49 of this code including, but not limited to, appropriate child welfare services.

ARTICLE 15. MONEY LAUNDERING.

§61-15-2. Laundering through financial transactions.

(a) It is unlawful for any person to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity knowing that the property involved in the financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that the transaction is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction is less than ~~\$1,000~~ \$2,500 is guilty of a Class 1 misdemeanor ~~and, upon conviction, shall be confined in jail for not more than one year or fined not more than \$1,000, or both confined and fined.~~

(c) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction is not less than ~~\$1,000~~ \$2,500 nor more than ~~\$20,000~~ \$25,000 is guilty of a Class 6 felony ~~and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years, or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.~~

(d) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction in excess of ~~\$20,000~~ exceeds \$25,000 is guilty of a Class 5 felony ~~and, upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more than ten years, or fined not less than \$5,000 nor more than \$25,000, or both imprisoned and fined.~~

ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.

§61-16-2. Prohibited use of an unmanned aircraft system; criminal penalties.

(a) Except as authorized by the provisions of this article, a person may not operate an unmanned aircraft system:

(1) To knowingly and intentionally capture or take photographs, images, video, or audio of another person or the private property of another, without the other person's permission, in a manner that would invade the individual's reasonable expectation of privacy, including, but not limited to, capturing, or recording through a window;

(2) To knowingly and intentionally view, follow, or contact another person or the private property of another without the other person's permission in a manner that would invade the individual's reasonable expectation of privacy, including, but not limited to, viewing, following, or contacting through a window;

(3) To knowingly and intentionally harass another person;

(4) To violate a restraining order or similar judicial order;

(5) To act with a willful wanton disregard for the safety of persons or property; or

(6) To knowingly and intentionally operate an unmanned aircraft system in a manner that interferes with the official duties of law enforcement personnel or emergency medical personnel.

(b) Any person violating the provisions of subsection (a) of this section is guilty of a Class 1 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail for not more than one year, or both fined and confined.~~

(c) Any person who equips an unmanned aircraft system with any deadly weapon or operates any unmanned aircraft system equipped with any deadly weapon, other than for military in an official capacity, is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.~~

(d) Any person who operates an unmanned aircraft system with the intent to cause damage to or disrupt in any way the flight of a manned aircraft is guilty of a Class 6 felony and, ~~upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 imprisoned for not less than one nor more than five years, or both fined and imprisoned.~~

(e) A person that is authorized by the Federal Aviation Administration to operate unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system in this state for such purposes if the unmanned aircraft system is operated in a manner consistent with federal law.

ARTICLE 17. CLASSIFICATIONS OF OFFENSES AND AUTHORIZED DISPOSITIONS OF OFFENDERS

§61-17-1. Classification of felonies and misdemeanors.

(a) Felonies are classified, for the purpose of sentencing, into the following six categories:

(1) Class 1 felonies.

(2) Class 2 felonies.

(3) Class 3 felonies.

(4) Class 4 felonies.

(5) Class 5 felonies.

(6) Class 6 felonies.

(b) Misdemeanors are classified, for the purpose of sentencing, into the following three categories:

(1) Class 1 misdemeanors.

(2) Class 2 misdemeanors.

(3) Class 3 misdemeanors.

(c) Petty offenses are not classified.

§61-17-2. Designation of offenses.

(a) The classification of each felony defined in this chapter is expressly designated in the section or chapter defining it. Any offense defined outside this title which is declared by law to be a felony without either specification of the classification or of the penalty is a Class 5 felony.

(b) The classification of each misdemeanor defined in this chapter is expressly designated in the section or chapter defining it. Any offense defined outside this chapter which is declared by law to be a misdemeanor without either specification of the classification or of the penalty is a Class 2 misdemeanor.

(c) Every petty offense in this chapter is expressly designated as such. Any offense defined outside this chapter without either designation as a felony or misdemeanor or specification of the classification or the penalty is a petty offense.

(d) Any offense which is declared by law to be a felony, misdemeanor, or petty offense without specification of the classification of such offense is punishable according to the penalty prescribed for such offense.

(e) Any offense defined within or outside this chapter without designation as a felony, misdemeanor or petty offense is punishable according to the penalty prescribed for such offense.

(f) Any offense defined outside this chapter with a specification of the classification of such offense is punishable according to the provisions of this chapter.

§61-17-3. Sentence of imprisonment for felony; presentence report; aggravating and mitigating factors; consecutive terms of imprisonment; definition.

(a) A sentence of imprisonment for a felony shall be a definite term of years and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the state department of corrections.

(b) No prisoner may be transferred to the custody of the state department of corrections without a certified copy of the judgment and sentence, signed by the court, and a copy of a recent presentence investigation report unless the court has waived preparation of the report.

(c) The term of imprisonment sentence shall be for a determinate period, which may be stated in a term of months, within the range prescribed under this subsection. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>
<u>Class 1</u>	<u>Life w/ Mercy</u>	<u>Life w/o Mercy</u>
<u>Class 2</u>	<u>15 years</u>	<u>60 years</u>
<u>Class 3</u>	<u>5 years</u>	<u>30 years</u>
<u>Class 4</u>	<u>3 years</u>	<u>15 years</u>
<u>Class 5</u>	<u>2 years</u>	<u>10 years</u>
<u>Class 6</u>	<u>1 years</u>	<u>5 years</u>

§61-17-4. Misdemeanors; sentencing.

(a) A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a Class 1 misdemeanor, One year.

(2) For a Class 2 misdemeanor, Six Months.

(3) For a Class 3 misdemeanor, 90 days.

§61-17-5. Class 6 felony; designation.

(a) Notwithstanding any other provision of this chapter, if a person is convicted of any Class 6 felony not involving a dangerous offense and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a Class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with the law and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a Class 6 felony and who has previously been convicted of two or more felonies.

(b) If a crime is punishable in the discretion of the court by a sentence as a Class 6 felony or a Class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney files an information in circuit court designating the offense as a misdemeanor.

§61-17-6. Determination of Sentence by Court.

The Court shall impose a sentence within the range of minimum and maximum terms based upon aggravating and mitigating circumstances the Court finds relevant based upon the pre-sentence investigation report.

§61-17-7. Offenses near Schools; offenses against children near schools; offenses against children generally; increased penalties.

(a) For all crimes committed within one thousand feet of a school, the Court may consider relevant circumstances and impose an increase of the potential sentence of one year for such crime: *Provided*, That such increase is permitted to result in a sentence which exceeds the specified maximum sentence limitation.

(b) If a child is the victim of such offense, the court may consider relevant circumstances and impose an increase of two years of the potential sentence for such crime: *Provided*, That such increase is permitted to result in a sentence which exceeds the specified maximum sentence limitation.

(c) If a child is the victim of any offense not committed within one thousand feet of a school, the court may consider relevant circumstances and impose an increase of two years of the potential sentence for such crime: *Provided*, That such increase is permitted to result in a sentence which exceeds the specified maximum sentence limitation.

ARTICLE 18. RESTITUTION AND FINES

§61-18-1. Fines for felonies.

(a) Unless provided otherwise, a fine for a felony shall be a sentence to pay an amount fixed by the court at not more five hundred thousand dollars.

(b) A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien against the defendant in like manner as a judgment for money rendered in a civil action.

(c) This section does not apply to an enterprise.

§61-18-2. Fines for misdemeanors.

Unless provided otherwise:

(a) A sentence to pay a fine for a Class 1 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than two thousand five hundred dollars.

(b) A sentence to pay a fine for a Class 2 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than seven hundred fifty dollars.

(c) A sentence to pay a fine for a Class 3 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than five hundred dollars.

(d) A sentence to pay a fine for a petty offense shall be a sentence to pay an amount, fixed by the court, of not more than three hundred dollars.

(e) A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.

(f) This section does not apply to an enterprise.

§61-18-3. Fines against enterprises.

(a) 'Enterprise' is any entity other than an individual person.

(b) Except as provided, a sentence to pay a fine that is imposed on an enterprise for an offense defined in this chapter or for an offense defined outside this chapter for which no special enterprise fine is specified shall be a sentence to pay an amount, fixed by the court, of not more than:

(1) For a Class 1 felony, ten million dollars.

(2) For a Class 2 felony, five million dollars.

(3) For a Class 3, 4, 5, or 6 felony, one million dollars.

(4) For a Class 1 misdemeanor, one hundred thousand dollars.

(5) For a Class 2 misdemeanor, fifty thousand dollars.

(6) For a Class 3 misdemeanor, ten thousand dollars.

(7) For a petty offense, five thousand dollars.

(c) A judgment that the enterprise shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action.

(d) The court shall base its decision on any evidence or information that was introduced or submitted to it before sentencing or on any evidence that was previously heard at trial and shall consider the following factors, if relevant:

(1) The income and assets of the enterprise and the economic impact of the penalty on the enterprise.

(2) Any prior criminal, civil or regulatory misconduct by the enterprise.

(3) The degree of harm resulting from the offense.

(4) Whether the offense resulted in pecuniary gain.

(5) Whether the enterprise made good faith efforts to comply with any applicable requirements.

(6) The duration of the offense.

(7) The role of the directors, officers, or principals of the enterprise in the offense.

(8) Whether the offense involved an unusually vulnerable victim due to age, physical or mental condition or any other factor that would make the victim particularly susceptible to criminal conduct.

(9) Whether the offense involved a threat to a market.

(10) Whether the enterprise breached a fiduciary duty in committing the offense.

(11) The obligation of the enterprise to pay restitution.

(12) Any other factors that the court deems to be appropriate.

§61-18-4. Reimbursement of incarceration costs; misdemeanors

(a) The court shall order a person who is convicted of a misdemeanor offense and who is sentenced to a term of incarceration to reimburse the political subdivision that is responsible for the costs of the person's incarceration for the incarceration costs.

(b) The court may determine the amount of incarceration costs to be paid based on the following factors:

(1) The per diem per person cost of incarceration incurred by the political subdivision that incarcerates the person.

(2) The person's ability to pay all or part of the incarceration costs."

Delegate Garcia moved to amend the amendment, on page 386, section 3, line 1, by striking out the words "definite term" and inserting in lieu thereof, the words "indeterminate period".

On page 386, section 3, line 7, by striking out the word "determinate" and inserting in lieu thereof, the word "indeterminate".

On page 386, section 3 lines 7,8 and 9 by striking out the words "which may be stated in a term of months, within the range prescribed under this subsection. The terms are".

And,

On page 388, following the period at the end of line 13, by striking out Section 6 in its entirety and renumbering Section 7 accordingly.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 343**), and there were— yeas 24, nays 74, absent and not voting 2, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Bates, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Nestor, Pethtel, Pritt, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Boggs and L. Pack.

So, a majority of the members present not having voted in the affirmative, the amendment to the amendment was rejected.

An amendment to the amendment, offered by Delegate Pushkin, was reported by the Clerk, on page 17, immediately following the Article 4 Heading, by inserting the following:

“§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned:

(ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned; Provided, That there is no criminal penalty under this subsection for one ounce or less of marijuana for persons 21 years old or older: Provided, however, That any person 18 to 20 years old, for more than 15 grams up to one ounce of marijuana is guilty of a misdemeanor, and is subject to a fine not to exceed \$500.00;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned;

(ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone as defined in §60A-1-101(f) of this code; ~~or less than 15 grams of marijuana~~, shall be disposed of under §60A-4-407 of this code: *Provided, however, That there is no criminal penalty under this subsection for marijuana for persons 21 years old or older: Provided, further, That for any person 18 to 20 years old who possesses less than 15 grams of marijuana is guilty of a misdemeanor and is subject to a fine not to exceed \$100.00.*

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess, sell, or otherwise transfer any equipment with the intent that the equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined. Any person 18 years old or more who violates subdivision (1) of this subsection and distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.”

Whereupon,

Delegate Pushkin asked and obtained unanimous consent that the amendment be reformed on line thirteen, by striking out the word “misdemeanor, and is subject to a fine not to exceed \$500.00” and inserting the words “petty offense”.

Delegate Pushkin later asked unanimous consent that the amendment be further reformed on page 3 line 55, by striking out the word “misdemeanor and is subject to a fine not to exceed \$100.00” and inserting the words “petty offense”, which consent was not obtained, objection being heard.

Delegate Pushkin then so moved, which question was put and prevailed.

On the adoption of the amendment, as reformed, to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 344**), and there were— yeas 46, nays 53, absent and not voting 1, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Barrett, Bates, Booth, Bridges, Brown, Capito, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Forsht, Garcia, Griffith, Hamrick, Hansen, Hardy, Higginbotham, Hornbuckle, Horst, J. Jeffries, Kimble, Linville, Lovejoy, Martin, Maynard, McGeehan, Nestor, Paynter, Pritt, Pushkin, Reed, Reynolds, Riley, Rowe, Skaff, Smith, Steele, Thompson, Walker, Wamsley, Williams, Young and Zukoff.

Absent and Not Voting: L. Pack.

So, a majority of the members present not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Fluharty, Young and Fleischauer moved to amend the amendment, on page 19, following section 3 on line 31, after the period, by inserting the following section:

“§61-1-4. Invasion or insurrection; upholding thereof; penalty.

Any person who commits an invasion or insurrection against the state is guilty of a Class 1 felony. Any person who upholds an invasion or insurrection against the state is of guilty of a Class 5 felony.”

The question now being on the adoption of the amendment offered by Delegates Fluharty, Young and Fleischauer, the same was put and rejected.

On motion of Delegates Young and Fleischauer, the amendment was amended, on page 35, section 15, line 28, following the word “confines”, by inserting a comma and the word “transports”.

On page 35, section 15, line 30, following the words “the intent”, by inserting the word “to:”.

On page 35, section 15, lines 31 through 33, by striking out the following:

“(1) To hold another person for ransom, reward, or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or”

And, inserting in lieu thereof, the following:

“(1) Hold another person for ransom, reward, or concession;

(2) Inflict bodily injury;

(3) Terrorize-the victim or another person; or”

And,

On page on page 35, section 15, line 34, by renumbering the number “(3)” to “(4)”.

The question now being on the adoption of the amendment offered by Delegate Capito, as amended, the same was put and prevailed.

There being no further amendments, the bill was ordered to engrossment and third reading.

At 3:17 p.m., on motion of Delegate Summers, the House of Delegates recessed until 3:50 p.m.

Second Reading

- continued -

Com. Sub. for H. B. 2095, Providing increased protections for the welfare of domestic animals; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with amendments pending and the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

Com. Sub. for H. B. 2224, Relating to complaints against public agencies to obtain records through the Freedom of Information Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

Com. Sub. for H. B. 2370, Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Howell, the bill was amended on page 1, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9b. Exemptions for Swimming Pools.

(a) There shall be an exemption in sewer charges for those who own swimming pools for pool water if that pool water is not discharged into the sewer system.

(b) In order for the owner of the pool to qualify, the individual must provide the dimensions of the pool that is being filled with water to the waste water utilities that are political subdivisions of the state within 30 days of filling the pool.

(c) The waste water utility shall calculate the volume of the pool and shall allow an individual to use the amount of water necessary to fill their pool, without being charged for the corresponding sewer charges that would normally be associated for that amount of use.

(d) The waste water utility shall have the opportunity to inspect the pool of the individual applying for the exemption as to verify the dimensions of the pool to ensure accuracy.

(e) This section only applies to privately owned swimming pools.”

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2488, Relating to an occupational limited license; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2592, Require Counties and Municipalities to hold all local elections during statewide elections; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Statler, the bill was amended on page 5, section 17, line 10, immediately following the word “however”, by striking out the remainder of the subsection and inserting in lieu thereof the following:

“That, notwithstanding any other provision of this Code, a local levying body, by a vote authorizing the action, may, prior to January 1, 2022, hold a special election for the purpose of synchronizing the renewal of an existing or expiring levy with a future primary or general election.”

On page 8, section 2, line 19, immediately following the word “provided”, by striking out the remainder of the subsection and inserting in lieu thereof the following:

“That, notwithstanding any other provision of this Code, a Board of Education, by a vote authorizing the action, may, prior to January 1, 2022, hold a special election for the purpose of synchronizing the renewal of an existing or expiring levy with a future primary or general election.”

And,

On page 8, section 2a, line 4, immediately following the word “provided,” by striking out the word “however.”

On motion of Delegate Statler, the bill was amended on page 2, section 16, line 9, immediately following the word “exceed”, by striking out the word “five” and inserting in lieu thereof “six”.

The bill was then ordered to engrossment and third reading.

H. B. 2730, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2751, Modernize the process for dissolution of municipal corporations in this State; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2876, Modify the five-year waiting period and 100-person minimum for an association health plan, and to allow new flexibility granted under federal rules; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2884, To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

H. B. 2908, Relating to disclosure of information by online marketplaces to inform consumers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2918, Relating to Family Drug Treatment Court; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2927, Adding Caregiving expenses to campaign finance expense; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2997, Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3030, Relating to gross weight limitations and road restrictions in Greenbrier and Pocahontas Counties; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 3036, Sunsetting the Board of Sanitarians; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 3072, Sunset the Board of Forestry; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Steele and Foster, the bill was amended on page 1, section 7, line 5, after the words "any college or university", by inserting "or a combination of a two-year associate degree or equivalent in a forestry technician or related program and relevant required work experience."

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 3074, Relating to information on organ and tissue donations; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3089, Make utility workers essential employees during a state of emergency; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3286, Making a supplementary appropriation to the Division of Human Services – Child Care and Development; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3287, Making a supplementary appropriation to the Department of Homeland Security; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3288, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3289, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3291, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3292, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 3295, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 3297, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 3307, Social Media Integrity and Anti-Corruption in Elections Act; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Linville, the bill was amended on page 4, section 12a, line 62, immediately following the word "user", by inserting "; and, which is subject to the provisions of 47 U.S. Code § 230: *Provided, That 'Social media platform': (i) does not include entities deriving a majority of annual revenue as an Internet service provider, electronic mail service, or any online news, sports, or entertainment service, website, or application not subject to the legal protections provided in the provisions of 47 U.S. Code § 230, and, (ii) for which any chat, comment or interactive functionality is incidental to or dependent upon on the provision of such content published by that service, application, or website.*"

And,

On page 14, section 32, line 30, immediately following the word "party," by inserting the following new paragraph: "(D) And, is subject to the provisions of 47 U.S. Code § 230, provided that".

The bill was then ordered to engrossment and third reading.

H. B. 3308, Relating to increasing number of limited video lottery terminals ; on second reading, coming up in regular order, was read a second time.

Delegates Barrett and Householder moved to amend the bill on page two, section one thousand one hundred one, line nineteen, by striking out subsection (d) in its entirety and inserting subsection (d) and a new subsection (e) to read as follows:

"(d) Pursuant to the increase of the number of video lottery terminals authorized in subsection (c) of this section, effective ~~2017~~ July 1, 2021, the commission shall conduct a bidding process no later than ~~September 1, 2017~~ October 1, 2021, for permits for additional terminals. Any permits for which a successful bid is made shall expire ~~June 30, 2024~~ June 30, 2031. The bidding process is open to current permit holders only and ~~which~~ shall be conducted in accordance with ~~sections one thousand one hundred six~~ §29-22B-1106, ~~one thousand one hundred seven~~ §29-22B-1107 and ~~one thousand one hundred nine~~ §29-22B-1109 of this article.

(e) The amendments to this section enacted in 2021 shall be effective on and after July 1, 2021.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 345**), and there were— yeas 75, nays 21, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Bruce, Burkhammer, Conley, Fast, Hanna, D. Jeffries, Jennings, Keaton, J. Kelly, Kimble, Kimes, Linville, Longanacre, Mandt, J. Pack, Paynter, Phillips, Pinson, Toney and G. Ward.

Absent and Not Voting: Ellington, L. Pack, Skaff and Worrell.

So, a majority of the members present having voted in the affirmative, the amendment was adopted.

The bill was then ordered to engrossment and third reading.

H. B. 3310, Relating to the jurisdiction of the Public Service Commission; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Capito, the bill was amended on page 9, section 1, line 186, after the word “commission”, by striking out the word “has” and inserting in lieu thereof the words “does not have”.

And,

By further amending the bill on page 10, section 1, line 191, after the word “commission”, by striking out the word “has” and inserting in lieu thereof the words “does not have”.

On motion of Delegate Capito, the bill was then amended on page 2, section 2, line 7, by striking out the words “(1) that is leased to such retail electric customer; or (2)” and inserting in lieu thereof a comma; and

By further amending the bill on page 3, section 1, line 13, by striking the words “(1) that is leased to the retail electric customer; or (2)” and inserting in lieu thereof a comma; and

By further amending the bill on page 3, section 1, line 15, after the word “all” by striking the word “leasing,”; and

By further amending the bill on page 3, section 1, line 16, after the word “PPAs” by striking the comma the word “leasing,”; and

By further amending the bill on page 3, section 1, line 21, by striking the words “or leases”; and

By further amending the bill on page 3, section 1, line 26, after the word “for” by striking the word “these”; and

By further amending the bill on page 3, section 1, line 26, after the word "PPAs" by striking the words "and leasing arrangements".

The bill was then ordered to engrossment and third reading.

H. B. 3311, Relating to the cost of medical records; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3312, Establishing a memorial to child labor and child workers who died in the course of employment in this state; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Miscellaneous Business

At 4:14 p.m., the House of Delegates adjourned until 10:00 a.m., Wednesday, March 31, 2021.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

SPECIAL CALENDAR

Wednesday, March 31, 2021

50th Day

10:00 A. M.

UNFINISHED BUSINESS

H. C. R. 21 - SP4 Dennis Harvey Roberts Bridge, McDowell County

Com. Sub. for H. C. R. 55 - Studying the viability of creating a veterinary school in West Virginia

H. C. R. 78 - Requesting an examination of juvenile proceedings

THIRD READING

Com. Sub. for H. J. R. 3 - Property Tax Modernization Amendment

Com. Sub. for H. B. 2017 - Rewriting the Criminal Code (CAPITO) (REGULAR)

Com. Sub. for H. B. 2095 - Providing increased protections for the welfare of domestic animals (CAPITO) (REGULAR) [AMENDMENTS PENDING] [RIGHT TO AMEND]

Com. Sub. for H. B. 2224 - Relating to complaints against public agencies to obtain records through the Freedom of Information Act (CAPITO) (REGULAR) [RIGHT TO AMEND]

Com. Sub. for H. B. 2370 - Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool (CAPITO) (REGULAR)

- Com. Sub. for H. B. 2488 - Relating to an occupational limited license (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2592 - Require Counties and Municipalities to hold all local elections during statewide elections (CAPITO) (REGULAR)
- H. B. 2730 - Relating to persons filing federal bankruptcy petition to exempt certain property of the estate (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2751 - Modernize the process for dissolution of municipal corporations in this State (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2876 - Modify the five-year waiting period and 100-person minimum for an association health plan, and to allow new flexibility granted under federal rules (J. PACK) (REGULAR)
- Com. Sub. for H. B. 2884 - To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions (CAPITO) (REGULAR) [RIGHT TO AMEND]
- H. B. 2908 - Relating to disclosure of information by online marketplaces to inform consumers (CAPITO) (REGULAR)
- H. B. 2918 - Relating to Family Drug Treatment Court (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2927 - Adding Caregiving expenses to campaign finance expense (CAPITO) (REGULAR)

- H. B. 2997 - Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel (CAPITO) (REGULAR)
- H. B. 3030 - Relating to gross weight limitations and road restrictions in Greenbrier and Pocahontas Counties (CAPITO) (REGULAR)
- Com. Sub. for H. B. 3036 - Sunsetting the Board of Sanitarians (STEELE) (REGULAR)
- Com. Sub. for H. B. 3072 - Sunset the Board of Forestry (STEELE) (REGULAR)
- Com. Sub. for H. B. 3074 - Relating to information on organ and tissue donations (ELLINGTON) (REGULAR)
- H. B. 3089 - Make utility workers essential employees during a state of emergency (CAPITO) (REGULAR)
- H. B. 3286 - Making a supplementary appropriation to the Division of Human Services – Child Care and Development (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 3287 - Making a supplementary appropriation to the Department of Homeland Security (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 3288 - Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

- H. B. 3289 - Supplementary appropriation to the Department of Commerce, Geological and Economic Survey (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 3291 - Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 3292 - Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 3295 - Making a supplemental appropriation to Division of Human Services and Division of Health Central Office (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 3297 - Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 3307 - Social Media Integrity and Anti-Corruption in Elections Act (CAPITO) (REGULAR)
- H. B. 3308 - Relating to increasing number of limited video lottery terminals (HOUSEHOLDER) (REGULAR)
- H. B. 3310 - Relating to the jurisdiction of the Public Service Commission (CAPITO) (REGULAR)
- H. B. 3311 - Relating to the cost of medical records (J. PACK) (REGULAR)

H. B. 3312 - Establishing a memorial to child labor and child workers who died in the course of employment in this state (STEELE) (REGULAR)

FIRST READING

Com. Sub. for S. B. 80 - Allowing for administration of certain small estates by affidavit and without appointment of personal representative (CAPITO) (REGULAR)

Com. Sub. for S. B. 81 - Relating generally to WV Uniform Trust Code (CAPITO) (REGULAR)

Com. Sub. for S. B. 346 - Authorizing DMV use electronic means when providing notice for licensees and vehicle owners (LINVILLE) (REGULAR)

S. B. 374 - Increasing threshold for bid requirement to \$10,000 to be consistent with other state agencies (STEELE) (REGULAR)

Com. Sub. for S. B. 375 - Relating to county boards of education policies for open enrollment (ELLINGTON) (REGULAR) [EDUCATION COMMITTEE AMENDMENT PENDING]

Com. Sub. for S. B. 389 - Relating to State Resiliency Office responsibility to plan for emergency and disaster response, recovery, and resiliency (STEELE) (REGULAR)

Com. Sub. for S. B. 421 - Authorizing Workforce West Virginia to hire at-will employees (STEELE) (REGULAR)

Com. Sub. for S. B. 429 - Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts (STEELE) (REGULAR)

- S. B. 463 - Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit (STEELE) (REGULAR)
- Com. Sub. for S. B. 472 - Updating criteria for regulating certain occupations and professions (STEELE) (REGULAR)
- Com. Sub. for S. B. 587 - Making contract consummation with state more efficient (STEELE) (REGULAR)
- Com. Sub. for H. B. 2022 - Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

HOUSE CALENDAR

Wednesday, March 31, 2021

50th Day

10:00 A. M.

UNFINISHED BUSINESS

S. C. R. 20 - Supporting and celebrating centennial anniversary of Jones Act

THIRD READING

H. B. 2741 - Relating to expansion of the alcohol test and lock program to offenders with a drug related offense (CAPITO) (REGULAR)

H. B. 3306 - Relating to virtual instruction (ELLINGTON) (REGULAR)

SECOND READING

Com. Sub. for S. B. 439 - Allowing use or nonuse of safety belt as admissible evidence in civil actions (CAPITO) (REGULAR)

Com. Sub. for H. B. 2004 - Permit a licensed health care professional from another state to practice in this state through telehealth when registered with the appropriate West Virginia board (J. PACK) (EFFECTIVE FROM PASSAGE)

Com. Sub. for H. B. 2015 - Requiring rules of local boards of health to be approved by the county commission except in cases of a public health emergency (J. PACK) (EFFECTIVE FROM PASSAGE)

Com. Sub. for H. B. 2177 - Permitting the issuance of a state issued identification card without a photo on the card under certain conditions (STEELE) (REGULAR)

H. B. 2536 - Relating to expressions of legislative intent regarding equivalent instruction time (ELLINGTON) (REGULAR)

Com. Sub. for H. B. 2628 - Relating to the removal of the prohibition on having ATMs in the area where racetrack video lottery machines are located (CAPITO) (REGULAR)

H. B. 2721 - Providing electronic notice of school attendance and satisfactory progress to the Division of Motor Vehicles in lieu of requiring each student to provide a paper notice (STEELE) (REGULAR)

Com. Sub. for H. B. 2959 - Relating to the financing of environmental pollution control equipment for coal-fired power plants (ANDERSON) (REGULAR)

Com. Sub. for H. B. 3009 - Relating to the publication of county board financial statements (ELLINGTON) (REGULAR)

- H. B. 3079 - Relating to exempting recovery residences from certain standards (J. PACK) (REGULAR)
- H. B. 3131 - Relating to correcting internal code references and citations (CAPITO) (REGULAR)
- H. B. 3305 - Relating to required course of study (ELLINGTON) (REGULAR)
- H. B. 3309 - Creating and funding a Video Lottery Terminals Modernization Fund (HOUSEHOLDER) (REGULAR)

FIRST READING

- H. B. 2582 - Relating to creating a third set of conditions for the professional teaching certificate (ELLINGTON) (REGULAR)
- H. B. 2590 - Relating to the West Virginia Employment Law Worker Classification Act (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2620 - Relating to a departmental study of the child protective services and foster care workforce (J. PACK) (REGULAR)
- H. B. 2719 - Relating to the Division of Motor Vehicles use of electronic means and other alternate means to provide notice (STEELE) (REGULAR)
- H. B. 3059 - Making contract consummation with state more efficient (STEELE) (REGULAR)
- Com. Sub. for H. B. 3102 - Requiring Director of transportation to have experience in transportation department (ELLINGTON) (REGULAR)

WEST VIRGINIA HOUSE OF DELEGATES

WEDNESDAY, MARCH 31, 2021

HOUSE CONVENES AT 10:00 A.M.

**VETERANS; AFFAIRS AND HOMELAND SECURITY
8:15 A.M. – HOUSE CHAMBER**

**COMMITTEE ON THE JUDICIARY
8:30 A.M. – ROOM 418 M**

**COMMITTEE ON RULES
9:45 A.M. – ROOM 434 M**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470