

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4851

BY DELEGATES STATLER, SMITH, RIDENOUR, THORNE,
HORNBY, ELLINGTON, ESPINOSA, FOGGIN AND TONEY

[Originating in the Committee on the Judiciary;

Reported on January 31, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-5-52; to amend and reenact §15-2D-3 of said code; and to amend and
3 reenact §61-7-11a of said code, all relating to creating school security officers; requiring
4 the director of the Division of Protective Services to establish standards for school security
5 officers and issue a certificate; providing definitions; authorizing local school boards, public
6 charter schools, and private or religious schools to employ school security officers;
7 providing standards for a school security officer to carry a firearm on school grounds;
8 requiring a background check; specifying the detention powers of a school security officer
9 and limitations on detention powers; requiring data sharing with the Division of Protective
10 Services; specifying payment for equipment; requiring insurance for schools employing a
11 school security officer; and clarifying that the prohibitions on carry a firearm in a school
12 zone do not apply to certified school security officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers

1 (a) The director is responsible for the control and supervision of the division. The director
2 and any officer of the division may carry designated weapons and have the same powers of arrest
3 and law enforcement in Kanawha County as members of the West Virginia State Police as set
4 forth in §15-2-12(b) and §15-2-12(d) of this code. The director and any officer of the division shall
5 also have such powers throughout the State of West Virginia in investigating and performing law-
6 enforcement duties for offenses committed on the Capitol Complex or related to the division's
7 security and protection duties at the Capitol Complex and throughout the state relating to offenses
8 and activities occurring on any property owned, leased, or operated by the State of West Virginia
9 when undertaken at the request of the agency occupying the property: *Provided*, That nothing in

10 this article shall be construed as to obligate the director or the division to provide, or be
11 responsible for providing, security at state facilities outside the Capitol Complex.

12 (b)(1) The director shall establish a School Safety Unit within the Division of Protective
13 Services. Officers shall be assigned to the School Safety Unit at the discretion of the director.
14 The officers assigned to the School Safety Unit shall primarily be charged to make school safety
15 inspections and to make recommendations to appropriate county school superintendents,
16 principals, or other school administrators, regarding school safety. The officers assigned to the
17 School Safety Unit shall also be authorized to respond to and investigate all school safety matters,
18 in consultation with county boards of education: *Provided*, That any officer of the School Safety
19 Unit shall have statewide jurisdiction and powers of general law enforcement and arrest for
20 violations of law committed in their presence.

21 (2) The director, in consultation with the Law Enforcement Professional Standards
22 Subcommittee of the Governor's Committee on Crime, Delinquency and Correction, shall
23 establish minimum recommendations for training for employment, job-entry, and in-service
24 training curricula, and provide written certification, for school security officers as described in §18-
25 5-52 of this code, which training and certification shall be administered and provided in the manner
26 approved by the director: Such training standards may include:

27 (A) Relevant state and federal laws;

28 (B) School and personal liability issues;

29 (C) Security awareness in the school environment;

30 (D) Mediation and conflict resolution, including de-escalation techniques such as a
31 physical alternative to restraint;

32 (E) Disaster and emergency response;

33 (F) Awareness of racism, cultural diversity, and implicit bias;

34 (G) Working with students with disabilities, autism spectrum disorders, mental health
35 needs, substance use disorders, and past traumatic experiences; and

36 (H) Student behavioral dynamics, including child and adolescent development and brain
37 research. The Division of Protective Services School Safety Unit may establish an advisory
38 committee consisting of local school board, public charter school, and private or religious school
39 representatives and school security personnel to assist in the development of the standards and
40 certification requirements in this subdivision.

41 (3) For purposes of this section, "school security officer" means an individual who is
42 employed by a local school board, public charter school, or private or religious school for the
43 singular purpose of maintaining order and discipline, preventing crime, investigating violations of
44 the policies of the school board, public charter school, or private or religious school, and
45 reasonably detaining any individual committing an offense that constitutes a breach of the peace,
46 as defined in §18-5-52 of this code, on school property, school buses, or at school-sponsored
47 events, and who is responsible solely for ensuring the safety, security, and welfare of all students,
48 faculty, staff, and visitors in the assigned school.

49 (c) Any officer of the division shall be certified as a law-enforcement officer by the
50 Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed
51 as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this
52 code.

53 (d) The director may:

54 (1) Employ necessary personnel, all of whom shall be classified exempt, assign them the
55 duties necessary for the efficient management and operation of the division, and specify members
56 who may carry, without license, weapons designated by the director;

57 (2) Contract for security and other services;

58 (3) Purchase equipment as necessary to maintain security at the Capitol Complex and
59 other state facilities. The provisions of §5A-3-3 of this code do not apply to purchases made
60 pursuant to this subdivision;

61 (4) Establish and provide standard uniforms, arms, weapons, and other enforcement
62 equipment authorized for use by members of the division and shall provide for the periodic
63 inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property
64 furnished to members of the division by the State of West Virginia is and remains the property of
65 the state;

66 (5) Appoint security officers to provide security on premises owned or leased by the State
67 of West Virginia;

68 (6) Consistent with the provisions in §15-2D-5 of this code, provide security for the
69 Speaker of the House of Delegates, the President of the Senate, the Governor, or a justice of the
70 Supreme Court of Appeals;

71 (7) Gather information from a broad base of employees at and visitors to the Capitol
72 Complex to determine their security needs and develop a comprehensive plan to maintain and
73 improve security at the Capitol Complex based upon those needs;

74 (8) Assess safety and security needs and make recommendations for safety and security
75 at any proposed or existing state facility as determined by the Secretary of the Department of
76 Homeland Security, upon request of the secretary of the department to which the facility is or will
77 be assigned: *Provided*, That records of such assessments, and any other records determined by
78 the Secretary of the Department of Homeland Security to compromise the safety and security at
79 any proposed or existing state facility, including primary and secondary schools, are not public
80 records and are not subject to disclosure in response to a Freedom of Information Act request
81 under §29B-1-1 *et seq.* of this code; and

82 (9) Enter into an interagency agreement with the Secretary of the Department of
83 Homeland Security and the Secretary of the Department of Administration, which delineates their
84 respective rights and authorities under any contracts or subcontracts for security personnel. A
85 copy of the interagency agreement shall be delivered to the Governor, the President of the

86 Senate, and the Speaker of the House of Delegates, and a copy shall be filed in the office of the
87 Secretary of State and shall be a public record.

88 (e) The director shall:

89 Propose legislative rules for promulgation in accordance with the provisions of §29A-3-1
90 *et seq.* of this code. The rules shall, at a minimum, establish ranks and the duties of officers within
91 the membership of the division.

92 (2) Consistent with subsection (b) of this section, provide services to all public primary and
93 secondary schools in furtherance of the purposes of the School Safety Unit: *Provided*, That the
94 director may provide services to any private primary and secondary schools in the state upon
95 request.

96 (3) Deliver a monthly status report to the Speaker of the House of Delegates and the
97 President of the Senate.

98 (4) Require any service provider whose employees are regularly employed on the
99 grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical
100 information, to have its employees submit to a fingerprint-based state and federal background
101 inquiry through the state repository, and require a new employee who is employed to provide
102 services on the grounds or in the building of the Capitol Complex to submit to an employment
103 eligibility check through E-verify.

104 (i) After the contract for such services has been approved, but before any such employees
105 are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to
106 sensitive or critical information, the service provider shall submit a list of all persons who will be
107 physically present and working at the Capitol Complex for purposes of verifying compliance with
108 this section.

109 (ii) All current service providers shall, within 90 days of the amendment and reenactment
110 of this section by the 80th Legislature, ensure that all of its employees who are providing services
111 on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or

112 critical information submit to a fingerprint-based state and federal background inquiry through the
113 state repository.

114 (iii) Any contract entered into, amended, or renewed by an agency or entity of state
115 government with a service provider shall contain a provision reserving the right to prohibit specific
116 employees thereof from accessing sensitive or critical information or to be present at the Capitol
117 Complex based upon results addressed from a criminal background check.

118 (iv) For purposes of this section, the term "service provider" means any person or company
119 that provides employees to a state agency or entity of state government to work on the grounds
120 or in the buildings that make up the Capitol Complex or who have access to sensitive or critical
121 information.

122 (v) In accordance with the provisions of Public Law 92-544 the criminal background check
123 information will be released to the Director of the Division of Protective Services.

124 (5) Be required to provide his or her approval prior to the installation of any and all
125 electronic security systems purchased by any state agency which are designed to connect to the
126 division's command center.

127 (f) Effective July 1, 2017, the Director of Security and security officers of the Department
128 of Arts, Culture, and History shall be made part of, and be under the supervision and direction of,
129 the Division of Protective Services. Security for all Capitol Complex properties of the Department
130 of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-52. School security officers.

1 (a) Local school boards, public charter schools, and private or religious schools may
2 employ school security officers, as defined in §15-2D-3 of this code, for the purposes set forth
3 therein.

4 (b) School security officers may carry a firearm in the performance of their duties if:

5 (1) Within 10 years immediately prior to being hired by the local school board or private or
6 religious school he or she:

7 (A) Was a law-enforcement officer as defined in §30-29-1 of this code in the state; or

8 (B) Was employed by a law-enforcement agency of the United States or any state or
9 political subdivision thereof and his or her duties were substantially similar to those of a law-
10 enforcement officer as defined in §30-29-1 of this code;

11 (2) He or she retired or resigned from their position as a law-enforcement officer in good
12 standing;

13 (3) He or she maintains the requirements of and status as an honorably separated or
14 qualified retired law-enforcement officer within the meaning of the Law Enforcement Officers
15 Safety Act of 2004, as amended, pursuant to 18 U.S.C. § 926C;

16 (4) He or she obtains and maintains any certification and training required by the Division
17 of Protective Services School Safety Unit pursuant to subdivision §15-2D-3 of this code;

18 (5) Undergoes a background check at his or her expense as required by the Division of
19 Public Services to verify that the prospective school security officer is not prohibited by state or
20 federal law from possessing, purchasing, or transporting a firearm, has been determined by the
21 Director of the Division of Protective Services to be appropriate and capable of discharging the
22 duties as a school security officer as set forth in a written certification, and has provided the written
23 certification of the Director of the Division of Protective Services to the local school board, public
24 charter school, or private or religious school; and

25 (6) The local school board, public charter school, or private or religious school grants him
26 or her the authority to carry a firearm in the performance of his duties.

27 (c) School security officers may not arrest another person but may notify the appropriate
28 law-enforcement agency and detain another person committing an act which constitutes a breach
29 of the peace in a reasonable manner and for a reasonable period. The detention shall not

30 constitute an arrest nor shall it render the local school board, public charter school, private or
31 religious school, or school security officer liable to the person detained: *Provided*, That the
32 detention may be no longer than the time required for the earliest of either (1) the determination
33 that no offense constituting a breach of the peace has been committed; or (2) the surrender of
34 the person detained to a certified law-enforcement officer. School security officers may not
35 interrogate or question a detained minor without the knowledge and consent of the minor's parent,
36 except in the instance of a perceived immediate danger to the health, safety, and welfare of others
37 within the facility, the questioning is limited to the immediate danger, and the questioning will likely
38 lead to the alleviation or elimination of the immediate danger, and if the person detained is a
39 student and is under the age of 21, their parent or guardian is notified of the detention.

40 (d) The local school board, public charter school, or private or religious school shall be
41 responsible for the costs of providing the necessary equipment for school security officers to
42 adequately perform their duties.

43 (e) For purposes of this section:

44 (1) "Breach of the peace" means:

45 (A) A felony;

46 (B) Any action or potential crime involving physical injury or a threat of physical injury to
47 another person;

48 (C) Any action or potential crime involving destruction of school property or property
49 located on the school premises; or

50 (D) Any act committed where the school security officer has reason to believe that a
51 person is likely to cause serious harm to himself, herself, or to others.

52 (2) "School security officer" has the same meaning as that term is defined in §15-2D-3 of
53 this code.

54 (f) A local school board and public charter school shall, and a private or religious school
55 may, cooperate with the School Safety Unit established in §15-2D-3 of this code to the fullest

56 extent practicable to assist the unit in fulfilling its duties, including, but not limited to, providing
57 data on all safety and security measures for school facilities.

58 (g) Nothing in this section shall be construed as limiting or superseding the provisions of
59 §61-7-11a of this code authorizing a private school to allow possession of a firearm or other deadly
60 weapon in or on the grounds of any private primary or secondary school, if such institution has
61 adopted a written policy allowing for possession of firearms or other deadly weapons in the facility
62 or on the grounds of the facility.

63 (h) A local school board, public charter school, or a private or religious school employing
64 a school security officer shall maintain insurance coverage which:

65 (1) Shall include adequate insurance for liability, property loss, and the personal injury of
66 students and other personnel; and

67 (2) May include coverage from the Board of Risk and Insurance Management pursuant to
68 §29-12-5a of this code, if applicable.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

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

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

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

10 (B) In or on the grounds of any primary or secondary educational facility of any type:

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

15 (C) At a school-sponsored function that is taking place in a specific area that is owned,
16 rented, or leased by the West Virginia Department of Education, the West Virginia Secondary
17 Schools Activities Commission, a county school board, or local public school for the actual period
18 of time the function is occurring;

19 (2) This subsection does not apply to:

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

22 (B) Any probation officer appointed pursuant to §62-12-5 of this code or state juvenile
23 probation officer appointed pursuant to §49-4-719 of this code, in the performance of his or her
24 duties;

25 (C) Any home confinement supervisor employed by a county commission pursuant to §61-
26 11B-7a of this code in the performance of his or her duties;

27 (D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in
28 performance of his or her official duties;

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

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

36 (G) A person who, as otherwise permitted by the provisions of this article, possesses an
37 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
38 weapon in a locked motor vehicle;

39 (H) Programs or raffles conducted with the approval of the county board of education or
40 school which include the display of unloaded firearms;

41 (I) The official mascot of West Virginia University, commonly known as the Mountaineer,
42 acting in his or her official capacity;

43 (J) The official mascot of Parkersburg South High School, commonly known as the Patriot,
44 acting in his or her official capacity; or

45 (K) Any person, 21 years old or older, who has a valid concealed handgun permit. That
46 person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle,
47 or other areas of vehicular ingress or egress to a public school: *Provided*, That:

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

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

54 (L) A school security officer as defined in §15-2D-3 of this code authorized to carry a
55 firearm and who meets the requirements set forth in §15-2D-3 and §18-5-52 of this code.

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

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

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

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

66 (d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a
67 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of
68 §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license
69 or instruction permit issued to the person for a period of time as the court considers appropriate,
70 not to extend beyond the person's 19th birthday. If the person has not been issued a driver's
71 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
72 the person's application for a license or permit for a period of time as the court considers
73 appropriate, not to extend beyond the person's 19th birthday. A suspension ordered by the court
74 pursuant to this subsection is effective upon the date of entry of the order. Where the court orders
75 the suspension of a driver's license or instruction permit pursuant to this subsection, the court
76 shall confiscate any driver's license or instruction permit in the adjudicated person's possession
77 and forward it to the Division of Motor Vehicles.

78 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this
79 code, and if the person does not act to appeal the conviction within the time periods described in
80 §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this
81 state shall be revoked in accordance with the provisions of this section.

82 (2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1)
83 of this code shall forward to the commissioner a transcript of the judgment of conviction. If the
84 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the

85 transcript when the person convicted has not requested an appeal within 20 days of the
86 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
87 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
88 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was
89 entered.

90 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
91 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the
92 commissioner shall make and enter an order revoking the person's license or privilege to operate
93 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
94 in a secondary school, for a period of one year or until the person's 20th birthday, whichever is
95 the greater period. The order shall contain the reasons for the revocation and the revocation
96 period. The order of suspension shall advise the person that because of the receipt of the court's
97 transcript, a presumption exists that the person named in the order of suspension is the same
98 person named in the transcript. The commissioner may grant an administrative hearing which
99 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a
100 preliminary showing that a possibility exists that the person named in the notice of conviction is
101 not the same person whose license is being suspended. The request for hearing shall be made
102 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing
103 is for the person requesting the hearing to present evidence that he or she is not the person
104 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall
105 stay the license suspension pending the commissioner's order resulting from the hearing.

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

108 (f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of
109 age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable
110 cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to

111 immediately report his or her knowledge or belief to the appropriate school or law-enforcement
112 officials.

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

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

118 (2) This subsection does not apply to:

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

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

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

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

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

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