

WEST VIRGINIA STATE POLICE LEGAL SERVICES

2012 Legislative Update

Laws Passed that Affect Law Enforcement

The following information represents both synopsis and full-text of laws passed during the 2012 session of the West Virginia Legislature. This document does not purport to contain all laws affecting law enforcement. This information was taken from enrolled bills obtained from the legislative web site. You should consult the Acts of the Legislature and/or the enrolled bills in order to obtain full-texts of the laws. This information may be available at <http://www.legis.state.wv.us/Code/toc.html> or by calling Legislative Services at 304.347.48000

"

****CLICK ON BLUE TEXT TO CONNECT DIRECTLY TO CODE'S LANGUAGE****
NEW CODE SECTIONS

[W.Va. Code §53-8-1 through W.Va. Code §53-8-17](#)

Senate Bill 191 Effective June 5, 2012 ***Relating to Personal Safety Orders***

****of interest:***

§53-8-2

(a) *General Provisions.* -- All orders, findings, pleadings, recordings, exhibits, transcripts or other documents contained in a court file are confidential and are not available for public inspection: *Provided*, That unless the file is sealed pursuant to section seventeen of this article or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the parties, attorneys of record, guardians ad litem, designees authorized by a party in writing and law enforcement. A magistrate or circuit judge may open and inspect the entire contents of the court file in any case pending before the magistrate's or judge's court. When sensitive information has been disclosed in a hearing, pleading or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only pursuant to section seventeen of this article.

(b) (1) *Proceedings are not open to the public.* -- Hearings conducted pursuant to this article are closed to the general public except that persons whom the court determines have a legitimate interest in the proceedings may attend.

(2) A person accompanying the petitioner may not be excluded from being present if his or her presence is desired by the person seeking a petition unless the person's behavior is disruptive to the proceeding.

(c) *Orders permitting examination or copying of file contents.* -- Upon written motion, for good cause shown, the court may enter an order permitting a person who is not permitted access to a court file under subsection (a) to examine and/or copy documents in a file. Such orders shall set forth specific findings which demonstrate why the interests of justice necessitate the examination, copying, or both, and shall specify the particular documents to be examined and/or copied and the arrangements under which such examination, copying, or both, may take place.

(d) *Obtaining confidential records.* -- Unless both the petitioner and the respondent waive confidentiality in writing, records contained in the court file may not be obtained by subpoena but only by court order and upon full compliance with statutory and case law requirements.

§53-8-11

(a) *Fines or incarceration.* -- An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall:

(1) For a first offense, be fined not more than \$1,000 or confined in jail not more than ninety days, or both; and

(2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail not more than one year, or both.

(b) *Arrest.* -- A law-enforcement officer shall arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of a temporary or final personal safety order in effect at the time of the violation.

§53-8-14

Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized and required to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer may refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all orders without delay: Provided, That service of process shall be attempted within seventy-two hours of law enforcement's receipt of the order. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.

§53-8-17

(e) *Access to a sealed record.* --

(1) This section does not preclude the following persons from accessing a sealed record for a legitimate reason:

(A) A law-enforcement officer;

(B) An attorney who represents or has represented the petitioner or the respondent in a proceeding;

(C) A prosecuting attorney; or

(D) An employee of the Department of Health and Human Resources.

(2) (A) A person not listed in subdivision (1) of this subsection may subpoena or file a motion for access to a record sealed under this section.

(B) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the sealed record under the terms and conditions that the court determines.

(C) In ruling on a motion under this subdivision, the court shall balance the person's need for access to the record with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.

(f) *Compliance with order.* -- Within sixty days after entry of an order under subdivision (3), subsection (d) of this section, each custodian of court records that are subject to the order of sealing shall advise in writing the court and the parties of compliance with the order.

W.Va. Code §17C-14-15

Senate Bill 211 Effective June 8, 2012

Creating traffic offenses for texting or using handheld wireless communication device while driving.

W.Va. Code §61-3-49b

Senate Bill 212 Effective June 14, 201

Creating criminal offense for disrupting communications and public utility services.

W.Va. Code §61-3-22a

Senate Bill 411 Effective June 8, 2012

Making use or possession of electronic cash register automated sales suppression devices unlawful.

W.Va. Code §61-8C-3a

Senate Bill 596 Effective June 8, 2012

Prohibiting child erotica

****of interest:***

(a) Any person age eighteen 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 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 sixteen years, or a person who is sixteen years of age or older but less than eighteen years old and who is mentally defective or mentally incapacitated

W.Va. Code §60A-7-706 (Amended) §61-8C-6, §61-8C-7, §61-8C-8, §61-8C-9, §61-8C-10 and §61-8C-11 (New)

Senate Bill 606 Effective June 6, 2012

Relating to property forfeiture related to child pornography arrests and computer crimes

****of interest:***

§60A-7-706

(b)(1) In the case of the funds belonging to the State Police, the funds shall only be expended at the direction of the Superintendent of the State Police and in accordance with the provisions of article two, chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two, article two, chapter twelve of this code;

§61-8C-6

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in article twelve, section five of the West Virginia Constitution and to the extent that such seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article twelve, section five of the West Virginia Constitution.

§61-8C-7

(a) The following are subject to forfeiture:

(1) All visual depictions which have been manufactured, distributed, dispensed or possessed in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, processing, delivering, importing or exporting any visual depictions or any crimes against children in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(3) All books, records, research products and materials, including hard drives, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(4) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of articles eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter by any person in exchange for a visual depiction, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which are intended to be used, to facilitate any violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter: *Provided*, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(B) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter; and

(C) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter.

(b) Property subject to forfeiture under this article may be seized by the State Police (hereinafter referred to as the "appropriate person" in this article).

(c) Visual depictions which are manufactured, possessed, transferred, sold or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Visual depictions which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the visual depictions.

(d) Notwithstanding any other provisions of this article to the contrary, any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years next preceding the sale been used in violation of this chapter.

§61-8C-9

(a) (1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor.

**W.Va. Code §61-2-14h(New); W.Va. Code §48-22-303 (Amended) ;
W.Va. Code §48-22-803(Repealed)**

***House Bill 4130 Effective June 6, 2012
Creating the felony criminal offense of sale or purchase of a child***

W.Va. Code §61-2-17 (New); W.Va. Code §30-29-3 (Amended); W.Va. Code §61-2-14a (Amended)

***House Bill 4053 Effective June 8, 2012
Relating to abduction, kidnapping and human trafficking***

W.Va. Code §31-2-17

***House Bill 4345 Effective June 5, 2012
Prohibiting the unauthorized sale of railroad scrap metal***

****of interest:***

(e) Before knowingly acquiring railroad scrap metal the purchaser shall attempt to ascertain the lawful ownership thereof, whether by evidence of a bill of sale from the company, or other form of written authorization from the company for sale or disposition of railroad scrap metal to the purchaser.

AMENDED CODE SECTIONS

W.Va. Code §36-8A-2, §36-8A-3, §36-8A-5

***Senate Bill 149 Effective June 8, 2012
Relating to disposition of forfeited or abandoned firearms in state custody***

****of interest:***

§36-8A-2

(a) On or before September 1, of each year, each law- enforcement agency which has unclaimed stolen property in its possession shall file an unclaimed stolen property report with the Treasurer which identifies all unclaimed stolen property in its possession at the time the report is filed.

§36-8A-5.

(e) Except as provided in subsections (c), (d) and (f) of this section, the State Treasurer shall dispose of the firearms that it receives under subsection (a) by sale at public auction to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 *et seq.* and authorized to receive firearms under the terms of their license.

(1) The auctions required by this subsection may occur online on a rolling basis or at live events but in no event may occur less frequently than once every six months.

(3) Employees of the State Police or of the agency from which the firearms are received are not eligible to bid on the firearms at an auction conducted under this section.

(f) The requirements of subsection (d) do not apply to a firearm that the chief executive of the law- enforcement agency or his or her designee certifies is unsafe for use because of wear, damage, age or modification, and any such firearm shall at the discretion of the superintendent be transferred to the State Police forensic laboratory for training or experimental purposes or to a museum or historical society or be destroyed.

W.Va. Code §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10

Senate Bill 161 Effective June 8, 2012
Relating to mandatory reporting of child abuse and neglect

****of interest:***

§49-6A-2

(a) Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made to the Department of Health and Human Resources: *Provided*, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint: *Provided, however*, That any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made.

(b) Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight hours after receiving such a disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that the reporting of the event to the police would expose either the reporter, the subject child, the reporter's children or other children in the subject child's household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children from the perceived threat of additional harm: *Provided*, That the individual makes the report as soon as practicable after the threat of harm has been reduced. The law-enforcement agency that receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

§49-6A-8

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section five of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than thirty days or fined not more than \$1,000, or both.

W.Va. Code §61-5-17

Senate Bill 166 Effective June 6, 2012
Making disarming or attempting to disarm correctional officer felony

****of interest:***

(b) Of this code has been amended to add correctional officers to the list of officers whom it is a felony to intentionally disarm or attempt to disarm. Upon conviction the defendant shall be imprisoned in a state correctional facility not less than one nor more than five years.

W.Va. Code §61-8B-2 and §61-8B-10

Senate Bill 165 Effective May 6, 2012

Creating criminal offense of sexual contact on incarcerated persons by correctional employees

**of interest:*

§61-8B-2

(c) A person is deemed incapable of consent when such person is:

(5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.

§61-8B-10

(c) 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 eleven-b, chapter sixty-two of this code.

(d) Authorized pat-down, strip search or other security related tasks does not constitute sexual contact pursuant to this section

W.Va. Code §17C-13-5

Senate Bill 204 Effective June 6, 2012

Relating to removal of vehicles from highway in emergency situations

**of interest:*

Whenever a vehicle has been stopped, parked or left standing upon any part of a highway or constitutes an obstruction to the restoration of traffic flow as the result of an accident or other emergency, any police officer or employee of the Division of Highways, duly authorized by the commissioner, may remove or order the removal of the vehicle, by towing or otherwise, to the nearest available established garage or parking lot for storage until called for by the owner or his or her agent. The owner is liable for the reasonable cost of removal and storage, and until payment of the cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. The garage or parking lot operator may enforce his or her lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

W.Va. Code §17C-3-4b

Senate Bill 205 Effective May 31, 2012

Relating to construction zone signage

**of interest:*

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in section one, article three, chapter seventeen-c of this code, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

(b) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by less than fifteen miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200.

(c) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by fifteen miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200 or confined in a regional jail not more than twenty days, or both.

(d) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.

W.Va. Code §17C-15-36a

Senate Bill 493 Effective June 8, 2012

Exempting certain unmarked law-enforcement vehicles from sun-screening restrictions

****of interest:***

(a) No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun-screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section: *Provided*, That law-enforcement K-9 and other emergency vehicles that are designed to haul animals, unmarked law-enforcement vehicles primarily used for covert or undercover enforcement and automobiles that have sun-screening devices installed at the factory by the manufacturer are exempt from this requirement. No unmarked law-enforcement vehicle, herein exempted, may engage in routine traffic stops.

W.Va. Code §9-6-8 and W.Va. Code §9-6-9

Senate Bill 498 Effective June 8, 2012

Relating to records of abuse, neglect or exploitation of vulnerable adults

****of interest:***

§9-6-8

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the office of health facility licensure and certification and all protective services agencies concerning an adult or facility resident under this article are confidential and may not be released, except in accordance with the provisions of section eleven of this article.

(b) Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to the adult, the records maintained by the adult protective services agency shall be destroyed thirty years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, all records concerning reports of abuse, neglect or exploitation of vulnerable adults, including all records generated as a result of such reports, may be made available to:

(1) Employees or agents of the department who need access to the records for official business.

(2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect or exploitation of a vulnerable adult.

(3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect or exploitation occurred.

(4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall, before permitting use of the records in connection with any court proceeding, review the records for relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the examination and use of the records or any part of the record.

(5) A grand jury, by subpoena, upon its determination that access to the records is necessary in the conduct of its official business.

(e) The identity of any person reporting abuse, neglect or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for protective services or the appropriate prosecuting attorney or law-enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect or exploitation when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed

§9-6-9

(a) If any medical, dental or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, state or regional ombudsman or any employee of any nursing home or other residential facility has reasonable cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of section eleven of this article: *Provided*, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation, any other person may make such a report.

W.Va. Code §27-4-1, §27-4-3, §27-5-4 and §61-7A-5

Senate Bill 507 Effective June 8, 2012

Relating to voluntary and involuntary hospitalization of mentally ill persons

****of interest:***

§27-4-1

(d) If the candidate for voluntary admission is a minor who is fourteen years of age or older, the admitting health care facility shall determine if the minor consents to or objects to his or her admission to the facility. If the parent or guardian who requested the minor's admission under this section revokes his or her consent at any time, or if the minor fourteen years of age or older objects at any time to his or her further treatment, the minor shall be discharged within ninety-six hours to the custody of the consenting parent or guardian, unless the chief medical officer of the mental health facility files a petition for involuntary hospitalization, pursuant to the provisions of section three of this article, or the minor's continued hospitalization is authorized as an involuntary hospitalization pursuant to the provisions of article five of this chapter: *Provided*, That, if the ninety-six hour time period would result in the minor being discharged and released on a Saturday, a Sunday or a holiday on which the court is closed, the period of time in which the patient shall be released by the facility shall be extended until the next day which is not a Saturday, Sunday or legal holiday on which the court is lawfully closed.

§61-7A-5

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of section seven, article seven of this chapter or by provisions of federal law by virtue solely of having previously been adjudicated to be mentally defective or to having a prior involuntary commitment to a mental institution pursuant to chapter twenty-seven of this code may petition the circuit court of the county of his or her residence to regain the ability to lawfully possess a firearm.

(i) The circuit clerk of each county shall provide the Superintendent of the West Virginia State Police, or his or her designee, and the Administrator of the West Virginia Supreme Court of Appeals, or his or her designee, with a certified copy of any order entered pursuant to the provisions of this section which removes a petitioner's prohibition to possess firearms. If the order restores the petitioner's ability to possess a firearm, petitioner's name shall be promptly removed from the central state mental health registry and the superintendent or administrator shall forthwith inform the Federal Bureau of Investigation, the United States Attorney General, or other federal entity operating the National Instant Criminal Background Check System of the court action.

W.Va. Code §61-3C-3 and §61-8A-1

Senate Bill 385 Effective May 31, 2012

Expanding definition of "computer" in commission of certain crimes

**of interest:*

§61-3C-3

(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.

§61-8A-1

(b) "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. 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.

W.Va. Code §61-3-49

Senate Bill 528 Effective June 8, 2012

Relating to scrap metal dealers and scrap metal

**of interest:*

This amendment establishes the criminal offense of larceny for the illegal possession, sale or purchase of stolen scrap metal and prohibits the purchase of certain items without proof of lawful possession. It provides, however, that a scrap metal dealer is not prohibited from purchasing or taking possession of stolen scrap metal if done pursuant to a written agreement with law enforcement. Requires scrap metal dealers to obtain business licenses, register scales with the Division of Labor, to document transactions involving five or more catalytic converters and to obtain an index fingerprint or thumb print on such documentation.

W.Va. Code §61-7-2, §61-7-4 and §61-7-7

***Senate Bill 353 Effective June 8, 2012
Relating generally to possession of firearms***

****of interest:***

§61-7-2

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

§61-7-4

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of checking the National Instant Criminal Background Check System and the West Virginia criminal history record responses in order to verify that the information required in subsection (a) of this section is true and correct.

(l) Whenever any person after applying for and receiving a concealed handgun 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: *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.

W.Va. Code §15-12-2, §15-12-3, §15-12-5 and §15-12-10

***Senate Bill 382 Effective June 3, 2012
Relating to sex offender registration***

****of interest:***

§15-2-2

(b)(6) Sections six, seven, twelve and thirteen, article eight; or

(b)(7) Section fourteen-b, article three-c, as it relates to violations of those provisions of chapter sixty-one listed in this subsection.

(d) Persons required to register under the provisions of this article shall register in person at the West Virginia State Police detachment responsible for covering the county of his or her residence, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:

(d)(6) Fingerprints and palm prints;

W.Va. Code §15-2-5

House Bill 4281 Effective July 1, 2012

Increasing the supplemental pay of members of the West Virginia State Police

****of interest:***

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: At the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of \$400 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the Armed Forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

W.Va. Code §20-2-5

House Bill 4322 Effective June 8, 2012

Adding coyote and fox to the list of species in which any color artificial light is permitted for hunting at night

****of interest:***

Except as authorized by the director, it is unlawful at any time for any person to:

(1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500 and shall be confined in jail for not less than ten days nor more than one hundred days;

ADDITIONAL LEGISLATION OF INTEREST

W.Va. Code §61-11-25 (Amended)

House Bill 3128 Effective June 4, 2012

Relating to filing a civil petition for expungement of records relating to an arrest

**of interest:*

(g) there shall be no filing fees charged or costs assessed for filing an action pursuant to this section.

W.Va. Code §7-5-2a (New), W.Va. Code §8-10-2a, §8-10-2b, §8-13-15, §50-3-2a (Amended)

Senate Bill 618 Effective June 8, 2012

Relating to municipal and magistrate courts' notification to DMV of violator's failure to pay or appear

****Summary:***

Municipal and Magistrate Courts must wait at least 90 days from the date that costs, fines, forfeitures, or penalties are due in full and 90 days from the date of failure to appear or otherwise respond before notifying the DMV for the failure to pay, appear or otherwise respond.

Statutory priority established for payments made on costs, fines, fees, forfeitures, restitution or penalties. This bill also authorizes the use of credit cards or check cards and permits counties and municipalities to add a fee to each transaction to cover the charge paid by the county or municipality for use of credit or check cards.

W.Va. Code §50-1-6 (Amended)

House Bill 4314 Effective Jun8, 2012

Relating to the appointment of magistrates

****Summary:***

When a vacancy occurs in the office of magistrate the judge who appoints a new person to fill the seat must choose someone of the same political party as the officeholder vacating the office

W.Va. Code §5H-1-1, §5H-1-2 and §5H-1-3 (Amended)

House Bill 4396 Effective March 10, 2012

To include law-enforcement officers in the West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act

W.Va. Code §15-2-4 (Amended)

House Bill 4626 Effective June 7, 2012

Increasing state police principal supervisors to nineteen

BILLS OF WHICH YOU MIGHT HAVE HEARD, BUT THEY WERE VETOED

Senate Bill 408--VETOED

Would have created new code section 61-3-59 which would have made intentional defacement of public and private property by graffiti a crime with first, second and third or subsequent offense. A definition for graffiti was included.

Senate Bill 477--VETOED

Would have created new code sections in Chapter 20 prohibiting the possession of wild and exotic animals by private individuals. Those already in possession of such animals would have been required to obtain a permit.

Senate Bill 547 --VETOED

Would have added specific felonies to the list of crimes eligible for expungement after conviction and would have eliminated the 18-26 year age range of the defendant when the crime was committed.