

# WEST VIRGINIA STATE POLICE LEGAL SERVICES

## 2010 Legislative Update

### Laws Passed that Affect Law Enforcement

*The following information represents both synopsis and full-text of laws passed during the 2010 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.wvu.us/Code/toc.html> or by calling Legislative Services at 304.347.4800.*

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#### NEW CODE SECTIONS

#### **A new article was added to Chapter 16, “Article 5W. WV Official Prescription Program Act.”**

W. Va. Code §16-5W-2. Legislative findings.

Subsection (a) Use of fraudulently obtained prescriptions to illegally obtain prescription drugs is an epidemic. Overdoses, deaths and injuries continue growing at an alarming rate.

W. Va. Code §16-5W-4. Establishment of West Virginia Official Prescription Program.

Subsection (a) The Board of Pharmacy shall establish and maintain an official prescription program in the state.

Subsection (b) The official West Virginia prescription paper shall be authorized by the Board of Pharmacy through a program vendor . . . which paper may be serially numbered and unable to be altered, copied, or counterfeited. Blank prescription paper shall not be transferable. The official prescription paper shall be provided to appropriate practitioners and facilities at a fee established by legislative rule.

Subsection (c) Prescription paper may be issued to specific practitioners marked with a unique number and, if so, shall only be used by that practitioner. The Board of Pharmacy shall establish security requirements concerning the procurement of the official prescription paper.

Subsection (d) A pharmacist **may not fill a written prescription from a West Virginia practitioner unless issued upon an official state issued prescription form.**

W. Va. Code §16-5W-5. Legislative rules.

The Board of Pharmacy shall propose rules for legislative approval . . . to accomplish the requirements of this article.

The legislative rules shall include at a minimum:

(1) That on July 1, 2011, every prescription written in West Virginia by a practitioner shall be written on official West Virginia tamper-resistant prescription paper.

(3) Standard format for prescription paper and the development of identifying markers on the front and back of the prescription paper.

(4) A means of reporting unauthorized use, theft or destruction of authorized state prescription paper.

W. Va. Code §16-5W-6. Exclusions.

Subsections (a) – (d) exclude from this article oral prescription practices; electronic prescription practices; out-of-state prescription practices; or prescriptions generated within a licensed medical facility that are internally dispensed to a patient treated in that facility where the patient is never in possession of the prescription.

**A new article was added to Chapter 17C, “Article 13A. Diesel Powered Motor Vehicle Idling Act.”**

W. Va. Code §17C-13A-2. Restrictions on idling.

No driver or owner of a diesel-powered motor vehicle with a gross vehicle weight of ten thousand one pounds or more engaged in commerce may cause, and no owner or operator of the location where the vehicle loads, unloads or parks, may allow the engine of the vehicle to idle for more than fifteen minutes in any continuous sixty-minute period, except as provided under section three of this article.

W. Va. Code §17C-13A-3. Exceptions.

Subsections (a)-(c) provide numerous exceptions to section 2. For example, section 2 does not apply to motor homes, farm tractors, or public safety vehicles in emergency situations. Subsection (c) provides exceptions for diesel powered vehicles in fact specific situations. Some examples include when a vehicle meeting section 2’s definition is receiving an inspection, or is powered by clean diesel technology.

**A new article was added to Chapter 61, “Article 13. Anti-Organized Criminal Enterprise Act.”**

W. Va. Code §61-13-1. Findings.

Subsection (a) The Legislature hereby finds that there is evidence of an increasing incidence of larger scale organized criminal activity in various parts of this State and that new statutes are necessary to protect the lives and property of the overwhelming majority of West Virginians who are law-abiding citizens. The evidence presented to the Legislature reflects that persons engaged in larger scale ongoing criminal enterprises are of all ages, multiple racial and ethnic origin and all pose a rising threat.

W. Va. Code §61-13-2. Definitions.

This section defines an “organized criminal enterprise” as a combination of five or more persons engaging over a period of not less than six months in one or more of the qualifying offenses set forth in this section.

W. Va. Code §61-13-3. Offenses.

Subsection (a) deems a felony for any person to knowingly and willingly become a member of an organized criminal enterprise and who knowingly promotes, furthers or assists in the

commission of any qualifying offense. This offense is separate from that of any qualifying offenses and may be punished separately.

Subsection (b) provides that any person who knowingly solicits, invites, recruits, encourages or causes another to become a member of an organized criminal enterprise or assists in the commission of a qualifying offense shall be guilty of a felony.

Subsection (c) provides that 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 attendance at trial or to change testimony shall be guilty of a felony.

**Note:** W. Va. Code §§30-29-3 and 10 were amended to include requirements for education and training for law enforcement on organized criminal organization investigation and accompanying anti-racial profiling education.

**Two new sections were added to W. Va. Code §62-1A. Search and Seizure.**

W. Va. Code §62-1A-10 prevents a law enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor or ordinance from searching the vehicle unless he or she obtains written consent of the operator on a form that complies with section 11 of this article or obtains oral consent with an oral recording complying with section 11 of this article. Handwritten consent will suffice should a form or audio recording be unavailable. If the court finds an officer had a reasonable suspicion of dangerousness, a written or recorded consent is not required.

W. Va. Code §62-1A-11 gives the Governor's Committee on Crime, Delinquency and Corrections the responsibility to promulgate rules and requirements for the form used and audio recording used no later than December 31, 2010. Minimum requirements include a statement that the operator understands that he or she may refuse consent, or withdraw consent at any time during the search.

**A new section was added to W. Va. Code §60A-4. Offenses and Penalties under the Uniform Controlled Substances Act.**

W. Va. Code §60A-4-413. Unlawful production, manufacture or possession of Salvia divinorum.

Subsection (b) It is unlawful for any person to knowingly or intentionally manufacture or possess an extract, compound, concentrate, or other processed substance intended for human consumption which contains Salvia divinorum, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a licensed physician or dispensed by a pharmacist for a recommended or medically necessary therapeutic use. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not more than six months, or fined not more than \$1,000, or both.

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## **AMENDED CODE SECTIONS**

### **CRIMES AGAINST THE PERSON**

W. Va. Code §62-12-10b was amended to expand the crimes against governmental representatives to include emergency service personnel which is defined as any paid or volunteer firefighter, emergency medical technician, paramedic, or other EMS personnel employed or under contract with and EMS provider, state agency or political subdivision.

### **TRAFFIC REGULATIONS**

W. Va. Code §§17C-4-1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, and 16 were amended to update terminology in reporting crashes to law enforcement agencies, update law-enforcement reporting requirements; and changing responsibility for receiving reports and preparation of reports to the Division of Highways. The word ‘accident’ is replaced by the word ‘crash’ throughout the amended sections. Any person who fails to make notification of a crash resulting in damage to fixtures or property is guilty of a misdemeanor with a fine of not more than \$150. W. Va. Code §17C-4-5. The driver of a vehicle involved in a crash resulting in property damage of \$1,000 or more must give notice of the by the quickest means of communication. W. Va. Code §17C-4-6. The investigating law enforcement officer must submit the report electronically or in writing within 24 hours after completing investigation to the Division of Highways. W. Va. Code §17C-4-7(b). If the investigating law enforcement officer cannot complete the investigation within 10 days of the crash, a preliminary report shall be submitted to the Division of Highways on the 10<sup>th</sup> day, followed by a final report within 24 hours of completing the investigation. W. Va. code §17C-4-7(c).

### **UNIFORM CONTROLLED SUBSTANCES ACT**

W. Va. Code §60A-4-410. Withholding information from practitioner; additional controlled substances; penalties.

Subsection (a) It is unlawful for a patient, in an attempt to obtain a prescription for a controlled substance, to knowingly withhold from a practitioner, that the patient has obtained a prescription for a controlled substance of the same or similar therapeutic use in a concurrent time period from another practitioner.

Subsection (b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not more than nine months, or fined not more than \$2,500, or both fined and confined. (Both fines and penalties increased.)

Subsection (c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this code.

### **MOTOR VEHICLE SAFETY RESPONSIBILITY LAW**

W. Va. Code §17A-3-3; §17D-2A-1, 2, and 3; §17D-2A-6, 7, and 8; were amended in relation to authorizing the Division of Motor Vehicles to use an electronic insurance verification program to identify uninsured noncommercial motor vehicles. W. Va. Code §§33-6-31f and 17D-2A-6a were added sections for the same purpose.

W. Va. Code §17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to Division of Motor Vehicles.

Subsection (a) At the time of investigation of a motor vehicle offense or crash the State Police or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of the agency making the investigation shall inquire of the operator of any motor vehicle involved and, by an inquiry through the on-line insurance verification program established in accordance with section six-a of this article if available as to the existence upon the vehicle or vehicles of the evidence of insurance or other security required by the provisions of this code and upon a finding by the law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any vehicle, he or she shall notify the Division of Motor Vehicles of the finding within five days: Provided, That the law-enforcement officer or agent may not stop vehicles solely to inquire as to the certificate of insurance.

### **SPEED RESTRICTIONS**

W. Va. Code §17C-6-7 has been amended to require law enforcement to receive training on speed-measuring devices in order for evidence of speed to be considered prima facie. The Governor's Committee on Crime, Delinquency and Correction is to establish a training program and certification standards by January 1, 2012 and law enforcement officers must complete a certified training course in speed detection prior to January 1, 2013.

### **WEST VIRGINIA STATE POLICE**

W. Va. Code §15-2-7 was amended in relation to limiting the age of applicants for appointment to membership in the West Virginia State Police. W. Va. Code §15-2-7(c) provides: "Each applicant for appointment shall be a person not less than twenty-one years of age nor more than thirty-nine years of age, of sound constitution and good moral character; . . . ."

### **CHILD ABUSE**

W. Va. Code §61-8D-5 has been amended to make it unlawful for a parent, guardian, custodian, or other person in position of trust to knowingly procure, authorize, or induce another person to engage in prohibited sexual conduct with a child. (authorize, or induce is new language.)

### **METHAMPHETAMINE LABORATORY ERADICATION ACT**

W. Va. Code §§60A-10-3, 4, 5, and 8 were amended to specify that pharmacy interns may vend pseudoephedrine and other chemical precursors of methamphetamine.

### **SPECIAL STOPS REQUIRED**

W. Va. Code §17C-12-7 was amended to increase penalties for overtaking and passing a school bus stopped for the purpose of receiving and discharging children; and requesting an educational information campaign on school bus safety.

Subsection (b) provides: "Any driver acting in violation . . . of this section is guilty of a misdemeanor and, upon conviction for a first offense, shall be fined not less than \$150 or more than \$500, or confined in jail not more than six months, or both fined and confined. Upon

conviction of a second violation . . . , the driver shall be fined \$500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a third or subsequent violation . . . , the driver shall be fined \$500, and confined not less than twenty-four hours in jail but not more than six months.

Subsection (h) provides: “To the extent that state, federal or other funds are available, the State Police shall conduct an information campaign to educate drivers concerning the provisions of this section and the importance of school bus safety.”

### **DIVISION OF BANKING**

W. Va. Code §31A-2-4 was amended to eliminate the requirement that background investigations for applicants seeking approval to engage in certain banking activities under the jurisdiction of the Commissioner of Banking be done through both the West Virginia State Police and the Federal Bureau of Investigation; applicants are to provide fingerprints for submission to the FBI or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check.

### **PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE**

W. Va. Code §48-27-1002 was amended to allow law-enforcement officers to seize weapons in possession of domestic violence respondents when certain injunctive relief and protective orders have been violated.

Subsection (e) provides: “Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section five hundred nine or subsections (b) and (c), of section six hundred eight, article five of this chapter the arresting officer, subject to the requirements of the Constitutions of this state and of the United States:

- (1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;
- (2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and
- (3) May seize all weapons that are possessed in violation of a valid protective order.”

### **PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE**

W. Va. Code §48-27-803 prohibiting the sharing domestic violence information with other governments and law enforcement agencies is repealed. W. Va. Code §48-27-206 was amended to broaden the definition of “law-enforcement agency” for the purpose of sharing information with the federal government and its agencies.

### **MOTOR VEHICLE ADMINISTRATION, REGISTRATION.**

W. Va. Code §17A-1-1, §17A-6-1, and §17F-1-9 were amended concerning a revision of the definition “all-terrain vehicle”; the inclusion of a definition for utility terrain vehicle and authorizing the same restriction and conditions on the use of utility terrain vehicles as on all-terrain vehicles.

W. Va. Code §17F-1-9. Definition of all-terrain and utility terrain vehicle.

(a) As used in this chapter, "all-terrain vehicle" or "ATV" shall mean any motor vehicle, designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat or saddle designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(b) "Utility terrain vehicle" shall mean any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.

### **CRASHES INVOLVING DEATH OR PERSONAL INJURIES**

W. Va. Code §17C-4-1 was amended to increase the penalty for knowingly failing to stop and render aid after a motor vehicle crash resulting in death to a fine of not more than \$5,000 or imprisonment for not less than one year nor more than five years, or both. If the crash results in physical injury, the penalty is a fine of not more than \$1,000, or imprisonment for not more than one year, or both.

### **CRIMES AGAINST PUBLIC JUSTICE**

W. Va. Code §61-5-17 was amended to add probation and parole officers in addition to law enforcement officers regarding threatening, obstructing or making false statements to an officer. Penalties are increased. A new felony crime of reckless fleeing in a vehicle from law enforcement, parole, and probation officers is established and is to be known as the "Jerry Alan Jones Act" in honor of the Charleston police officer killed in the line of duty.