

WEST VIRGINIA STATE POLICE LEGAL SERVICES

2011 Legislative Update

Laws Passed that Affect Law Enforcement

The following information represents both synopsis and full-text of laws passed during the 2011 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 304.347.4800.

NEW CODE SECTIONS

A new article was added to Chapter 62, “Article 1G. Subpoena Powers for Aid of Criminal Investigations Relating to Certain Offenses Against Minors”

W.Va. Code §62-1G-1 Declaration of necessity

It is declared, as a matter of legislative determination, that it is necessary to grant subpoena powers in aid of criminal investigations of certain crimes against minors involving electronic communications systems or services or remote computing services.

W.Va. Code §62-1G-2 Subpoenas for criminal investigations relating to certain offenses against minors for records concerning an electronic communications system or service or remote computing service; content; fee for providing information; and limiting liability.

Subsection (a) provides definitions of: electronic communication; electronic communications service; electronic communication system; electronic service provider; sexual offense against a minor; and remote computing service.

Subsection (b) provides that when investigating a sexual offense against a minor, an offense of stalking where the victim is a minor, or an offense of child kidnapping if the investigating agency **“has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of”** the crime a Magistrate or a Circuit Judge may issue a subpoena to the electronic communications system or service or remote computing service provider that owns or controls the internet protocol address, websites, electronic mail address or service to a specific telephone number requiring the production of the following information: names, addresses, local and long distance telephone connections; records of session times and durations; length of service, including the start date and types of service utilized; telephone or other instrument subscriber numbers or other subscriber identifiers including any temporarily assigned network address; and means and sources of payment for the service, including any credit card or bank account numbers.

Subsection (c) provides that the subpoena shall state that the recipient of the subpoena produce only those records listed **“that are reasonably necessary to the investigation of the suspected criminal activity or offense as described in the subpoena: Provided that the law-enforcement agency may not examine the contents of electronic communications without a warrant.”**

Subsection (d) provides that the recipient of the subpoena may charge the actual cost for providing the information and that the law-enforcement agency conducting the investigation shall pay the fee.

Subsection (e) provides that the recipient of the subpoena shall not disclose the existence of the subpoena or the response to the subpoena to the account holder identified in the subpoena.

Subsection (f) provides if the recipient of the subpoena does not have the information requested in the subpoena, the provider shall inform the law-enforcement agency of the same, and shall provide any information it has concerning how to locate the correct provider.

Subsection (g) provides that there is no cause of action against a provider defined in this section for providing information, facilities or assistance in accordance with the terms of a subpoena issued pursuant to this section.

Subsection (h) provides that application for a subpoena under this section may be by any means permitted under the rules promulgated by the West Virginia Supreme Court of Appeals.

Subsection (i) provides that the West Virginia Supreme Court of Appeals shall create a form for law-enforcement agencies to utilize in applying for a subpoena under this section.

ARTICLE 6 LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS

W.Va. Code §17A-6-10d

This new code section was created to provide for special plates for vehicles of non-profit organizations that are engaged in research and development using motor vehicles. The portion of this code that is important for law enforcement is subsection (h) which states such vehicles are exempt from the need for inspection stickers.

W.Va. Code §17A-6-10d(h) “Vehicles operated by a nonprofit corporation pursuant to this section are exempt from the annual motor vehicle inspection and the displaying of the certificate of inspection otherwise required by article sixteen, chapter seventeen-c of this code. However, a vehicle that has been issued a special plate pursuant to this section must be safe and may not, in any manner, endanger the driver, other vehicle occupants, other motorists, pedestrians or the general public.”

UNIFORM COMMERCIAL DRIVER’S LICENSE ACT

Portions of this code have been amended relating to issuance, disqualification, suspension and revocation of commercial driver’s license. Of importance is the new section below:

****New Code Section**** W.Va. Code §17E-1-14a Commercial Drivers Prohibited from Texting

- (a) No commercial driver may engage in texting while driving a commercial motor vehicle.
- (b) No motor carrier may allow or require its drivers to engage in texting while driving a commercial motor vehicle.
- (c) For the purpose of this section only, and unless a more restrictive prohibition is prescribed in this code, driving means operating a commercial motor vehicle with the

motor running, including while temporarily stationed because of traffic, a traffic control device or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of or off a highway as defined in 49 CFR 390.5 and halted in a location where the vehicle can safely remain stationary.

ARTICLE 43 CREATED IN CHAPTER 16 PUBLIC HEALTH

W.Va. Code §16-43-1 and §16-43-2 require including a bittering agent in coolant and antifreeze and provides a \$100.00 per day fine for violators.

W.Va. Code §55-7-26

This new section of the code provides immunity from civil and criminal liability for First Responders who use forced entry in response to a 911 call.

W.Va. Code §61-8-15 Prohibition on certain demonstrations at funerals.

This new code section creates the misdemeanor offense of demonstrating at a funeral for which the penalty is confinement to jail for an indeterminate sentence of not more than one year and fined not less than \$200 nor more than \$500. A demonstration may not be held from the time period of 60 minutes before and ending 60 minutes after a funeral, memorial service or ceremony and not within 500 feet of the same. Demonstration is specifically defined under W.Va. Code §61-8-15(b).

W.Va. Code §57-3-10 Reporters' Privilege

This code section prohibits members of the news media from being compelled to disclose confidential sources and information derived from a confidential source in any civil, criminal, administrative or grand jury proceeding unless that testimony is necessary to prevent imminent death, serious bodily injury or unjust incarceration.

AMENDED CODE SECTIONS

WEST VIRGINIA COMPUTER AND ELECTRONIC COMMUNICATIONS DEVICE CRIME AND ABUSE ACT

W.Va. Code §61-3C-14a Obscene, harassing and threatening communications by computer, cell phones and electronic communication devices; penalty

The amendments to this code section ensure that harassment by mobile phone, personal digital assistant or other electronic communication devices is criminalized as well as the traditional computer.

CHILD WELFARE

W.Va. Code §49-1-3 Definitions relating to abuse and neglect

“Imminent danger to the physical well-being of the child” has been expanded to include “The parent, guardian or custodian’s abuse of alcohol, or drugs or other controlled substance...has impaired his or her parenting skills to a degree as to pose an imminent risk to a child’s health or safety.”

SEX OFFENDER REGISTRATION ACT

W.Va. Code §15-12-10 Address and online information verification

This code section was amended to require sex offenders to verify and update their email address as well as other online identities. The amended language specifically states "...must respond to all verification inquiries and informational requests, including but not limited to requests for online information made by the State Police pursuant to this section...As used in this section, the term 'online information' shall mean all information required by subdivision (8), subsection (d), section two, article twelve, chapter fifteen of this code."

LAW ENFORCEMENT TRAINING

Article 29 of Chapter 30, "Law Enforcement Training and Certification" has been significantly revised and amended including replacing the Law Enforcement Training and Certification Subcommittee with the Law Enforcement Professional Standards Subcommittee and adding the West Virginia Troopers Association to subcommittee membership.

The aim of this revision and the addition of W.Va. Code §30-29-11 is to prevent police officers from resigning from one police agency while under investigation for improper actions and then being hired by another jurisdiction. It also creates a method to decertify police officers independent of successful criminal prosecution.

PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE

W.Va. Code §48-27-903 Misdemeanor offenses for violation of protective order; repeat offenses; penalties

The amendment to this code section criminalizes the violation of a restraining order entered upon a conviction for stalking or harassment. The existing penalties of the section for first, second and third offenses are used.

COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES

W.Va. Code §15-10-4

This amendment removes a twelve-month limitation for certain agreements between or among law-enforcement agencies and permits agreements between or among different law-enforcement agencies to remain in effect unless terminated.

COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES

W.Va. Code §15-10-5 Federal Officers' peace-keeping authority

Those law-enforcement officers listed under subsection (b) have been expanded to include: Department of Veterans Affairs Police, Department of Veterans Affairs special investigators, Office of Inspector General special agents, and Federal Air Marshals with the Federal Air Marshal Service.

ADDING SYNTHETIC CANNABINOIDS AND HALLUCINOGENS AND STIMULANTS TO THE SCHEDULE I LIST OF CONTROLLED SUBSTANCES

W.Va. Code §60A-1-101, §60A-2-204, §60A-4-401

Those substances that have a substantially similar chemical structure to a controlled substance or those which have equal or similar pharmacologic activity to the "real thing" are targeted by this amendment to the statute (e.g. "K2", "Spice", "Bath Salts" etc.)

UNLAWFUL RESTRAINT

The misdemeanor crime of unlawful restraint is created and exists as both first and second degree crimes, this section also creates a recidivist penalty, affirmative defenses and an exemption for law enforcement officers performing their official duties.

W.Va. Code §61-2-14g Unlawful restraint in the first degree, unlawful restraint in the second degree; penalties; definition.

- (a) Unlawful restraint in the first degree-Any person who, without proper legal authority, intentionally restrains another by use, attempted use or threatened use of force is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one year, or fined not more than \$500 or both.
- (b) Unlawful restraint in the second degree –Any person who, without proper legal authority, intentionally restrains another by intimidation, is guilty of unlawful restraint in the second degree and, upon conviction, shall be confined in jail for not more than six months, or fined not more than \$100, or both.

Section (c) provides information as to how a conviction under this act can be a second, third or subsequent criminal acts of domestic violence.

Section (d) defines “intimidation” and “restrain” as used in this act.

Section (e) provide affirmative defenses including protecting a person from imminent physical danger and when the person restrained is less than 18 and the actor was a parent, legal guardian, acting under the authority of a parent or legal guardian or a teacher or school personnel acting under W.Va. Code §18A-5-1.

Section (f) provides that this section does not “apply to acts done in performance of duty by any law-enforcement officer.”

The domestic violence criminal acts section was also amended at W.Va. §Code 61-2-28(c) and (d) to include W.Va. Code §61-2-14g.

CAUSING INJURY OR DEATH TO ANIMALS USED BY LAW ENFORCEMENT

W.Va. Code §§ 19-20-24 and 61-3E-6 have been amended to increase the penalty for injury or death to animals used by law enforcement.

W.Va. Code §19-20-24 increases the penalty from \$500 -\$1,000 to “shall be fined not less than \$500 nor more than \$5,000” and further changes the terms of imprisonment to a definite term of not less than one year nor more than three years.

W.Va. Code §61-3E-6 adds that any person convicted under that code section shall make restitution to the agency owning the animal for any veterinary bills and replacement costs of any disabled animal or animal that was killed.

SALE OF LIQUOR ON ELECTION DAY

W.Va. Code §60-3A-18 has been amended to permit the sale of liquor on election day.

PAROLE CONSIDERATIONS FOR INMATES SERVING LIFE SENTENCES

W.Va. Code §62-12-13 has been amended to provide that inmates who are serving life sentences shall be considered for parole every three years instead of annually.

**FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON
OR INCAPACITATED ADULT**

W.Va. Code §61-2-29b now requires full restitution to a victim of the crime of exploitation of an elderly person or incapacitated adult. This code section also permits financial institutions to report directly to the Prosecutor or investigators and requires public officers or employees to make such a report.
