

In the 2015 Legislative Session, 1022 bills were introduced in the House of Delegates and 585 bills were introduced in the Senate. The last day of the legislative session is Saturday, March 14, 2015, unless extended. The following bills relating to criminal law matters have progressed as indicated:

NEW LAW

ENACTED INTO LAW – February 19, 2015

In effect from passage.

HB 2200 SPONSORS: Shott, Lane, McCuskey, Manchin and Fleischauer

The stated purpose of the legislation is to “revise, rearrange, consolidate and recodify the laws of the State of West Virginia relating to child welfare and juvenile disposition.” Essentially, Chapter 49 of the West Virginia Code is entirely rewritten. A detailed review of the bill will require further study by the agency.

ENACTED INTO LAW – February 25, 2015

In effect ninety days from passage – May 21, 2015.

HB 2274 SPONSORS: Hanshaw, Hamilton, A. Evans, and Azinger

The substantive language of the new law is, expressly, “The commissioner [of division of corrections] may enter into agreements to provide for the rendering of mutual aid with the political subdivisions of this state, other states, and the federal government to provide for the common defense, protect the public peace, health and safety and to preserve the lives and property of the people of the state.” The Secretary of the Department of Military Affairs and Public Safety has to approve the agreement and may terminate the agreement at any time.

ENACTED INTO LAW – March 3, 2015

In effect ninety days from passage – May 26, 2015.

HB 2025 SPONSORS: Howell, Shott, Hamrick, Romine, Sobonya, Espinosa, Miller, Weld, Statler, Kurcaba, and Canterbury

The bill approved in the conference committee provides that a person who is serving a period of supervised release of ten years or more due to the conviction on a sexual offense shall be guilty of a misdemeanor if the person loiters within one thousand feet of the property line of a residence or workplace of the victim of the offense for which the person was convicted. A person who is serving a period of supervised release of ten years or more for a sexual offense relating to a minor shall be guilty of a misdemeanor if the person loiters within one thousand feet of an educational facility for minors, entertainment facility for minors, playground, athletic facility, or school bus stop. A charge cannot be made, however, unless the person has refused to leave the location upon request by a law enforcement person, a security officer, an owner, a victim or a guardian or parent of a victim, or a teacher or other school personnel. “Loitering” is defined to mean “enter[ing] or remain[ing] on property while having no legitimate purpose” or by overstaying the time necessary to fulfill a legitimate purpose. The limitation does not apply if the person’s presence is dictated as a condition of supervision or is with the permission of the supervising officer.

AWAITING GOVERNOR'S SIGNATURE

PASSED; SENT TO GOVERNOR – March 2, 2015

In effect ninety days from passage.

HB 2010 SPONSORS: Kessinger, McCuskey, Border, Shott, Rowan, Frich, Westfall, Lane, Anderson, Sobonya, and Faircloth

The bill requires the nonpartisan election of justices of the Supreme Court of Appeals of West Virginia, judges of the circuit court, judges of the family court, and judges of the magistrate court. The general election for these judicial candidates is to be held during the primary election for other offices. The elections for circuit court, magistrate court and family court are to be done by divisions.

PASSED; SENT TO GOVERNOR – March 3, 2015

In effect ninety days from passage.

SB 335 GOVERNOR'S BILL

The legislation's purpose is to enact statutory provisions that will prevent deaths arising out of opiate overdoses. Licensed health care providers are authorized to prescribe opioid antagonists to emergency responders or to patients or their relatives or caregivers when patients are at risk of experiencing an opiate overdose. The licensed health care providers are obligated to provide educational material to any person receiving such a prescription. Liability of a person administering an opiate antagonist is limited to instances of gross negligence or willful misconduct. The person administering such a drug is required to ensure additional medical treatment for the person.

PASSED; SENT TO GOVERNOR – March 4, 2015

In effect ninety days from passage.

HB 2157 SPONSOR: Lane

The legislation creates a felony offense based on, with the intent to commit fraud, obtaining, removing, or disseminating an absent voters' ballot; intimidating an absent voter; or completing an absent voters' ballot. The period of imprisonment upon conviction is an indeterminate sentence of one to five years and/or a fine between \$10,000 and \$20,000.

PASSED; SENT TO GOVERNOR – March 8, 2015

In effect from passage.

SB 374 SPONSORS: Trump, and D. Hall

The general requirement is that, before any inmate is released on parole, the inmate is to appear in person or by videoconference before a Parole Board panel for purposes of being examined and interrogated. This legislation would waive the requirement where a physician certifies that the inmate is by reason of a medical condition or disease too debilitated, either physically or cognitively, to appear before the panel.

PASSED; SENT TO GOVERNOR – March 8, 2015

In effect from passage.

SB 375 SPONSOR: Trump

Forty-five days' notice of a parole hearing is required to be given by the Parole Board to specified persons by certified mail, return receipt requested. This legislation provides that the notice to law enforcement agencies and officers "who were primarily involved with the investigation of the crime for which the offender was sentenced" is to be sent by "regular mail, properly address and postage prepaid" rather than by certified mail.

PASSED; SENT TO GOVERNOR – March 8, 2015

In effect from passage.

SB 507 SPONSORS: Trump and Plymale

This legislation provides that the Executive Director of the Regional Jail and Correctional Facility Authority can, subject to the existing statutory safeguards and procedures that exist for telephone calls, "monitor, intercept, record and disclose" the content of "emails and other forms of communication" to or from inmates housed in regional jails. An express provision is added requiring the Executive Director to "develop a system that allows inmates to confidentially communicate with their attorneys [by electronic communication] thereby safeguarding the sanctity of the attorney-client privilege."

PASSED; SENT TO GOVERNOR – March 9, 2015

In effect from passage.

HB 2933 SPONSORS: E. Nelson, Anderson, Canterbury, Espinosa, Frich, Hamilton, Westfall, Moye, and Williams

The legislation provides for a supplemental appropriation to Public Defender Services' line item for panel attorneys in the amount of 12.7 million dollars.

STILL COMPLETING LEGISLATIVE ACTION

PASSED BOTH HOUSES; CONFERENCE COMMITTEE REPORTS FILED – March 8, 2015

HB 2576 SPONSORS: Howell, Hartman, Kessinger, Cadle, Arvon, Moffatt, McGeehan, Zatezalo, Faircloth, R. Smith, and Ferro

The bill provides for the separation of executive departments into different code sections so as to make future amendments to a particular department more manageable.

PASSED BOTH HOUSES; SENATE REQUESTS HOUSE TO CONCUR IN TITLE AMENDMENT – March 9, 2015

HB 2550 SPONSORS: Cowles, Miller, Householder, Moffatt, McGeehan, Sponaugle, H. White, Campbell, Skinner, Rowe and Perry

The legislation amends the process regarding a student's accumulation of unexcused absences from school during a school year. If the student has three such absences, then a notice is sent to the parents stating that the student's attendance is required and that an additional two unexcused absences will require a conference with the principal. If the student has ten unexcused absences in a school year, then a complaint for truancy may be made against the parents.

PASSED BOTH HOUSES; SENATE REQUESTS HOUSE TO CONCUR IN TITLE AMENDMENT – March 9, 2015

HB 2776 SPONSORS: Stansbury, Campbell, Rodighiero, Householder, Ashley, Fleischauer, Summers, Longstreth, Kurcaba, Ellington and Eldridge

The legislation permits the following occupations to prescribe hydrocodone combination drugs to a patient, but only for a period of time that does not exceed three days in any thirty day period: a licensed physician assistant; an advanced practice registered nurse; and an oral pharmaceutical certified licensee.

PASSED BOTH HOUSES; SENATE REQUESTS HOUSE TO CONCUR TO AMENDMENTS – March 9, 2015

HB 2880 Stansbury, Rohrbach, Householder, R. Phillips, Arvon, Howell, Moffatt, Shott, Ellington, E. Nelson and Campbell

The legislation creates an "Addiction Treatment Pilot Program." The Supreme Court of Appeals and the Division of Corrections are to find research partners to develop a plan for the pilot program. The program is to "provide addiction treatment, including medication –assisted treatment, to persons who are offenders within the criminal justice system, eligible to participate in a program, and selected ... because of their dependence on opioids." The program is to be conducted in any circuit in which an adult drug court program is operating or for a person who would be eligible for work release. The selected person would have to abide by the rules of the drug court program or the work release program. The Senate proposed amended definitions to the House bill to which concurrence has been requested.

PASSED SENATE; ON THIRD READING ON HOUSE CALENDAR – March 10, 2015

SB 89 SPONSORS: Laird and Miller

The legislation strikes the \$70,000 salary of the Executive Director of the Prosecuting Attorneys Institute from the provisions of W. Va. Code §6-7-2a, which establishes the salary for numerous appointed state officers. The legislation then provides within the enabling provisions for the Prosecuting Attorneys Institute that the executive director's salary shall be \$70,000 or greater as established by the executive council for the institute, subject to appropriation by the Legislature from the West Virginia Prosecuting Attorneys Institute Fund to which "special prosecution" premiums paid by the counties are deposited. The executive director's salary is to be considered a cost to be paid by the fund after being established by the executive council.

PASSED SENATE; ON THIRD READING ON HOUSE CALENDAR – March 10, 2015

SB 454 SPONSORS: Prezioso, Beach, D. Hall, Kessler, Leonhardt, Plymale, Walters, Woelfel, Facemire and Stollings

The legislation creates the offense of trademark counterfeiting and provides penalties for any conviction of the offense. The penalty is a felony if the retail value involved exceeds \$1,000. The period of imprisonment is an indeterminate sentence of one to five years and a penalty of up to \$20,000. The legislation also provides for the seizure and forfeiture of equipment related to the counterfeiting.

PASSED HOUSE; ON THIRD READING ON SENATE CALENDAR – March 10, 2015

HB 2586 SPONSORS: Shott, Lane, Miller, Frich, Rowan, Fleischauer, Border, Pasdon and Waxman

This legislation was introduced by request of the Supreme Court of Appeals of West Virginia. The provisions deal with the service on nonresident persons of a protective order arising out of a domestic violence proceeding. Principally, it provides for service upon the nonresident person through the secretary of state's office under the general provisions of W. Va. Code §56-3-33(a).

PASSED HOUSE; ON SECOND READING ON SENATE CALENDAR BUT FIRST REFERRED TO SENATE JUDICIARY – March 6, 2015

HB 2805 SPONSORS: Eldridge, Hamilton, Rodighiero, Canterbury, H. White, Williams, Trecost, Perry, Moye, and Campbell

The legislation provides for the transfer of a juvenile who was convicted under the adult jurisdiction of the court from a secure juvenile facility to a correctional facility when the juvenile turns eighteen years of age. When the birthday arises, the sentencing court may conduct a hearing to determine if a placement other than the transfer to an adult facility should be considered, such as pretrial placements available to adults, but may not order the continued placement

in a juvenile facility.

PASSED HOUSE; ON SECOND READING ON SENATE CALENDAR BUT FIRST REFERRED TO SENATE JUDICIARY – March 6, 2015

HB 2828 SPONSORS: Cowles, Storch, Miller, Border, Shott and Upson

The legislation governs when a person under the age of sixteen years or a person with an intellectual disability who functions under the age of sixteen years can testify as a witness at a trial or pretrial proceeding by closed circuit television. The definition of closed circuit is amended to provide for only one-way viewing so that the child does not have to see the courtroom or the defendant. The procedure is to be permitted if the child would suffer emotional distress if testifying in the presence of the defendant. The distress must be more than nervousness, excitement, or general reluctance to testify. The distress can be established through the examination of a psychologist or licensed clinical social worker. Additional provisions establish protections for the child if testifying in court including having a toy or other comforting item in his or her possession or having a support person in close proximity.

COMMITTEE SUBSTITUTE PASSED SENATE; REFERRED TO HOUSE JUDICIARY – March 3, 2015

SB 395 SPONSORS: Sypolt, Facemire, Gaunch, Prezioso, Stollings, Plymale, Palumbo, and Williams

The bill has two separate purposes, seemingly. The first is to redefine "assault," "battery," "domestic assault," and "domestic battery" in order to conform the state law definition with the federal definition as it relates to the offense of a prohibited person in possession of a firearm. This language had been modified in the 2014 Legislative session to comply with a Fourth Circuit Court of Appeals' decision that, after the Legislature acted, was overruled by the United States Supreme Court of Appeals. This legislation now intends to comply with the United States Supreme Court's opinion. The definition in existing law requires the "use" of "physical force capable of causing physical pain or injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately suffering physical pain or injury." This legislation would modify the language to require "physical contact of an insulting or provoking nature or unlawfully and intentionally causes physical harm to another person." The domestic assault and battery would encompass any "family or household member." The second purpose of the bill is to expand the list of persons prohibited from possessing a firearm to include a "fugitive from justice" and a person who "has renounced his or her citizenship."

PASSED SENATE; PASSED OUT OF HOUSE HEALTH AND HUMAN RESOURCES; REFERRED TO HOUSE JUDICIARY – March 6, 2015

SB 523 GOVERNOR'S BILL

This legislation creates the "Drug Overdose Prevention and Clemency Act." The stated findings are that "West Virginia currently has the highest drug overdose mortality rate in the United States." The conclusion is that "it is in the public interest to encourage citizens to intervene in drug and alcohol overdose situations by seeking potentially life-saving emergency medical assistance for others without fear of being subject to certain criminal penalties." Persons who "in good faith and timely manner" seek emergency medical assistance for a person who has overdosed are not to be held criminally responsible for enumerated crimes relating to, among other offenses, the buying or selling of alcoholic beverages, the possession of controlled substances, or public intoxication. To qualify for this immunity, the person must remain with the person who has overdosed, identify themselves to the responders, and cooperate with the responders. Evidence of seeking such assistance is a mitigating circumstance for any offenses arising out of the circumstances relating to the assistance. A guilty plea to an exempted offense is permitted to avoid conviction on other charges. The immunity is restricted to the use of evidence held due to the circumstances of seeking assistance and is not

extended to evidence gained from an independent source. To this point, the bill is substantially identical to SB 18. However, additional provisions provide for extending the immunity to the person who needed assistance if the person "participates in, complies with, and completes a substance abuse treatment or recovery program approved by the court." Other alternative sentences and "clemency options" are provided including deferred prosecution, pretrial diversion, drug court adjudication, probation, conditional discharge or a weekend jail program. Law enforcement personnel are given immunity from liability for the wrongful arrest of a person who would be entitled to the protection of these provisions.

PASSED HOUSE; REFERRED TO SENATE JUDICIARY – March 5, 2015

HB 2263 SPONSOR: Cowles

The legislation is intended to clarify the responsibilities of the prosecutor in child abuse and neglect proceedings. The language provides, expressly, that the prosecuting attorney maintains an "attorney-client" relationship with the Department of Health and Human Resources ("DHHR"), but also maintains an "independent duty" to "fulfill the requirements and responsibilities imposed ... by law." The legislation then imposes the responsibility on prosecuting attorneys to protect the "public interest" by "protecting abused and neglected children." This duty prevails in any conflict with the DHHR, and the prosecutor can take independent action to file a petition. The prosecuting attorney must withdraw as counsel for the DHHR, and the DHHR can then "designate one of its own counsel" to represent the department's interests. The current statute provides only for mediation between DHHR and the prosecuting attorney to resolve any conflict.

PASSED HOUSE; REFERRED TO SENATE JUDICIARY – March 5, 2015

HB 2366 SPONSORS: Rowan, L. Phillips, Sobonya, P. Smith, Border, Arvon, Storch, and Frich

The legislation provides for a more serious felony offense of soliciting a minor through the use of a computer and actually traveling to meet with the minor with the intent to engage in sexual activity. The period of imprisonment is an indeterminate sentence of five to thirty years. The existing offense of soliciting a minor through the use of a computer is to be a lesser included offense of the new felony offense. The legislation further provides that the crime of distribution of obscene material to a minor is committed when the offender "believes" that the person to whom distribution is made is a minor. The statute currently provides for when the person "knows" distribution is to a minor.

PASSED HOUSE; REFERRED TO SENATE JUDICIARY – March 5, 2015

HB 2429 SPONSORS: P. Smith, Perry, Hamrick, Moye, Eldridge, Lynch, Williams, Ferro, Reynolds, Faircloth and Sobonya

The legislation provides that a person who is required to register as a sex offender cannot volunteer for an organization for a period of ten years after conviction or release from prison if the organization's volunteers have direct contact with minors. The legislation further provides that a person who is required to register and who volunteers for an organization and who is to have direct contact with a minor must inform the organization in writing of the person's conviction and required registration. A list of activities involving minors is set forth. If the organization is notified about a prior conviction on a sexual offense, but permits the person to volunteer, then the organization is required to notify the parents or guardians of the minors who will come into contact with the volunteer. The failure to comply with the provisions of the legislation is a criminal offense.

PASSED HOUSE; REFERRED TO SENATE JUDICIARY – March 5, 2015

HB 2664 SPONSORS: Sobonya, Butler, McCuskey, Stansbury, E. Nelson, Ihle, Householder, Ellington, Westfall, Marcum and Byrd

The legislation, to be known as "Andrea and Willy's Law," increases the periods of incarceration for the offense of driving under the influence of alcohol or drugs in certain instances. If a person who is under the influence causes the death of another person within one year of the incident, the indeterminate sentence is increased from two to ten years to three to fifteen years. This penalty applies without regard to a finding of reckless disregard of the safety of others or that the impairment contributed to the incident, thus eliminating the lesser included misdemeanor offense. The legislation creates a felony offense for causing serious bodily injury while existing law has only a misdemeanor offense for bodily injury. The current misdemeanor offense of driving while impaired requires a blood alcohol concentration between .08 and .15, while this legislation would only require impairment and would require at least twenty-four hours of jail time. If driving while impaired, a person with a blood alcohol concentration greater than .15 will be required to serve at least forty-eight hours of jail time. Permitting, knowingly, another person to use a vehicle when that person is impaired gives rise to a mandatory jail time of two days.

PASSED HOUSE; REFERRED TO SENATE HEALTH AND HUMAN RESOURCES – March 5, 2015

HB 2931 SPONSORS: Ashley and Westfall

The legislation adds drugs to Schedule I of the controlled substances list, including substituted amphetamines, tryptamines, and ethanamines.

PASSED HOUSE; REFERRED TO SENATE JUDICIARY – March 5, 2015

HB 2939 SPONSOR: B. White

The legislation first adds sexual assault offenses to the definitions constituting child abuse and neglect. The legislation then expands the lists of persons who are mandated to report suspected incidents of child abuse and neglect to include school teachers or other school personnel who either personally observe, or receive reports of, sexual abuse of a child on school premises or on school buses or other school related transportation. The teacher or other school personnel is required to immediately report the matter to the state police or other law-enforcement agency with jurisdiction. The failure to report the incident is a misdemeanor offense.

SECOND READING ON HOUSE CALENDAR – March 10, 2015

HB 3016 SPONSORS: Ellington, Householder, Rohrbach, Stansbury, Hill and Westfall

The legislation creates a registry of convictions for operating a clandestine drug laboratory and other offenses relating to methamphetamines. The information is to be inputted by the West Virginia State Police into the Multi-state Real Time Tracking System. Persons on the registry who then purchase precursor material in designated amounts without a prescription are subject to prosecution of a misdemeanor offense. Straw purchases of precursor material also give rise to misdemeanor offenses.

COMMITTEE SUBSTITUTE TABLED ON SECOND READING ON HOUSE CALENDAR – March 3, 2015

HB 2021 SPONSORS: Lane, Faircloth, Kurcaba, Westfall, Moffatt, Ihle, Frich, and R. Phillips

The committee substitute for this proposed bill provides for a "pilot program for drug screening of applicants" for assistance under the federal "Temporary Assistance for Needy Families Program." Subject to federal approval, the Department of Health and Human Resources ("DHHR") is to implement the pilot program in one or more counties. The drug testing of an applicant is only to be done if a "reasonable suspicion" exists "that the adult uses or is under the influence

of a drug.” Reasonable suspicion exists if the applicant has been convicted of a drug offense within the past five years (other than simple possession) or the applicant is a mother who delivers a child that is addicted to certain drugs. A mother may agree to undergo treatment in order to continue to qualify for assistance. Disqualification will not affect any other household member’s application or a dependent’s qualification for benefits. Moreover, the applicant can designate another person to receive the benefits for the benefit of any dependents. The period of disqualification is two years unless the applicant undergoes a treatment program, which would reduce the period of disqualification to six months. Finally, a person convicted of a felony drug offense is to be ineligible for food stamps. On the dates of December 31, 2015, and December 31, 2016, the Secretary of DHHR is to report to the Legislature on the results of the pilot program.