



# Legislative Watch

## THE FINAL WINDUP

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During the 2016 Legislative Session, Public Defender Services monitored two hundred and forty-seven (247) bills that, in some manner, affected the criminal defense lawyer. Of these bills, fifty-nine (59) were passed. Three (3) of the bills were effectively vetoed while one (1) other bill was vetoed, but the veto was quickly and decidedly overridden.

Several pieces of legislation focused on the regulation of animal-related endeavors, including fishing, fighting, trapping, and stocking. Deer and other cervids, bear, furbearing animals including coyotes and beavers, and native brook trout were all featured.

The evils of pure caffeine products and powdered alcohol were addressed. Fireworks and street racing were legalized. And, of course, if you want to vote, be prepared to prove you are who you say you are. And, oh yeah, if you want to receive your governmental assistance, you need to be drug free, but legislators do not if they run for office.

And, of course, a multitude of bills were introduced to increase the sentences for distribution of controlled substances, but not one bill was passed that decreased the sentences for criminal offenses. Oh, wait a minute, one bill did pass that decreased the penalty for the unlawful killing of a bear and reduced the period for the resulting suspension of the hunting license.

Legislation that did not pass included regulation of unmanned aircraft; establishment of CASA programs in every circuit; the custodial responsibility of law enforcement for grand jury records; increasing the rates of compensation for court-appointed counsel; regulation of fantasy games; reformation of the provisions governing court reporters; creating an offense of disturbing the peace; reducing the number of jury strikes by a criminal defendant; increasing the number of jury strikes by the prosecutor; creating a sentencing commission; imposition of the death penalty; drug testing of legislators; legalization of marijuana; permitting prescription of marijuana for medical purposes; non-partisan election of prosecuting attorneys; and elimination of the Office of Judges for the Department of Motor Vehicles.

A compelling facet of this session was the legislation vetoed by the Governor. The Governor vetoed several items relating to the possession of firearms, but the legislation regarding the right to carry a concealed firearm without permit or license was passed by the Legislature by overriding the Governor's veto. However, other pieces of legislation relating to the possession of firearms were effectively killed by a veto after the session ended. The vetoes included the bills that would permit prosecutors and investigators in the Attorney General's office to bear arms.

As a matter of interest, thirty-four (34) of the fifty-nine (59) enactments relating to criminal defense were passed on the final day of the legislative session.

In the sections below, the legislation that became law and that affected criminal law or criminal defense lawyers will be discussed. In the final section, the bills effectively vetoed by the Governor will be discussed.

Contributions to these summaries were made by the agency's general counsel and the members of the agency's appellate advocacy division. The names of the contributors are noted together with the contributed summaries.

## **CRIMINAL OFFENSES - GENERAL**

### **SENATE BILL 283**

Sponsor: Ferns  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Creating crime when fire is caused by operation of a clandestine drug laboratory.  
Code Affected: Amending W. Va. Code §60A-4-411.

As originally introduced, a fire to a building or dwelling caused by the operation of a clandestine drug laboratory (is there any other kind of drug laboratory?) would support a charge of arson in the first degree.

As passed, however, the legislation amended the provisions generally governing the "operating or attempting to operate clandestine drug laboratories."

First, if the operation of a clandestine drug laboratory results in the burning of a "dwelling, outbuilding or structure of any class or character," a felony offense separate and distinct from the offense of operation of the clandestine drug laboratory is created. The resulting punishment is either, or both, a fine of \$1,000 to \$5000 and imprisonment for an indeterminate sentence of one to five years. The express statement is made that this offense is NOT a lesser included offense of the operation of a clandestine drug laboratory.

Second, all the offenses under this section of the code are expressly made "qualifying felony offenses of manufacturing and delivery of a controlled substance," which presumably affects the enhancement of sentences for future drug-related offenses.

### **SENATE BILL 323**

Sponsors: Trump, Kessler, Woelfel, Palumbo, Romano and Williams  
Effective Date: Passed March 8, 2016, and in effect 90 days from passage.  
Clerk's Summary: Correcting statute subsection designations regarding trespassing on property.  
Code Affected: Amending W. Va. Code §61-3B-3.

The legislation corrected the subsection designations for the provision criminalizing trespass on property "other than a structure or conveyance." Presently, the subsections of Section 3 of Article 3B of Chapter 61 of the West Virginia Code, W. Va. Code §61-3B-3, are

designated as (a), (b), (c), (d), (e), (c), and (d). The legislation, as enacted, will designate the subsections, in the same order, as (a), (b), (c), (d), (e), (f), and (g).

**SENATE BILL 333**

Sponsors: Karnes and Leonhardt  
Effective Date: Passed March 10, 2016, and in effect 90 days from passage.  
Clerk's Summary: Taking and registering of wildlife.  
Code Affected: Amending W. Va. Code §§20-2-4, 21 & 22.

The legislation accomplished two principal objectives.

First, the statute made clear that "it is unlawful to take, obtain, purchase, possess or maintain in captivity, any live wildlife, wild animals, wild birds, game, or fur-bearing animals" except as otherwise provided by law.

Second, the statute requires the electronic registration with the Division of Natural Resources of any wildlife that is taken rather than permitting the presentment of such wildlife for tagging at an official checking station. The electronic registration also resulted in the striking of language requiring presentment of certain wildlife to an official checking station before transportation of the carcass into another county.

**SENATE BILL 334**

Sponsor: Karnes  
Effective Date: Passed March 9, 2016, and in effect 90 days from passage.  
Clerk's Summary: Identifying coyote as fur-bearing animal and woodchuck as game animal.  
Code Affected: Amending W. Va. Code §20-1-2.

For purposes of applying the provisions of the State Code relating to Natural Resources, W. Va. Code §§20-1-1, *et seq.*, "game animals" is to include the "woodchuck or groundhog" and "fur-bearing animals" is to include the "coyote." Finally, "wild animals" is defined to include "coyote and porcupines and all species of cervids." "Cervids" are deer and members of the deer family. (Editor's note: The inclusion of porcupines was a "prickly" issue and people "bucked" at including cervids.)

**HOUSE BILL 4362**

Sponsors: Kurcaba, Fleischauer, Statler, Householder, Espinosa, Overington, Weld, Summers, Blair, Byrd and Upson  
Effective Date: Passed March 5, 2016, and in effect 90 days from passage.  
Clerk's Summary: Establishing a felony offense of strangulation.  
Code Affected: Adding W. Va. Code §61-2-9d.

Interestingly, the Governor had vetoed similar legislation passed in the 2015 session, stating that existing criminal law provisions would address an assault involving the strangulation of a person. However, the Governor approved the legislation upon its passage in the 2016 session, perhaps acknowledging the support of the proposition by the Joint Interim Committee on the Judiciary and heeding the claims by law enforcement, prosecutors, advocates, and others that strangulation was not adequately addressed by existing statutes on assault and domestic violence.

The relatively terse language of the new statutory provision is that “any person who strangles another without that person’s consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a felony.” “Strangulation” is defined as “knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat.” “Bodily injury” is defined as “substantial physical pain, illness or any impairment of physical condition.” The punishment upon conviction of the felony offense is either, or both, a fine up to \$2,500 and imprisonment for an indeterminate sentence of one to five years.

**HOUSE BILL 4174**

Sponsors: Kurcaba, Statler, Weld, Fast, Kelly, Azinger, Waxman, Blair, Upson, Frich and Phillips  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Exempting activity at indoor shooting ranges from five hundred feet of any church or dwelling house.  
Code Affected: Amending W. Va. Code §20-2-58 and W. Va. Code §61-6-23.

*Following summary provided by Scott E. Johnson*

The legislation addresses firearms discharge provisions relating to indoor firing ranges.

W. Va. Code §20-2-28(a)(4) is amended in a manner that is curious. Presently, state law now prohibits the discharge in a “park or other place where persons gather for purposes of pleasure.” The legislation amends this to a “state, county or municipal park in areas of which the discharge of firearms is prohibited.” Seemingly, the statute removes the ban on discharging firearms in parks or public gathering places *per se*, but limits it to just parks and areas within the park that would be covered by other sections of the statute, such as public roads, proximity to a church or school, or proximity to a dwelling house. Or, perhaps, the “prohibition” is intended to be that which is prescribed by either state, county or municipal law, ordinances, or regulations as applicable to the type of park.

Notwithstanding, the prohibition against the discharge of firearms, generally, is not to apply to “indoor shooting ranges” for which the “owner or operator ... holds all necessary and required licenses” and that are “in compliance with all applicable state, county, municipal laws, rules or ordinances regulating the design and operation of such facilities.”

The legislation also amends W. Va. Code §61-6-23(b) relating to shooting ranges and limitations on nuisance actions. W. Va. Code §61-2-23(b) generally prohibits a property owner from maintaining a nuisance against a firing range if the range was active as of the date the person acquired his or her property. If the range is not used for one year and then recommences shooting activity, the property owner may maintain a nuisance action within two years after shooting recommences.

W. Va. Code §61-2-23(c) provides for a two year statute of limitations against a firing range that is established after the property owner acquires his or her property.

Finally, a new subsection (d) provides that NO nuisance action may be maintained against an "indoor" shooting range which holds all the necessary and required licenses and complies with all applicable state, county and municipal laws, rules or ordinances regulating the use of such facilities.

**HOUSE BILL 2122**

Sponsors: Ambler, Cooper, Householder, Walters, R. Smith, Canterbury and Gearheart  
Effective Date: Passed March 7, 2016, and in effect 90 days from passage.  
Clerk's Summary: Making it illegal for responders to photograph a corpse; Jonathan's law.  
Code Affected: Adding W. Va. Code §61-8-30.

*Following summary provided by Lori M. Waller*

This legislation, to be known as Jonathan's law, prohibits a first responder, defined as law enforcement officers, firefighters, and emergency medical services personnel, from photographing, filming, videotaping, or otherwise reproducing in any manner the image of a human corpse or the image of an injured person receiving medical care or assistance except as needed for purposes related to law-enforcement, public safety, health care, insurance, legal investigation, or legal proceedings or as ordered by a court.

A first responder also is prohibited from knowingly disclosing such images without obtaining permission from the injured person or that person's next-of-kin or, if the person is deceased, from the personal representative of the deceased, except as needed for the previously stated purposes or as ordered by a court. "Disclosure" is defined to mean "sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, offer or otherwise make available or make known to any third party."

An initial offense is a misdemeanor punishable by imposition of only a fine in an amount between \$50 and \$500. A second offense will result in an increased fine and potential confinement in jail for twenty-four hours. Subsequent offenses can result in fines between \$1,000 and \$5,000 and confinement in jail for a period of time up to six months.

This legislation is known as "Jonathan's Law" in recognize of Jonathan Thomas. Mr. Thomas was a Beckley resident, who after being stung by a bee and suffering ill effects, drove his UPS truck into a tree. The injuries were so severe that the funeral was held with a closed casket. Nonetheless, an emergency medical technician had photographed the corpse with his cell phone while the body was in transit and had disseminated the photographs to co-workers. Charges were initially filed against the first responder, but were subsequently dropped.

**HOUSE BILL 2205**

Sponsors: Howell, Stansbury, Ambler, Cooper, Miller, Faircloth, Zatezalo, Blair, Statler and Wagner  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Creating the crime of prohibited sexual contact by a psychotherapist.  
Code Affected: Adding W. Va. Code §61-8-31.

*Following summary provided by Lori M. Waller*

The legislation prohibits sexual contact and sexual intercourse between (i) a psychotherapist, or a person who fraudulently represents himself or herself to be a psychotherapist, and (ii) a client or patient, for which the violation is a felony offense that is punished by either, or both, a fine up to \$10,000 or imprisonment for an indeterminate sentence of one to five years. A "psychotherapist" can be a psychiatrist, a psychologist, a licensed clinical social worker, or a mental health counselor. A "client" or "patient" is covered under this section only if the client has been treated for more than an initial visit or one session. The definition is not clear whether an "initial visit" and "one session" are the same occurrence or different occurrences.

While professional ethics would prohibit such sexual contact and sexual intercourse, the conduct becomes a criminal offense when it involves "therapeutic deception," which is defined as "representation by the psychotherapist to the patient or the client that sexual contact or sexual intercourse with the psychotherapist is consistent with or part of the treatment of the patient or client." Notably, the definition of such deception does not refer to a person who fraudulently represents himself or herself to be a psychotherapist, as the definition of a "psychotherapist" requires the proper licensure. Accordingly, a paradox might be created with the requirement of "therapeutic deception" for the criminal offense when committed by a person who is only pretending to be a psychotherapist.

Consent of the patient or client, regardless of the age of the patient or client, is specifically excluded as a defense to this offense.

**HOUSE BILL 2366**

Sponsors: Rowan, Miller, Sobonya, P. Smith, Border, Avron and Storch  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Relating generally to the solicitation of minors.  
Code Affected: Amending W. Va. Code §61-3C-14b and W. Va. Code §61-8A-4.

*Following summary provided by Lori M. Waller*

In subsection (a) of W. Va. Code §61-3C-14b, the elements of the crime of soliciting a minor by using a computer was amended by replacing the word "to commit" with the words "in order to engage in" with respect to the enumerated illegal acts. The effect of the change is seemingly to acknowledge that the solicitation may involve an undercover law enforcement person posing as a minor. Technically, the illegal acts could not be "committed" with such a person. Accordingly, the change of the verbiage means it is the intent of the offender which controls, not the possible consequence of the offender's actions. The punishment for this offense remains a term of imprisonment of two to ten years.

A subsection (b) was added to this statute, making it a crime for anyone over the age of eighteen to commit the acts listed in subsection (a) and then engage in an overt act to go into the physical presence of the known or believed minor with the intent to engage in any sexual activity or conduct with the minor prohibited by law. The resulting punishment for this offense is a term of imprisonment of five to thirty years. Subsection (a) was expressly made a lesser included offense of the offense set forth in

subsection (b).

The legislation further amended the offense involving the use of obscene matter with intent to seduce a minor. First, the offense applies to not only a person who “knows” that the victim is a minor, but also to a person who “believes” a person is a minor. This amendment is consistent with the revision of such laws to criminalize behavior when it involves an adult law enforcement person posing as a minor. Second, the offense now limits the targeted “minor” to a “minor at least four years younger than the adult” committing the offense.

**HOUSE BILL 4724**

Sponsors: Folk, Overington, Zatezalo, Manchin, Moore, Sobonya, Kessinger, Foster, Summers, Azinger, and McGeehan

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk’s Summary: Relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation.

Code Affected: Amending W. Va. Code §61-5-27.

*Following summary provided by Jason D. Parmer*

The legislation adds two additional elements to the crime of threatening intimidation, harassment and retaliation against public employees, jurors or witnesses. These two elements require the State to prove that the threat is “directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so.”

The rationale for the legislation was to comply with the holding of the Supreme Court of the United States in *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969), that a state statute violates the First and Fourteenth Amendments when it “purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action.” The Supreme Court of the United States further noted that the exception should only be “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

**HOUSE BILL 4738**

Sponsors: Hanshaw, McCuskey, Foster, Weld, Fast, Overington, Folk, Shaffer, Moore, Byrd and Manchin

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk’s Summary: Relating to the offense of driving in an impaired state.

Code Affected: Amending W. Va. Code §17C-5-2.

*Following summary provided by Jason D. Parmer*

The definition of “impaired state” is amended to include being “under the influence of any other ... inhalant substance.” Interestingly “inhalant substance” is combined with the reference to “any other drug,” but it is not added to the definition of being “under the combined influence of alcohol and any controlled substance or any other drug.” Accordingly, a defense might arise out of a combined influence charge when one of the substances is an inhalant because it should not be considered as included in the catchall

reference, "any other drug," due to the amendment to the preceding language.

Also, a clarification in language is made to the existing misdemeanor offense that applies to a person "who drives a vehicle in this state while he or she is in impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight." The new language applies the misdemeanor offense to a person "who drives a vehicle in this state: (i) while he or she is in an impaired state or (ii) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight." This language could provide a number of defenses relating to the nature of the substance causing the impairment or the level of alcohol concentration.

**SENATE BILL 43**

Sponsors: Williams, Beach, Blair, Leonhardt, and Miller  
Effective Date: Passed March 10, 2016, and in effect 90 days from passage.  
Clerk's Summary: Clarifying means of posting to prohibit hunting or trespassing.  
Code Affected: Amending W. Va. Code §20-2-8 and W. Va. Code §61-3B-1.

*Following summary provided by Crystal L. Walden*

This legislation amends the statutes relating to posting land to prohibit hunting or other trespass. The landowner/ holder's name is no longer required to appear on the posted signs.

In addition to the traditional means of posting signs five hundred feet apart, a new way for land owners to post land is created. A landowner may now post land by clearly visible purple painted markings, "consisting of one vertical line no less than eight inches in length and two inches in width and the bottom of the mark not less than three nor more than six feet from the ground or normal water surface." The marks are to be affixed to "immovable, permanent objects that are no more than one hundred feet apart and readily visible to any person approaching the property." Signs are still required to be posted at all roads, driveways, or gates of entry "so as to be noticeable from outside the boundary line."

Research reveals that "purple" has been adopted in many states as the indication of trespass, including the states of Arkansas, Texas, Missouri, and Illinois. Apparently, purple was the quasi-scientific choice by a former Arkansas state forester in 1989, which was made from a list of black, pink, green and purple which were colors that had no other significance in forestry. One pundit dubbed the effect as the "long arm of lavender."

**HOUSE BILL 4201**

Sponsors: Overington, Hanshaw, Blair, Shott, Statler, Sobonya, Summers, Weld, Kessinger, B. White and Fleischauer  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Increasing the criminal penalties for participating in an animal fighting venture.  
Code Affected: Amending W. Va. Code §§61-8-19a & 19b; and W. Va. Code §61-8-19c.

The legislation rewrites the statutory provision prohibiting an “animal fighting venture.” “Animal fighting venture” is now defined. Specifically, “‘animal fighting venture’ means any event that involves a fight conducted between at least two animals for purposes of sport, wagering, or entertainment.” An exception is made, however, for “any lawful activity the primary purpose of which involves the use of one or more animals in racing or in hunting another animal.” A further exception is made for “the lawful use of livestock .... or exotic species of animals bred or possessed for exhibition purposes when such exhibition purposes do not include animal fighting or training therefore.” (Editor’s note: So, where does bullfighting stand?)

Under the existing statute, it is tersely stated that “it is unlawful for any person to engage in, be employed at, or sell an admission to any animal fighting venture.” This legislation expansively provides that it is unlawful to “conduct, finance, manage, supervise, direct, engage in, be employed at, or sell an admission to any animal fighting venture or to knowingly allow property under his care, custody or control to be so used.” Under the expansive language, the property owner on which an animal fighting venture is conducted could be criminally culpable.

The legislation further makes it unlawful to “possess an animal with the intent to engage the animal in an animal fighting venture.”

The penalties have been modified. For violations of the foregoing prohibitions, the offense remains, generally, a misdemeanor, punishable by confinement in jail for up to one year and by a fine that is increased from (i) \$100 to \$1,000 to (ii) \$300 to \$2,000. For violations involving “a wild animal, game animal, or fur bearing animal ... or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine or equine species whether wild or domesticated,” the offense remains a felony, but the term of imprisonment is increased from (i) one to five years to (ii) two to five years and the fine is increased from (i) \$1,000 to \$5,000 to (ii) \$2,500 to \$5,000.

The legislation also addresses the crime of attendance at an animal fighting venture. It will now be unlawful to not only attend such a venture, but “to knowingly cause an individual who has not attained the age of eighteen to attend.” The legislation also provides for enhancement of the penalties for second and additional convictions of the offense. The first conviction will remain a misdemeanor offense, although the fine has been increased from (i) \$100 to \$1,000 to (ii) \$300 to \$2,000. The enhancement of subsequent convictions elevates the offense to a felony punishable by either, or both, a fine between \$2,500 and \$5,000 and imprisonment for an indeterminate term of one to five years.

Finally, the legislation creates a new offense of “wagering at animal fighting ventures.” The offense also makes it unlawful to “conduct, finance, manage, supervise, direct, lease or own all or part of a business or premises involving betting or wagering on an animal fighting venture with the knowledge that the betting or wagering is occurring.” The first conviction is a misdemeanor punishable by either, or both, confinement in jail for up to one year and a fine between \$300 and \$2,000. The second and subsequent convictions are felonies punishable by either, or both, imprisonment for an indeterminate sentence of one to five years and a fine between \$1,000 and \$5,000. The prospect exists that a person attending an animal fighting venture could be charged with two offenses, i.e., attending the fight and then wagering on the outcome.

**HOUSE BILL 4309**

Sponsors: Rowan, Border, Fast, Stansbury, Moye, Campbell, Overington, Romine, Duke, Pethtel, and Ferro

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person.

Code Affected: Adding W. Va. Code §§55-7J-1, *et seq.*, and amending W. Va. Code 61-2-29b.

As introduced, this legislation simply increased the punishment for the commission of the offense of exploitation of an elderly person, protected person or incapacitated adult when the amount involved exceeded \$1,000.

As passed, however, this legislation also created a statutory civil action for the financial exploitation of an elderly person, protected person, or incapacitated adult. Provision is made for punitive damages and the recovery of attorneys' fees.

Under existing law, the exploitation of such persons constituted the crime of larceny and was subject to the punishment for such an offense.

The legislation makes the exploitation a discrete offense. If the amount involved is less than \$1,000, the offense is a misdemeanor, subject to either, or both, a fine in an amount not to exceed \$1,000 and confinement in jail for not more than one year. If the amount involved is \$1,000 or more, than the offense is a felony and the punishment is either, or both, a fine in an amount not to exceed \$10,000 and imprisonment for an indeterminate sentence of two to twenty years.

The remaining provisions of the current statute remain unchanged.

**HOUSE BILL 4314**

Sponsors: Rohrbach, Stansbury, Bates, Ellington, Householder, Miller, Perdue, Waxman, and B. White

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Prohibiting the sale of powdered or crystalline alcohol.

Code Affected: Amending W. Va. Code §60-1-5, W. Va. Code §60-3-11, and W. Va. Code §§60-6-7 and 8; and adding W. Va. Code §61-10-33.

In the provisions of the state code concerning the state's control of alcoholic liquors, a definition of "powdered alcohol" is added. The definition is: "alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food." Any "material intended for industrial purposes" is excluded.

The legislation than provides that "the commissioner [of West Virginia Alcohol Beverage Control] shall not list or stock powdered alcohol in inventory."

Research indicates that "public health concerns" arise with powdered alcohol because of: (i) the ability to make alcohol at greater concentrations than intended; (ii) increased ability to conceal and transport product to places where alcohol is banned; (iii) potential to snort or incorporate into

food; and (iv) potential misuse unintentionally by persons reconstituting the product who are unfamiliar with the product's potency.

The legislation makes it a criminal offense to "manufacture or sell, aid or abet in the manufacture or sale, possess, use or in any other manner provide or furnish powdered alcohol." Likewise, it will be a criminal offense for a licensed person to "sell, possess, possess for sale, furnish or provide any powdered alcohol."

Finally, the legislation adds an entirely new section which makes it a crime to "knowingly possess, sell or offer for sale a pure caffeine product." A "pure caffeine product" is a "product that is comprised of ninety percent or more caffeine and is manufactured into a crystalline, liquid, or powdered form."

Research reveals that the FDA has warned about the use of such products, which have been linked to deaths of young people. The FDA warns that the product is a powerful stimulant that may be attractive to youth. A single teaspoon of such a product can be the equivalent of 28 cups of coffee.

The legislation makes an exemption for coffee, tea, soft drink, energy drink, energy product, or any other "caffeine-containing beverage" which is "formulated, manufactured, and labeled in accordance with the laws and regulations enforced by the United States Food and Drug Administration."

Also, the prohibition does not extend to "possessing, selling or offering for sale any product manufactured in a unit-dose form such as a pill, tablet, or caplet, but only if each unit dose of the product contains not more than two hundred fifty milligrams of caffeine."

The following entities are exempted from the prohibition: (i) a food processing establishment; (ii) a manufacturer of a drug available without prescription; (iii) a laboratory licensed by the Board of Pharmacy; (iv) a laboratory of a state entity; and (v) a postal or delivery service that transports or delivers the product to one of the foregoing entities.

The violation of the section is a misdemeanor punishable only by a fine up to \$100.

#### **HOUSE BILL 4330**

Sponsors: Cadle, Ihle, Butler, Weld, Ireland, Zatezalo, Azinger, Kelly, Anderson, Sobonya and Deem  
Effective Date: Passed March 7, 2016, and in effect from passage.  
Clerk's Summary: Relating to make unlawful to take a fish, water animal  
Code Affected: Amending W. Va. Code §20-2-64. or other aquatic organism from state waters to stock a commercial pond or lake.

Under existing law, you cannot give, and under this new legislation, you will not be able to take.

Presently, you cannot "release any fish, water animal or other aquatic organism, alive or dead, or any part, nest or egg thereof into the waters of this state except as authorized by a stocking permit..." This legislation provides that is also unlawful "to take, give or receive, or agree

to take, give or receive, any fish, water animal or other aquatic organism taken from the waters of this state for purposes of stocking any commercial fishing preserve, or other privately owned ponds, for commercial purposes.”

The standard punishment for natural resource violations would apply as no specific punishment is set forth.

#### **HOUSE BILL 4575**

Sponsors: McCuskey, Foster, Hanshaw, Sobonya, and Frich  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Creating criminal offenses relating to money laundering.  
Code Affected: Adding W. Va. Code §§61-14-1, *et seq.*

The statute creates the criminal offense of money laundering. The first section provides definitions of various terms used in the new article of the code. “Cryptocurrency” is the most notable term, encompassing “digital currency in which encryption techniques are used to regulate the generation of units or currency and verify the transfer of funds and which operates independently of a central bank.” Cryptocurrency is a form of “monetary instrument” together with more traditional forms of money or monetary equivalency. Departing from the introduced bill which encompassed any “offense,” the enacted legislation creates a “laundry list” (pun intended) of criminal activities that will form the predicate for the new criminal offenses of money laundering.

Section 2 of the new article creates the offense of “laundering through financial transactions.” Specifically, “it is unlawful for any person to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity knowing that the property involved in the financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity ... with the intent to promote the carrying on of the criminal activity; or ... knowing that the transaction is designed in whole or part (i) to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the criminal activity; or (ii) to avoid any transaction reporting requirement imposed by law.” The penalty for a conviction is either, or both, a fine between \$5,000 and \$25,000 and imprisonment for an indeterminate term of one to five years.

Section 3 of the new article makes it “unlawful for any person to transport, transmit, or transfer, attempt to transport, transmit or transfer monetary instruments or property involving the proceeds of criminal activity, knowing that the monetary instrument or property are the proceeds of some form of criminal activity” with the same intent as set forth in Section 2. The punishment is the same as set forth in Section 2.

Section 4 of the new article provides for the forfeiture of any property or monetary instruments involved in the commission of the foregoing offenses.

Section 5 provides that “each transaction, transfer, transportation or transmission” in violation of the provisions of the article constitutes a separate offense. Moreover, the section provides for venue wherever any element of the offense occurred.

**HOUSE BILL 4673**

Sponsors: Anderson, Kelly, Border, A. Evans, Phillips, Wagner, Trecost, R. Smith, Shaffer, Ireland and Miller

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Providing for a crime for the theft, damage or release of deer from private game farms.

Code Affected: Amending W. Va. Code §19-2H-11.

This legislation might be known as the "deer rustling" bill.

The introduced bill proposed a new section dealing with the removal of deer from private game farms. As passed, however, the legislation amends an existing statute governing "captive cervids from a captive cervid farming facility." A "cervid" is defined in an online dictionary as "any member of the deer family, comprising deer, caribou, elk and moose, characterized by the bearing of antlers in the male or in both sexes."

Specifically, the following provision is added to the existing statutory language: "A person may not kill, injure, or take any captive cervid that is the property of another." The following punishment is proscribed: "A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than \$500 and pay restitution...."

**CONTROLLED SUBSTANCES/DRUGS****SENATE BILL 627**

Sponsors: Takubo, Maynard, Mullins, Stollings, Trump, and Plymale

Effective Date: Passed March 10, 2016, and in effect 90 days from passage.

Clerk's Summary: Permitting physician to decline prescribing controlled substance.

Code Affected: Amending W. Va. Code §30-3A-2 and W. Va. Code §55-7-23.

The existing Article 3A of the West Virginia Code is entitled the "Management of Pain Act." Section 2 of the Article is entitled "limitation on disciplinary sanctions or criminal punishment related to management of pain."

This legislation, as enacted, adds to Section 2 a limitation on disciplinary sanctions by a licensing board against a health care provider with prescriptive authority, or criminal punishment by the state of a health care provider with prescriptive authority, who has declined to prescribe, or has discontinued the prescribing, of any controlled substance to his or her patient if the health care provider is exercising "reasonable prudent judgment" and believes the patient is "misusing the controlled substance in an abusive manner" or is "unlawfully diverting a controlled substance legally prescribed" for the patient's use.

Consistently, the legislation further amends Section 23 of Article 7 of Chapter 55 of the West Virginia Code, W. Va. Code §55-7-23, to add, in identical circumstances, the limitation of a health care provider's liability in tort to a patient or a third party.

**HOUSE BILL 4033**

Sponsors: Ellington, Summers, Householder, Rohrbach, Stansbury, Waxman, Perdue and Rodighiero

Effective Date: Passed March 12, 2016, and in effect ninety days from passage.

Clerk's Summary: Adding criminal penalties for the unauthorized practice of pharmacists' care.

Code Affected: Amending W. Va. Code §§30-5-12b & 34.

*Following summary provided by Matthew D. Brummond*

The legislation first amends a reference in Section 12b(e) of Article 5 of Chapter 30 of the Code, W. Va. Code §3-5-12b(e), to section "twenty-two of this article" when describing the penalties to be imposed upon a pharmacist for refusing to substitute equivalent generic drugs for brand name drugs. The provision should refer to, and is amended to refer to, section thirty-four of the article entitled "Criminal Offenses." However, a subsequent reference in Section 12b(r) to section twenty-two is not so corrected. Moreover, no penalties are actually set forth for such violations in the current version of section thirty-four as, instead, the Board of Pharmacy is instructed to report such violations to the appropriate law enforcement personnel.

However, the legislation does amend the provisions of W. Va. Code § 30-5-34 to include a penalty for a specific violation by a person other than a properly licensed pharmacist. Specifically, "[a]ny person who intentionally practices, or presents himself or herself out as qualified to practice pharmacist care or to assist in the practice of pharmacist care, or uses any title, word, or abbreviation to indicate or induce others to believe he or she is licensed to practice as a pharmacist technician without obtaining an active, valid West Virginia license to practice that profession; or [w]ith a license that is: (1) Expired, suspended, or lapsed; or (2) Inactive, revoked, suspended as a result of disciplinary action, or surrendered ... is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars."

**HOUSE BILL 4146**

Sponsors: Ellington, Summers, Bates, Faircloth, Householder, Rohrbach, Sobonya, Stansbury, Eldridge, McCuskey and Frich

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Providing insurance cover abuse-deterrent analgesic drugs.

Code Affected: Adding W. Va. Code §33-15-4m, W. Va. Code §33-16-3y, W. Va. Code §33-24-7n, W. Va. Code §33-25-8k, and W. Va. Code §33-25A-8m.

*Following summary provided by Scott E. Johnson*

These Code sections pertain to abuse deterrent opioid analgesic drugs. They are all substantively identical in requiring that insurance policies cover the prescription of such drugs, but each new code section specifically applies the new requirements to a different kind of insurance entity.

Subsection (a) is the definitional subsection of the newly added W. Va. Code §33-15-4m which applies to Accident and Sickness Insurance. Per

this new Code subsection, an “abuse-deterrent opioid analgesic drug” (ADOAD) is a generic or brand name opioid analgesic drug approved by the FDA with abuse deterrent labeling indicating that the drug has properties expected to deter or reduce its abuse.

Subsection (b) provides that on and after January 1, 2017, any accident and sickness insurance policy must provide coverage for at least one ADOAD. An entity falling within the new Code section may not require an enrollee or insured to use a non ADOAD before an ADOAD covered by the entity’s formulary.

New W. Va. Code §33-16-3y contains the identical provisions contained in Code § 33-15-4m but makes them applicable to Group Accident and Sickness Insurance Entities.

New W. Va. Code §33-24-7n contains the identical provisions as contained in Code §33-16-3y but makes them applicable to Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations, and Health Service Corporations.

New W. Va. Code §33-25-8k contains the identical provisions as contained in Code §33-16-3y but makes them applicable to Health Care Corporations.

New W. Va. Code §33-25A-8m contains the identical provisions as contained in Code §33-16-3y but makes them applicable to Health Maintenance Corporations.

**HOUSE BILL 4176**

- Sponsors: Stansbury, Howell, Householder, Ellington, Summers, Rohrbach, Weld, Miller, Hanshaw, Westfall, and B White
- Effective Date: Passed March 12, 2016, and in effect 90 days from passage.
- Clerk’s Summary: Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program.
- Code Affected: Amending W. Va. Code §§62-15A-1, 2 & 3.

*Following summary provided by Scott E. Johnson*

W. Va. Code §§ 62-15A-1, 2 and 3 are amended so that the criminal justice addiction pilot treatment program administered by the Department of Health and Human Resources (DHHR) includes the Regional Jail and Correctional Facility Authority (RJA) as a participating criminal justice entity. Under Chapter 62, Article 15A, the DHHR may authorize the listed criminal justice agencies to select participants for addiction treatment. Specifically, if RJA is selected as a participating Criminal Justice Entity, each RJA inmate selected for treatment is required to be serving a misdemeanor or felony sentence and be at high risk for drug addiction. Payment for the treatment program must be secured through Medicaid, or a state, federal, or private grant or other funding mechanism providing for the full treatment necessary to participate in the pilot program.

Any inmate who successfully completes the program may, at RJA’s discretion, receive up to five days off their sentence.

If a participant begins participation in the program while in Division

of Corrections' custody, but is confined in a Regional Jail, and is transferred to a Division of Corrections' facility before completing the program, the Division of Corrections is obligated to ensure the treatment will continue and the inmate will receive credit toward his sentence as if he had remained at the Regional Jail until successful completion of the program.

**HOUSE BILL 4728**

Sponsors: Ellington, Summers and Householder  
Effective Date: Passed March 11, 2016, and in effect 90 days from passage.  
Clerk's Summary: Relating to schedule three controlled substances.  
Code Affected: Amending W. Va. Code §60A-2-208.

*Following summary provided by Jason D. Parmer*

Human chorionic gonadotropin is added to the Schedule III of controlled substances, except when used for injection or implantation in cattle or any other nonhuman species when that use is approved by the FDA. The hormone's illicit use lies in its ability to increase testosterone production and, therefore, it can be, and has been, used in conjunction with various anabolic androgenic steroids. The hormone can be found on some sports' listing of banned substances.

**SENATE BILL 6**

Sponsors: Ferns, Carmichael, Gaunch, Takubo, Trump, Prezioso, Stollings, Plymale, Blair, Karnes and Sypolt  
Effective Date: Passed March 10, 2016, and in effect 90 days from passage.  
Clerk's Summary: Requiring drug screening and testing of applicants for TANF program.  
Code Affected: Adding W. Va. Code §9-3-6.

*Following summary provided by Brenda K. Thompson*

**BACKGROUND:**

Many states have proposed some form of drug testing or screening for applicants and recipients of public assistance. Federal rules permit drug testing as a condition of receipt of benefits under the Temporary Assistance for Needy Families (TANF) block grant. In 2009, over 20 states proposed legislation that would require drug testing as a condition of eligibility for public assistance programs; in 2010, at least 12 states considered similar proposals. Most of these proposals focused on suspicionless or random drug testing. None of the proposals were successfully enacted, likely due to being at odds with a 2003 Michigan Court of Appeals case that held suspicionless drug testing unconstitutional absent a showing of special need grounded in public safety.

Florida's statute, enacted in 2011, required all new TANF applicants to submit to a drug test and all current beneficiaries to be subject to random drug testing as a condition to receiving benefits. An applicant who refused a drug test but was otherwise eligible for benefits was granted a preliminary injunction, which was affirmed by the U.S. Court of Appeals for the Eleventh Circuit. *Lebron v. Sec. of the Fla. Dep't of Children and Families*, 772 F.3d 1352 (11th Cir. 2014). While waiting for the Eleventh Circuit's preliminary injunction ruling, the parties each filed a motion for summary judgment with the District Court, which granted the plaintiff's motion. *Lebron*, Dist. Ct. Final Summary Judgment, Case No.: 6:11-cv-

1473-MSS-DAB. The District Court found that the drug tests represented Fourth Amendment searches and the state had to show a valid "special need" which was only justified in two instances: where there is "the specific risk to public safety by employees engaged in inherently dangerous jobs and the protection of children entrusted to the public school system's care and tutelage." The State of Florida appealed the District Court's decision to the Eleventh Circuit, which affirmed the District Court's summary judgment in favor of the plaintiff.

As of March 2016, at least 15 states had passed legislation regarding drug testing or screening for public assistance applicants or recipients. These are Alabama, Arkansas, Arizona, Florida, Georgia, Kansas, Michigan, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Utah, West Virginia and Wisconsin. Some statutes apply to all applicants, others include specific language requiring a reason to believe an applicant is engaging in illegal drug activity or has a substance use disorder, and still others require a specific screening process.

**BILL SUMMARY:**

This bill requires the Secretary of the Department of Health and Human Resources (DHHR) to create a three-year pilot program to drug test certain persons applying for benefits from the Temporary Assistance to Needy Families (TANF) Program. It requires the Secretary to seek the necessary federal approval immediately following enactment of this section and to begin the program within 60 days of receiving approval. If federal approval is not granted for any portion of the program, the Secretary must implement the program to meet the federal objections while still operating the program consistent with the purposes of the bill.

Under the pilot program, an applicant for whom there exists a reasonable suspicion of substance abuse, as defined in the bill, is required to complete a drug test. The cost of the test is paid by DHHR. If the test is positive, the applicant may request further testing at his or her own expense.

Specifically, reasonable suspicion exists if: (i) a case worker determines from a drug screen that the "applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen"; or (2) an applicant has been convicted of a drug-related offense within three years immediately prior to the application. Under this standard, a "drug screen" is an analysis done for potential abuse, presumably from responses to questions during an interview, while a "drug test" is actual analysis of urine. Reasonable suspicion based upon the "drug screen" provides grounds for the applicant to have a "drug test."

Applicants who have a first positive test are required to complete a substance abuse treatment and counseling program and a job skills program approved by DHHR, and may continue to receive benefits while participating. Upon program completion, participants are subject to periodic drug screening and testing. Upon a second positive test, applicants must complete a second substance abuse treatment and counseling program and a job skills program but are suspended from receiving benefits for a 12 month period or until completion of the second program. Upon a third positive test, the applicant is permanently terminated from the TANF Program. Refusal to participate or failure to complete a substance abuse treatment and counseling program and a job skills program renders an applicant ineligible. Refusal to take a drug screen or a drug test renders an

applicant ineligible. Applicants denied assistance may request a review of the denial by the Board of Review.

If a parent is deemed ineligible, a protective payee may be designated to receive benefits on behalf of his or her child or children. The Secretary shall order an investigation and home visit from Child Protective Services (CPS) for any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test.

The bill contains provisions for confidentiality of drug screen and test results. It requires the Secretary to promulgate emergency rules to prescribe the design, operation and standards for the pilot program, and to report to the Joint Committee on Government and Finance by December 31, 2016 and annually thereafter until the conclusion of the pilot program.

Any person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

**SENATE BILL 431**

Sponsor: Governor Tomblin  
Effective Date: Passed March 12, 2016, and in effect from 90 days from passage.  
Clerk's Summary: Authorizing pharmacists and pharmacy interns dispense opioid antagonists.  
Code Affected: Amending W. Va. Code §§16-46-3, 5, and 6; and adding W. Va. Code §16-46-3a.

The Board of Pharmacy is to develop a protocol pursuant to which pharmacists or pharmacy interns may dispense an opioid antagonist without a prescription. The obligation imposed upon the pharmacist or the intern is to provide mandatory counseling to the individual to whom the drug is dispensed. The topics are to include: (i) the proper administration of the opioid antagonist; (ii) the importance of contacting emergency services before or upon administration of the opioid antagonist; and (iii) the "risks associated with failure to contact emergency services following administration of an opioid antagonist." The pharmacist is to document the dispensing of the opioid antagonist as if it were prescribed, including complying with the requirement of reporting to the Board of Pharmacy for purposes of "controlled substances monitoring."

If the pharmacist or intern complies with the statutory requirements and acts in good faith, then the pharmacist or intern will not be subject to criminal prosecution or civil liability arising out of the dispensing of the opioid antagonist. However, gross neglect and willful misconduct is not protected from prosecution.

The Board of Pharmacy is to compile data from the database for controlled substances monitoring related to the dispensing of opioid antagonists and is to report the data, "excluding any personally identifiable information," to the Legislative Oversight Commission on Health and Human Resources Accountability, the Joint Committee on Health, and the West Virginia Bureau for Behavioral Health and Health Facilities.

**SENATE BILL 454**

Sponsor: Governor Tomblin  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Licensing and regulating medication-assisted treatment programs for substance abuse disorders.  
Code Affected: Amending W. Va. Code §16-1-4; amending W. Va. Code §§60A-9-4, 5, 5a, 7 and 8; and adding W. Va. Code §§16-5Y-1, *et seq.*

The provisions of W. Va. Code §16-1-4 currently describes rules that might be promulgated by the Secretary of the Department of Health and Human Resources in order to effectuate the purposes set forth in the provisions governing "Public Health." Under the existing law, one identified area for regulation, set forth in subsection (10), was "opioid treatment programs duly licensed and operating." While the subsection (10) was purportedly authorizing the issuance of regulations on this subject, the subsection was actually a detailed mandate on how to regulate such programs. Accordingly, the statutory provision on the proposal of rules by the Secretary actually was a substantive framework for the licensing of opioid treatment programs.

This legislation deletes the subsection (10) and adds an entirely new article within the West Virginia Code, entitled "Medication-assisted Treatment Program Licensing Act" in which much of the detail in the existing statute is set forth. Generally, the new Act sets forth the licensing requirements for opioid treatment programs and sets forth registration requirements for "office based medication-assistant treatment programs" for substance abuse. Operational requirements are imposed on such programs, and penalties and fines are provided for violation of the statutory provisions.

Additionally, the dispensing of an opioid antagonist or the filling of a prescription for an opioid antagonist are required to be reported and inputted into the Controlled Substances Monitoring database. Language on the reporting is changed from "prescribers" to "practitioners" and an express provision is added that "all practitioners ... who prescribe or dispense Schedule II, III or IV controlled substances shall register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database." Licenses are not to be granted or renewed for practitioners until their compliance with the registration requirement.

A practitioner's failure to register with the program or to access the information in the database when required to do so may be subject to a \$100 administrative penalty, the proceeds of which are to be deposited into the "Fight Substance Abuse Fund." The legislation now places the responsibility for the administration of the Fund in the West Virginia Bureau of Public Health.

Finally, the legislation directs the Department of Health and Human Resources to hire a "grant writer" who is to "identify, application [sic] and monitoring [sic] policies and procedures to increase grant applications and improve management and oversight of grants." The grant writer is to "focus his or her abilities on obtaining grants concerning the prevention and treatment of substance abuse." The hiring is part of a pilot project and the efficacy of the project will be reviewed by the Legislative Oversight Commission on Health and Human Resources Accountability.

**HOUSE BILL 4347**

Sponsors: Ellington, Summers, Faircloth, Rohrbach, Sobonya, Stansbury, Storch, Upson, B. White and Frich

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Providing pregnant women priority to substance abuse treatment.

Code Affected: Adding W. Va. Code §9-5-24.

The entirety of the new statutory provision is: "Substance abuse treatment or recovery service providers that accept Medicaid shall give pregnant women priority in accessing services and shall not refuse access to services solely due to pregnancy as long as the provider's services are appropriate for pregnant women."

**JUVENILE/ABUSE AND NEGLECT****SENATE BILL 326**

Sponsors: Trump, Kessler, Woelfel, Palumbo, Romano and Plymale

Effective Date: Passed March 10, 2016, and in effect 90 days from passage.

Clerk's Summary: Repeal and recodify law relating to delinquency of minor child.

Code Affected: Repealing W. Va. Code §§49-4-901, 902; and adding W. Va. Code §61-8D-10.

Structurally, the legislation removes the provisions punishing persons who contribute to the delinquency or neglect of a child from the provisions of the West Virginia Child Welfare Act, W. Va. Code §§49-1-1, *et seq.*, to the provisions of the criminal code governing child abuse, *i.e.*, W. Va. Code §§61-8D-1, *et seq.* Revisions are made, however, to the criminal offense.

Under the provisions of current law, the offense applies to a "person, who by act or omission contributes to, encourages or tends to cause the delinquency or neglect of any child." The examples are "aiding or encouraging the child to habitually or continually refuse to respond, without just cause, to the lawful supervision of the child's parents, guardian or custodian or to be habitually absent from school without just cause."

The newly enacted statutory provision punishes a person who is "eighteen years or older" and who "knowingly contributes to or encourages the delinquency of a child." Delinquency on the part of the child is then defined as follows: "the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian or custodian." Neglect of the child is no longer discussed, although, as part of the chapter of the Criminal Code on abuse and neglect, other provisions would apply to such acts.

The newly enacted provision also condenses the provisions governing the suspension of the sentence of a person convicted of the misdemeanor offense. Essentially, suspension of the sentence continues to be expressly permitted. The conditions upon such suspension of a sentence may include paying for all treatment, support and maintenance of the involved child while in another's custody; posting a bond up to the amount of \$5,000 to secure payment of all amounts ordered to be paid, including

the cost of medical, psychological, or psychiatric treatment of the involved child; and participation in programs designed to correct the child's behavior or the offender's behavior.

The provision under existing law regarding the placement of the child in a temporary custodial situation is removed. The effect of this change is not immediately apparent.

The newly enacted provision continues to permit, however, the involved child to remain in the custody of the offender and permits a condition to be imposed requiring "the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency."

#### **HOUSE BILL 4317**

Sponsors: Foster, McGeehan, Butler, Ihle, Azinger, Fast, Moffatt, J. Nelson, Summers, Waxman and Miller  
Effective Date: Passed March 12, 2016, and in effect 90 days from Passage.  
Clerk's Summary: Limiting factors in parenting plans.  
Code Affected: Amending W. Va. Code §48-9-209.

With respect to parenting plans under Chapter 48 of the West Virginia Code, entitled Domestic Relations, the court is to determine, when either parent requests or when credible information has been received, whether a parent to whom responsibility might be allocated has "repeatedly made fraudulent reports of domestic violence or child abuse." If a determination is made that the parent has so acted, then the court is required to impose limits with respect to the offending parent that are "reasonably calculated to protect the child or child's parent from harm." Relevant limitations that are listed include: (i) "increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity"; (ii) "an additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity"; and (iii) "restraints on the parent from communication with or proximity to the other parent or the child."

The legislation changes the language in the referenced provision from "repeatedly made" to "made one or more fraudulent reports of domestic violence or child abuse." Accordingly, one such incident is sufficient to support the court's imposition of limitations in the offending parent's plan with respect to the custody of, or visitation with, the children. Notably, the legislation provides that the "withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent." (Editor's note: The reference to "child support" is presumed to have been an intended reference to "child abuse.")

#### **MOTOR VEHICLES**

##### **SENATE BILL 634**

Sponsor: Governor Tomblin  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Creating William R. Laird IV Second Chance Driver's License Act.  
Code Affected: Adds W. Va. Code §§17B-7-1, *et seq.*

The legislation creates the William R. Laird IV Second Chance Driver's License Act. The legislation is named after the Senator who is retiring at the end of this current term and who has supported the legislation over the years.

The legislation sets forth a finding that "allowing individuals who have been unable to obtain a driver's license or to have their driver's license reinstated due to unpaid court costs to obtain a stay of the driver's license suspension or revocation will better enable these individuals to return to the workforce and repay unpaid court costs in a timely manner." Accordingly, the purpose of the Act is "to create a program that allows the commissioner [of the Division of Motor Vehicles] to temporarily stay a driver's license suspension or revocation for individuals who are accepted into the second chance driver's license program if the individual thereafter remains current in the repayment of unpaid court costs as required by the program."

The program is available to those drivers who may lose their license "for failure to remit unpaid court costs," if the costs are not related to charges involving driving a commercial motor vehicle, and who have been delinquent for at least 12 months in the payment of the court costs. The program is to be developed by the Director of the Division of Justice and Community Services.

The program involves the payment of court costs in monthly installments. The amount of the monthly payment will be determined by the Director of the Division of Justice and Community Services based on the participant's income, but the payment cannot be less than \$50 a month and the payments must satisfy the court costs in full within one year's period of time. The commencement of payments will result in the issuance of a certificate of compliance to the Division of Motor Vehicles, which is then to stay any administrative action to revoke or suspend the individual's driver license.

The act generally provides the steps to be followed in the administration of the program and further directs the Director of the Division of Justice and Community Services, "in consultation with" the Commissioner of the Division of Motor Vehicles, to promulgate emergency and legislative rules to implement the program.

**HOUSE BILL 2665**

Sponsors: Folk, Skinner, Espinosa, Householder, Faircloth, Overington, Upson, Blair, Perdue, Sobonya and Waxman

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Relating to participation in Motor Vehicle Alcohol Test and Lock Program.

Code Affected: Amending W. Va. Code §17C-5-2b.

*Following summary provided by Matthew D. Brummond*

West Virginia law permits first offender DUI defendants to plead guilty in exchange for a deferred prosecution/conviction upon satisfactory completion of the interlock program. This legislation makes anyone who refused secondary chemical testing, i.e. a blood draw, ineligible for the program.

Mr. Brummond's Note: This act may be subject to constitutional challenge depending on the outcome of *Birchfield v. North Dakota*, 14-1468. In that case, petitioner drivers argued that state statutes criminalizing the refusal to submit to a breathalyzer test when police reasonably suspect the subject is driving under the influence violate the Fourth Amendment. SCOTUS heard arguments on April 20, 2016, and seemed to signal that the threat of criminal sanction may be too coercive for the waiver of the Fourth Amendment right against warrantless searches to be valid.

**SENATE BILL 648**

Sponsor: Blair  
Effective Date: Passed March 8, 2016, and in effect 90 days from passage.  
Clerk's Summary: Allowing local authorities permit flashing traffic signals during low traffic times.  
Code Affected: Amending W. Va. Code §17C-3-7.

*Following summary provided by Lori M. Waller*

The existing statute defines the responsibilities of drivers when encountering a flashing red signal or flashing yellow signal. This legislation expressly authorizes "local authorities" to use such flashing signals between the hours of 11:00 p.m. and 6:00 a.m. in areas that experience low traffic flow. Uncertainty exists as to why the authorization was required because W. Va. Code §17C-3-3 gives general authorization to local authorities to "place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary." Potentially, therefore, this legislative change was intended as a limitation on the use of the flashing signals.

**SENATE BILL 686**

Sponsors: Maynard, Carmichael, Gaunch, Karnes, Takubo, Walters and Blair  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction.  
Code Affected: Adding W. Va. Code §7-1-3qq and W. Va. Code §8-12-5g.

*Following summary provided by Lori M. Waller*

The legislation creates two new sections of the West Virginia Code, sections 7-1-3qq and 8-12-5g.

Section 7-1-3qq authorizes county commissions to hold motor vehicle racing events on public roads, municipal streets or airports and sets forth the requirements and the regulations for doing so.

Section 8-12-5g authorizes municipalities to hold motor vehicle racing events on public roads, municipal streets or airports and sets forth the requirements and the regulations for doing so.

The requirements and regulations provide generally for an event to be held for, and to be deemed to be, the public purpose of promoting commerce and tourism and for an event to be authorized and held so that the injury to anyone cannot be the liability of the county or municipality

but, instead, will be covered by the liability insurance coverages of the organizations sponsoring or organizing the event.

Notably, the original introduced bill recommended amending section 17C-6-8, entitled, in part, "racing on streets and highways prohibited" and adding a subsection at the end of the section to make the statute inapplicable to races sanctioned by the county or the municipality that are held on county or municipal roads. The provision is now referenced in the two newly created sections.

**SENATE BILL 13**

Sponsors: Carmichael, Boso, Gaunch, Leonhardt, Trump, Walters, Blair, Takubo, Miller and Unger  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Increasing penalties for overtaking and passing stopped school buses.  
Code Affected: Amending W. Va. Code §17C-12-7.

*Following summary provided by Crystal L. Walden*

The most significant change made by this legislation is the rebuttable inference found in subsection (c), which was created to address situations in which the license plate number of the vehicle that improperly passed the school bus is obtained but not the identity of the driver. Restated, "it may be inferred" that the registered owner is the driver of the vehicle in these situations. If there are more than one registered owners/lessees, the owner/lessee listed first will be charged. However, if the presumption is used to institute charges, the driver will only be subject to the fine associated with the offense.

Notably, the new subsection (c) states that this charge related to overtaking and passing a stopped school bus is intended to be a separate and distinct offense from the felony charges set forth in subsection (f), i.e., overtaking and passing a stopped school bus and causing serious bodily injury to a person other than the driver, and subsection (g), i.e., overtaking and passing a stopped school bus and causing death. The intent is that a person who pays the fine under the subsection (c) for the violation cannot then claim double jeopardy if evidence or circumstances arise supporting the felony charges. Indeed, the interesting analysis is that the charge can be made under the inference in subsection (c) with the expectation by law enforcement personnel that the processing of this charge will lead to the actual identification of the driver for purposes of making the more serious charges.

Service of process of a complaint under the new subsection will be governed by W.V. Rule of Crim. Pro. 4. Therefore, a magistrate will determine if the case will be instituted by summons issued on a complaint or by an arrest warrant.

Finally, the legislation changes the fine and incarceration exposure for the misdemeanor violation. A first offense violation is now punishable by not less than \$250 nor more than \$500, or confinement in jail not more than six months, or both fined and confined. The second offense now carries a fine of not less than \$500 nor more than \$1000, or confinement in jail not more than six months, or both fined and confined. Upon conviction of the third or subsequent violation the driver shall be fined \$1000 and confined not less than 48 hours. The penalties for the felony offenses were

not amended.

**SENATE BILL 476**

Sponsors: Beach, Plymale and Kessler  
Effective Date: Passed March 11, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Relating to driving restrictions in school zones.  
Code Affected: Amending W. Va. Code §17C-6-1.

The legislation generally amends the provisions of W. Va. Code §17C-6-1 which govern speed limitations in school zones.

The legislation first imposes upon the West Virginia Division of Highways the expressly stated duty to erect signage “indicating the place of entry and exit of each school zone.” Notably this applies to existing school zones as well as new school zones permitted by this legislation.

The legislation then provides that, “upon a formal vote and written request by a county board of education to expand a school zone to a road that is adjacent to school property, the West Virginia Division of Highways shall expand the school zone by erecting new signage indicating the expanded school zone’s location and speed limit within ninety days of receiving the request.” However, the school zone cannot be extended beyond the standard one hundred twenty five feet length of the adjacent road unless the “division determines that the additional extension is needed and necessary for the safety of the school children.”

Finally, the legislation lessens the punishment for exceeding the speed limit in a school zone to a fine of twenty-five dollars or less if the signage that is required is not present in the school zone. So, the driver is to know, generally, that in the vicinity of a school, the speed limit is fifteen miles per hour, but the violation is limited to the fine if signage is not erected. With respect to the extension of the school zone, the legislation’s wording seemingly supports the statutory construction that, without the signage, the extension has no effect and, accordingly, no violation can occur.

**EVIDENCE**

**SENATE BILL 262**

Sponsor: Blair  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Eliminating need for law enforcement to obtain court order prior to having access to inmate mail and phone recordings.  
Code Affected: Amending W. Va. Code §§25-1-17, 18.

The Commissioner of Corrections will no longer need “an order of a court or administrative tribunal” before disclosing the contents of an inmate’s telephone calls or mail to an “appropriate” law enforcement agency when “disclosure is necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the correctional institution.”

The new statutory provision requires the Commissioner of Corrections to “promulgate a policy directive” which establishes a record-

keeping procedure for retention of copies of the disclosures made to law enforcement agencies. If a crime is charged based "in whole or part" on the disclosures, then the criminal defense lawyer is entitled to review all of his or her client's telephone conversations or mail in the custody of the Commissioner whether or not the conversations or mail are evidence in the criminal prosecution.

**SENATE BILL 104**

Sponsors: Plymale, Woelfel and Stollings.  
Effective Date: Passed March 9, 2016, and in effect 90 days from passage.  
Clerk's Summary: Classifying Marshall University Forensic Science Center as a criminal justice agency.  
Code Affected: Adding W. Va. Code §15-2-24c.

The Forensic DNA Analysis Laboratory of the Marshall University Forensic Science Center is declared to be "engaged in the administration of criminal justice" as defined by the provisions of 28 C.F.R. §20.3(b). Accordingly, the Center will be included in the regulations governing the collection, storage and dissemination of criminal history record information by the Department of Justice.

The new statute requires the Center to confer with the West Virginia State Police about available grants or other funding. The West Virginia State Police is to have "primacy of decisionmaking ... with regard to applications for particular grants or funding ... to which the Marshall University Forensic Science Center shall accede."

The Center and the West Virginia State Police are compelled by the statute to execute a written agreement with one another to ensure compliance with the statute.

**HOUSE BILL 4364**

Sponsors: Skinner, McGeehan, Hamrick, Fluharty, Householder, Blair, Sponaugle, Manchin, Miley, Byrd and Marcum  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Internet Privacy Protection Act.  
Code Affected: Adding W. Va. Code §21-5G-1.

The legislation governs an employer's access to content of an employee's material maintained through the internet.

"Personal accounts" of employees are governed and are defined as "an account, service or profile on a social networking website that is used by an employee or potential employee exclusively for personal communications unrelated to any business purposes of the employer."

With respect to personal accounts maintained on the internet by employees, employers are not to "request, require or coerce an employee or potential employee" to (i) disclose a username and password in order for the employer to gain access to such an account; (ii) access such account in the presence of an employer; or (iii) add an employer to the account.

An employer can (i) access publicly available information about the employee; (ii) require disclosure of an username and password to access an electronic device issued by the employer or to access an account provided by the employer and obtainable by reason only of the employment

relationship; (iii) conduct an investigation regarding, and require the employee's cooperation concerning, an unauthorized transfer of the employer's proprietary information, confidential information or financial data to an employee's personal account; (iv) prohibit an employee from using a personal account during employment hours; and (v) disclose specific content relevant to the workplace laws and regulations governing employee misconduct.

The new section is contained in the chapter of the state code governing labor laws. The violation of the provisions by an employer would be subject, therefore, to the remedies provided generally for violation of the chapter.

**SENATE BILL 504**

Sponsors: Ashley, Laird, Maynard, Miller, Romano, Walters and Plymale  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Relating to confidentiality of juvenile records.  
Code Affected: Amending W. Va. Code §49-5-101 and W. Va. Code §62-6B-2; and adding W. Va. Code §62-6B-6.

The legislation governs, specifically, the disclosure and use of recorded interviews of a child under the age of eighteen years that were made "in connection with alleged criminal behavior or allegations of abuse or neglect."

First, no recorded interview in any judicial or administrative proceeding is to be "published or duplicated except pursuant to the terms of an order of a court of competent jurisdiction." This confidentiality extends to written documentation in any form that is related to the recorded interview.

Second, only psychologists, psychiatrists, physicians, nurses and social workers who are providing services to the interviewed child may have access to the recorded interview prior to the commencement of formal proceedings. It is unclear when a parent of the child who is not involved in the allegations may have access to the recorded interview and it is further unclear when an entity who could have done, but did not do, the interview can have access, such as a child advocacy center, a child protective services worker, a law enforcement worker, prosecuting attorney, or other investigator of criminal conduct. The statute's construction creates the confusion and may result in extended arguments regarding such disclosures in the course of criminal proceedings.

Third, the Supreme Court of Appeals is "requested" to promulgate rules regulating the publication and duplication of recorded interviews in the courts of the state and the use, duplication, and publication by counsel of such recorded interviews.

The violation of the section by the knowing and willful duplication or publication of a recorded interview in contravention of the terms of a court order is a misdemeanor punishable by either, or both, a fine between \$2,000 and \$10,000 and confinement in jail for a period of ten days to one year.

**HOUSE BILL 4279**

Sponsors: Hamilton, A. Evans, Romine, Wagner, Ambler, Eldridge, Pethtel, Spounagle, and Guthrie

Effective Date: Passed March 7, 2016, and in effect 90 days from passage.

Clerk's Summary: Relating to disposition of seized firearms.

Code Affected: Amending W. Va. Code §20-7-8.

W. Va. Code §20-7-8 generally provides for the disposition of property seized by natural resources police officers that was "found in the possession of the accused and susceptible of use in committing the offense of which the person is accused." The property includes, interestingly, "firearms, fishing equipment traps, boats, or any other device, appliance or conveyance, but does not include dogs." Generally the property is to be returned to the accused upon payment of any fines and other penalties. The property is to be forfeited to the state when (i) a person fails to pay any fines and costs; (ii) a person is convicted of a second violation of the offenses found in Chapter 20 of the West Virginia Code; or (iii) the property seized is forbidden to be used or is unfit or unsafe for further use.

This legislation provides that, with respect to firearms, the disposition is to be made in accordance with W. Va. Code §§36-8A-1, *et seq.* Essentially, the disposition of firearms seized by natural resources police officers will be handled in Section 5 of the chapter, which already addresses law-enforcement personnel of the West Virginia Division of Natural Resources. Accordingly, the legislation appears to be a technical amendment, rather than a substantive one.

**PROCEDURE****HOUSE BILL 4740**

Sponsors: Weld, Hanshaw, McCuskey, Fleischauer, Kessinger, Sobonya, Summers, Zatezalo, and J. Nelson

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Permitting that current members of the National Guard or Reserves may be excused from jury duty.

Code Affected: Amending W. Va. Code §52-1-11.

*Following summary provided by Jason D. Parmer*

The new language is in its entirety, "A person who is not qualified for jury service under section eight of this article [W. Va. Code §52-1-8] may be excused from jury service by the court if the person is a current member of the National Guard or reserves." Notably, the excuse is within the discretion of the court.

**SENATE BILL 338**

Sponsors: Trump, Kessler, Woelfel, Palumbo, Romano, Stollings, Plymale and Yost

Effective Date: Passed March 10, 2016, and in effect 90 days from passage.

Clerk's Summary: Compiling and maintaining Central State Mental Health Registry.

Code Affected: Amending W. Va. Code §§61-7A-1, 2, 3 and 4.

*Following summary provided by Brenda K. Thompson*

This bill modifies the requirements for inclusion in the State Mental Health Registry. Formerly, persons included on the registry were prohibited from possessing firearms due to substance abuse or mental illness. The bill deleted the inclusion of "substance abuse" as a proscription against the possession of firearms, intending for the article to apply only to those with mental illness. The definition of a "mental institution" has been similarly amended to exclude facilities or the part of a facility used for the treatment of "addiction."

Moreover, the bill defines "committed to a mental institution" to expressly exclude "children under 14 years of age" and "voluntary admission for mental health treatment." The registry will list, therefore, only individuals, over the age of 14 years, who "have been involuntarily committed for treatment pursuant to the provision of chapter twenty-seven of this code."

Formerly, the names of persons to be included in the registry by reason of commitment under Chapter 27 of the West Virginia Code, W. Va. Code §§27-1-1, et seq., were to be provided to the Superintendent of the West Virginia State Police. This bill adds a requirement to report the names also to the Administrator of the Supreme Court of Appeals.

**HOUSE BILL 4558**

Sponsors: Frich, Shott, Arvon, P. Smith, Rowan, Sobonya, Miller, Border, Upson, Kessinger, and Summers  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Relating to victim notification and designation of additional individuals to receive notice of an offender's release.

Code Affected: Amending W. Va. Code §61-11A-8.

Throughout the various stages of the prosecution of a crime, notice is required to be given by designated officials, in writing or by telephone, to victims of, or the family members of victims of, the crimes of murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson, any sexual offense against a minor, or any violent crime. In response, the victims, or family members of the victims, may request further notice at later stages of proceedings, especially regarding release of the offender from custody or upon discharge of any sentence. Family members are authorized under the statute to be given notice when the victim is not alive or, if alive, is not competent.

This legislation permits a victim to designate "an additional adult individual" to receive the notices required under the section. The victim must provide to the notifying agency, which could be prosecutors, law enforcement personnel, or correctional administrators, "the additional adult individual's contact information ... in writing."

**HOUSE BILL 4644**

Sponsors: Miller, Border, D. Evans, Statler, Moffatt, McCuskey, Sobonya, and Rohrbach  
Effective Date: Passed March 7, 2016, and in effect 90 days from passage.  
Clerk's Summary: Relating to jury fees.

Code Affected: Amending W. Va. Code §52-1-17.

The legislation removes antiquated language from the statutory provision. The “note” to the introduced bill explains as follows: “The purpose of this bill is delete subsection (e) therein which provides the sheriff to pay into the State Treasury all jury costs received from the court clerks and that the sheriff shall be held to account in the sheriff’s annual settlement for all the moneys.” The “note” concludes: “This is a clean-up proposal due to the fact that subsection (e) is no longer needed because circuit clerks have been mailing the jury fees to the State Treasury since 2003.”

## **SENTENCES**

### **HOUSE BILL 4360**

Sponsors: Shaffer, Sponaugle, Shott, Reynolds, Miley, Armstead, Hanshaw, and Weld  
Effective Date: Passed March 11, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Increasing the criminal penalty for the unlawful practice of law.  
Code Affected: Amending W. Va. Code §30-2-4.

The language of existing law is changed subtly. The prohibition will be that an unlicensed, unadmitted and unsworn attorney cannot “appear as an attorney at law for another in a court in this state or to make it a business to solicit employment for any attorney, or to hold himself or herself out to the public ... as being entitled to practice law, or in any other manner to assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney and counselor or equivalent terms in any language, in such manner as to convey the impression that he or she is a legal practitioner of law or in any manner advertise that he or she, either alone or together with other persons, has, owns, conducts or maintains a law office.”

Notably, the express prohibition against “furnish[ing] an attorney or counsel to render legal services” in the current statute has been removed from the new language. This may be a concession to the practice of insurance companies maintaining a captive firm to represent insureds or to the creation of legal service plans.

Currently, the unlawful practice of law is a misdemeanor punishable only by imposition of a fine up to the amount of \$1,000. The new law would impose, for the first offense, a punishment of either, or both, a fine up to \$5,000 and confinement in jail up to ninety days. For any subsequent offense, the punishment is either, or both, a fine up to \$10,000 or confinement in jail for not more than one year.

Finally, the new statutory provision will expressly provide that “nothing herein prohibits a lawyer from advertising services or hiring a person to assist in advertising services as permitted by the Rules of Professional Conduct.”

### **HOUSE BILL 4411**

Sponsors: R. Smith, J. Nelson, D. Evans, Rohrbach, Anderson, Hamrick, Ihle, Wagner and Stansbury  
Effective Date: Effective March 11, 2016.  
Clerk’s Summary: Relating to penalty for illegally taking native brook

trout.  
Code Affected: Amending W. Va. Code §20-2-5a.

This provision of the code provides penalties to be imposed upon a person who is convicted of “violating a criminal law of this state that results in the injury or death of game ... or a protected species of animal.” Specifically, the statute provides for the “forfeiture” of “the cost of replacing the game or protected species of animal to the state.”

This enacted legislation changes the calculation of the amount to be forfeited for native brook trout that is taken above the creel limit. Before the enactment, the calculated cost was \$10 for every pound of game fish or fish of a protected species above the limit. After enactment, the calculated cost for native brook trout, specifically, will be \$100 for the first five fish taken illegally and \$20 for each additional fish.

#### **HOUSE BILL 2494**

Sponsors: Weld, Fast, Spounagle, Skinner and Shott  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Creating a provisional plea process in criminal cases.  
Code Affected: Adding W. Va. Code §61-11-22a.

*Following summary provided by Lori M. Waller*

A defendant is permitted to enter a plea of guilty to a felony or a misdemeanor and then, upon motion by the defendant, the court is authorized to defer acceptance of the plea and further adjudication on the plea for three years if the offense is a felony and for two years if the offense is a misdemeanor. During the deferment period, the defendant is subject to any terms and conditions the court may impose on him or her, including “periods of incarceration, drug and alcohol treatment, counseling and participation in programs [such as work release, home incarceration, and other programs developed under the West Virginia Community Corrections Act, W. Va. Code §§62-11c-1, *et seq.*].”

If the defendant is successful in completing the deferment period, he or she may have his or her plea withdrawn and have the matter dismissed or may then enter a plea of guilty or no contest to a lesser offense.

If the defendant is not successful in completing the deferment period, then, following a hearing initiated by the motion of the prosecuting attorney, his or her original guilty plea may be accepted by the court and the defendant may be sentenced in conformity with that plea. The court need only to have “reasonable cause to believe” that the defendant violated the terms and conditions. As introduced, the requirement would have been by “clear and convincing evidence.”

The statute does not expressly address whether credit will be given for any period of incarceration during the deferment period, but, presumably, credit would have to be given unless the sentencing expressly stated otherwise.

The deferred adjudication process is expressly stated to be separate and distinct from the conditional guilty plea provided for in West Virginia Rule of Criminal Procedure 11(a)(2).

**SENATE BILL 361**

Sponsors: Gaunch, Boso, Mullins, Palumbo, Walters, Williams and Prezioso  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Prohibiting persons who have committed crimes against the elderly from performing community service involving elderly.  
Code Affected: Amending W. Va. Code §61-2-10a.

*Following summary provided by Brenda K. Thompson*

In 1984, the Legislature enacted §61-2-10a which provided that upon conviction of stalking, harassment or assault during the commission or attempted commission of a felony against a person who is 65 years of age or older, the court had the discretion to suspend the sentence and order probation upon condition that the convicted person perform public service in or about facilities or programs providing care or services for the elderly. This legislation retains the option for the court to suspend a sentence and to require public service as a condition of probation, but provides that the public service may not be performed in or about facilities or programs providing care or services for the elderly.

**HOUSE BILL 4346**

Sponsors: Hamilton, A. Evans, Romine, Wagner and Guthrie  
Effective Date: Passed March 10, 2016, and in effect from passage.  
Clerk's Summary: Relating to bear hunting and offenses and penalties.  
Code Affected: Amending W. Va. Code §20-2-22a.

The statutory provision that is amended is entitled: "Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties."

The legislation now includes "training dogs on bears or pursuing bears with dogs" in the definition of "the hunting of bear" for the purposes of regulation and licensure. The prohibition of using dogs in hunting bears has been removed from the statute. Accordingly, the purpose of this change seems to be the allowance, through licensure, of the use of dogs to hunt bear.

The legislation expands unlawful activity beyond killing or attempting to kill a bear to include wounding or attempting to wound a bear. Unlawful means of doing such is expanded to include the use of "bait" and the feeding of bears. "Bait" is defined to include, "corn and other grains, animal carcasses or animal remains, grease, sugars in any form, scent attractants and other edible enticements." An area is considered to be baited "for ten days after all bait has been removed." This legislation has immediate effect, so an interesting conundrum is that, on the date of passage, a person could comply and remove the bait immediately, but the property remains technically in violation for ten days after the removal and the owner cannot do anything to avoid this. It is also now unlawful to "transport" as well as possess a part of a bear that has not been properly tagged.

The prohibition on "entering a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of division personnel" has been removed.

The claim for a bear's destruction of property is also addressed. First, the term "damaging" is added to the scope of claims in addition to "destroying." Second, a permit may be issued to the owner of the damaged or destroyed items to hunt, destroy or capture the bear that did the damage after investigation by the natural resources officer or a wildlife biologist. Third, the property for which damage can be claimed has been restricted so as not to cover "personal and real property which is commonly used for the purposes of feeding, baiting, observing or hunting wildlife, including, but not limited to, hunting blinds, tree stands, artificial feeders, game or trail cameras and crops planted for the purpose of feeding or baiting wildlife."

Notably, the criminal penalties for violation of the section have been lessened. For a first offense, the fine has been reduced from (i) \$1,000 to \$5,000 to (ii) \$500 to \$1,000, and the period of confinement in jail has been reduced from (i) thirty to one hundred days to (ii) ten to thirty days. For a second offense, the fine has been reduced from (i) \$2,000 to \$7,500 to (ii) \$1,000 to \$3,000, and the period of confinement in jail has been reduced from (i) thirty days up to one year to (ii) thirty days to one hundred days. The period of suspension of the offender's hunting and fishing licenses has been reduced from "life" to five years. For the third and subsequent offenses, the punishment has been reduced from a felony to a misdemeanor, with confinement in jail for a period of six months to one year reduced from imprisonment for a term of one to five years. The fine is reduced from (i) \$5,000 to \$10,000 to (ii) \$2,500 to \$5,000. The period of suspension of the hunting and fishing licenses is to be ten years.

## **MISCELLANEOUS**

### **SENATE BILL 267**

Sponsor: Blair  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Modifying removal procedure for certain county, school district and municipal officers.  
Code Affected: Amending W. Va. Code §§6-6-1, 7.

Section 1 of the existing statute has been rewritten to define, individually, the grounds that might be used to remove county, school district, and municipal officers who have fixed terms of public service.

"Official misconduct" is now defined separately from "neglect of duty" and requires a public office holder's conviction of a felony during the term of office or willful unlawful behavior in the course of the performance of duties of a public office.

"Neglect of duty" is the knowing refusal or willful failure of a "public officer" to perform an "essential act or duty of the office required by law."

"Incompetence" is defined similarly to existing law, requiring, generally, (i) waste or misappropriation of public funds; (ii) an official determination that the public officer is incompetent; or (iii) conduct that demonstrates an inability to perform the essential official duties including habitual drunkenness or drug addiction.

A new definition is added for a "qualified petitioner", which is "a person who was registered to vote in the election in which the officer was chosen that next preceded the filing of the petition."

Section 7 of the statute amends existing law by stating how charges may be proferred (which verb, in existing law, is “preferred,” meaning to “put forward or present for consideration; ... to bring a charge or indictment against a criminal suspect, *Black’s Law Dictionary, 7<sup>th</sup> Ed.*). This provision is probably the byproduct of the events in the City of Charleston in which a person famously known for such petitions tried to remove the Mayor, resulting in a dismissal of the petition but at significant cost to the City and, but for the graciousness of his personal legal counsel, the Mayor.

The new law will raise the number of petitioners from “fifty” in the advent of a county officer and from “twenty-five” in the advent of a municipal officer. The new law also changes the allowance for an even lower number under existing law equal to one percent of the number of voters participating in the election before the filing of the petition.

The new requirements are established based on the population of the county or municipality requiring, variously, from 100 to 2000 petition signatures for removal of county officers and from 50 to 2000 petition signatures for removal of municipal officers. A lesser number will be appropriate if equal to ten percent of the “number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.”

The new law will require the petition for removal to have the charges stated in writing and for “each page on which signatures are affixed shall include the name and office of the challenged officer, the charges or grounds for removal, ... and an informed acknowledgment of an agreement with the charges.” One person may be responsible for filing the petition and prosecuting the removal action.

The new law specifies that within five days after filing a petition, a summons will issue for the purpose of a “preliminary hearing” at which a “judicial determination” will be made as the “validity of the ... petition,” requiring the clerk, therefore, to have ascertained whether the signatures are signatures of eligible residents. If not dismissed, the petition is then to be heard by a three judge panel selected by the Supreme Court of Appeals as is done under existing law.

A new provision sets forth that if the proceeding is dismissed or decided in favor of the challenged officer, “the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.”

#### **HOUSE BILL 2605**

Sponsors: Moore, Hornbuckle and Shott  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk’s Summary: Removing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor.  
Code Affected: Amending W. Va. Code §55-2-15.

*Following summary provided by Matthew D. Brummond*

Under the current statutory scheme, sexual assault complainants have a two-year statute of limitations imposed by W. Va. Code § 55-2-12 (Personal actions not otherwise provided for). However, due to their legal disability, minors may file a suit within two years of reaching adulthood, but

under no circumstances more than twenty years after the alleged injury, pursuant to W. Va. Code § 55-2-15 (General saving as to persons under disability).

This legislation amends the provisions of W. Va. Code § 55-2-15 to provide for a longer statute of limitations for child sexual assault/abuse complainants. It provides that child complainants can file suit within four years of reaching adulthood instead of two. The legislation also removes the twenty-year cap with respect to child sex crimes. Since it is axiomatic that child complainants are under a disability, this effectively changes the statute of limitations for child sex crimes to a minimum of four years under all circumstances. The legislature implemented this change in the savings statute rather than the statute of limitations section (55-2-12), labelling the enactment as a "special" savings statute. Notably, the bill as introduced would have provided no period of limitation with respect to such acts.

The legislation includes a discovery rule. For claims arising from child sexual assault/abuse, complainants have four years from the time of reaching adulthood or four years from when the abuse is discovered, whichever is longer.

This bill is likely a response to *Donley v. Bracken*, 192 W. Va. 383, 452 S.E.2d 699 (1994) and *Albright v. White*, 202 W. Va. 292, 503 S.E.2d 860 (1998). In *Bracken*, the Supreme Court of Appeals of West Virginia held that the statutory language of W. Va. Code § 55-2-15 was unambiguous and did not provide equitable tolling of the statute of limitations for latent discovery. *White* was a repressed memory case that largely re-affirmed *Bracken*.

#### **HOUSE BILL 2852**

Sponsors: Hamrick, Trecost, Zatezalo, Waxman and E. Nelson  
Effective Date: Passed March 8, 2016, and in effect from passage.  
Clerk's Summary: Relating to legalizing and regulating the sale and use of fireworks.  
Code Affected: Repealing W. Va. Code §§29-3-23, 24, 25 & 26;  
Adding W. Va. Code §§29-3E-1, *et seq.*; and  
Amending W. Va. Code §§61-3E-1 & 11.

*Following summary provided by Matthew D. Brummond*

Prior to the passage of this legislation, the sale, possession, or use of fireworks, as defined by code, was illegal without permit, and as a general matter consumers could not obtain fireworks at retail. Exceptions existed for model rocket engines, cap guns (as distinguished from blank cartridges), sparklers, snakes, and other specifically enumerated "fireworks" which did not require any permit (though even these were not to be sold to people under the age of sixteen).

The legislation permits, and regulates, the sale and use of fireworks. Notably, the legislation modernizes West Virginia's fireworks regulations to reference the CFR and NFPA standards.

As regards penalties under the new statutory scheme, people who violate the portions of the code without a specified penalty are guilty of a misdemeanor and can be fined anywhere between \$100 and \$500. The fire marshal may seize and dispose of all contraband fireworks.

The act leaves in place municipalities' authority to create their own regulations for the possession and use of fireworks by consumers.

**HOUSE BILL 4013**

Sponsors: Lane, Anderson, Blair, Hamrick, Ambler, D. Evans, Border, McCuskey, Householder, Ireland and Zatezalo

Effective Date: Passed March 12, 2016, and in effect 90 days from passage.

Clerk's Summary: Requiring a person desiring to vote to present documentation identifying the voter.

Code Affected: Amending W. Va. Code §§3-1-34 & 41; Amending W.Va. Code §§3-2-11, 12; Amending W. Va. Code §17B-2-1; and Adding W. Va. Code §3-1-51.

The legislation requires voters to present one of the following pieces of identification before voting: 1) state issued driver's license, 2) West Virginia ID, 3) US passport, 4) WV state or federal employment card, 5) a student identification card issued by a WV college, 6) a military ID card, etc. (see W. Va. Code § 3-1-34(a)(1) and (2) for full requirements). There are two exceptions for presenting an ID: a valid voter (With ID) may vouch for the individual, or the poll worker may *choose* to not require an ID if he or she personally knows the would-be voter.

The bill also requires poll workers to inspect the document to ensure its authenticity. The inspection is visual, and the poll worker must make a judgment call as to whether the picture ID depicts the voter presenting the identification.

A person who cannot present a valid ID can only fill out a provisional ballot after completing a voter identity affidavit. Provisional ballots will only be counted towards the election after the clerk compares the signature on the ballot with the signature on the registration or otherwise verifies the authenticity of the signature.

A new provision is added to existing law requiring the clerk of the county commission to mail letters to the voter who executed an affidavit regarding his or her identity. The voter is informed that a person used the voter's name and address to vote. The voter is instructed to notify the clerk if he or she did not vote. If so notified, the clerk is then to refer the matter to the Secretary of State for investigation of potential voter fraud.

Provision is made for the Department of Motor Vehicles to issue identification cards to be specifically used for presentment at the polling place.

Finally, the provisions for issuance of a drivers' license or an identification card to persons over the age of fifty years or the age of seventy years have been made less restrictive. Significantly, a person over the age of fifty years will not be required to present a birth certificate with a "raised seal or stamp" if the issuing jurisdiction does not require such a stamp and a person over the age of seventy years is not required to present a birth certificate.

**HOUSE BILL 4145**

Sponsors: Blair, Azinger, Butler, Cadle, Eldridge, Householder, Marcum, Overington, Phillips, Sobonya, and Upson

Effective Date: Passed February 24, 2016, and in effect 90 days from passage.

Clerk's Summary: Relating to carry or use of a handgun or deadly weapon.

Code Affected: Repealing W. Va. Code §20-2-6a; Amending W. Va. Code §§61-7-3, 4, 6, 7, and 11a; and Adding W. Va. Code §§61-7-4a, 15a, and 17.

*Following summary provided by Scott E. Johnson*

The legislation repeals W. Va. Code §20-2-6a related to carrying a concealed handgun for self-defense while hiking, hunting, camping, or in or on a motor vehicle.

The legislation amends W. Va. Code §61-7-3 to make it a crime for only persons under the age of 21 to carry a concealed deadly weapon without a license or other lawful authorization as provided in the West Virginia Code. A first offense is a misdemeanor carrying a sentence of not more than 12 months and a fine of between \$100.00 to \$1,000.00 dollars. A second offense or subsequent offense is a felony carrying a 1 to 5 year sentence and a fine of between \$1,000.00 and \$5,000.00.

W. Va. Code §61-7-3(b) requires the Prosecuting Attorney to determine if a violation is a second or subsequent offense and to include such information in the indictment. This subsection also obligates the Prosecuting Attorney to introduce evidence of the second or subsequent offense at trial.

W. Va. Code §61-7-4 deals with the issuance of general concealed weapons permits. Subdivision (a)(3) requires that applicants for a concealed weapons permit be 21 years of age. The subdivision grandfathered those individuals who are 18 years of age and hold a concealed weapons permit allowing them to keep their concealed weapons permit. This subsection further provides that if the licensee is 18 years of age and is required to carry a concealed weapon as a condition of employment, the individual may so certify employment to the Sheriff and is otherwise entitled to a full license upon completion of the other requirements for a license.

Subsection (d) requires that live firing of a pistol or revolver be a part of the firearms training for licensure.

A new subsection (r) provides for up to a maximum \$50.00 tax credit for those who take firearms training or, if training is less than \$50.00, the \$50.00 tax credit is available against the cost of applying for a license.

W. Va. Code §61-7-4a creates a new section of the West Virginia Code providing for a provisional license to carry a deadly weapon for individuals between 18 and 21 years of age.

As an amendment to W. Va. Code §61-7-6(a), persons over 18 but not 21 are exempted from W. Va. Code §61-7-3 when carrying a deadly weapon on their own premises or carrying an unloaded firearm from the place of purchase to his/her home, residence or place of business or a place of repair and back to the home, residence or place of business.

W. Va. Code §61-7-6 includes a new subdivision (a)(7) exempting from Code § 61-7-3 any members of the United States Armed Forces, Reserve, or National Guard. The Code provision made several non-substantive, stylistic changes.

The crux of the legislation is subsection (c) . Under subsection (c), a

21 year old or older person who is a United States citizen or legal resident and not otherwise prevented from possessing a firearm by West Virginia or Federal law is entitled to carry a concealed weapon without a permit.

Subsection (d) makes it a "separate and additional offense" to any other criminal prohibitions in the West Virginia Code to possess a concealed firearm when one is barred from possessing a firearm in general under subsection (a). The new crime imposes a punishment of not more than 3 years and a fine of not more than \$5,000.00 or both.

Subsection (e) makes it a "separate and additional offense" to any other criminal prohibitions in the West Virginia Code to carry a concealed firearm if one is prohibited from carrying a concealed firearm under subsection (b). Carrying a concealed firearm when generally prohibited from carrying a firearm under subsection (b) carries a penalty of up to 10 years in prison, or a \$10,000.00 fine or both.

The legislation amended Code § 61-7-11a by adding a provision in subsection (b)(1) allowing for the possession of a firearm or other deadly weapon on a private primary or secondary education building, structure, or facility when the institution has adopted written policies allowing for such possession on such buildings, structures, or facilities.

A provision is also added allowing probation officers to carry firearms on educational facilities while the probation officer is in the performance of his or her duties.

A new criminal penalty is added to the West Virginia Code. Under new W. Va. Code § 61-7-15a, as a separate and distinct offense in addition to any Code provisions, if one uses or presents a firearm during the commission of a felony, the penalty is incarceration in a State Correctional Facility for not more than 10 years.

A new Code section provides that nothing in the revised code should be construed to abrogate or modify statutory provisions or common law decisions relating to the defense of self or others.

Notably, the legislation was vetoed by the Governor, but the veto was overridden.

**SENATE BILL 376**

Sponsors: Trump, Palumbo, Gaunch, Williams, Beach, Yost, Miller and Maynard  
Effective Date: Passed March 10, 2016, and in effect 90 days from passage.  
Clerk's Summary: Expanding authority of Secretary of State and State Police.  
Code Affected: Amending W. Va. Code §30-18-10.

*Following summary provided by Brenda K. Thompson*

This bill provides that the Secretary of State shall require applicants for private investigator and security guard licensure to submit to a state and national criminal history record check. Applicants must provide fingerprints to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation, and must pay the actual costs of the fingerprinting and criminal history record check. The results of the record check are not to be disclosed, even under the provisions of the Freedom of

Information Act, W. Va. Code §§29B-1-1, *et seq.*, except to the individual who made the application or as authorized in writing by the applicant or pursuant to a court's order. By making an application, the legislation expressly provides that the applicant is "authorizing the Secretary of State, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license."

**SENATE BILL 404**

Sponsors: Ferns, Plymale, Stollings and Presiozo  
Effective Date: Passed March 12, 2016, and in effect 90 days from passage.  
Clerk's Summary: Removing prohibition on billing persons for testing for HIV and sexually transmitted diseases.  
Code Affected: Amending W. Va. Code §16-3C-2 and W. Va. Code §16-4-19.

The provisions of W. Va. Code §16-4-19 deal generally with the testing for HIV both upon voluntary request of a person and in certain mandated circumstances. The legislation first authorizes "all healthcare provides, the bureau [for public health], ... [and] county or local health departments" to bill insurance companies or other third party providers for payment of the costs of HIV-related testing and treatment. A test cannot be refused to be administered because the person requesting the test elects to remain anonymous, thus precluding billing, or because the person has no insurance coverage.

The legislation then authorizes the costs for the mandatory testing of persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation to be billed to the person so charged unless a court has determined that the person is unable to pay. If the person is unable to pay, then the costs are to be paid by the correctional facility in which the person is incarcerated, the bureau for public health, or the correctional facility. And, if the person so charged has health insurance, then the insurance provider may be billed. And persons so charged do not have the option of remaining anonymous.

Throughout the legislation, direction is provided for the billing of the person who has to undergo the mandatory testing, including the billing of an insurance company, rather than making this an immediate obligation of the bureau for public health.

A technical error occurs in the bill in that no subsection h(11) of W. Va. Code §16-3C-2 exists. This effectively eliminates language in the existing law that would permit a court, upon the prosecution's motion, to order that an offender undergo even more extensive testing pursuant to guidelines issued by the Centers for Disease Control and Prevention. No authorization will exist for such orders upon the effective date of the legislation. Due to the mis-numbering, it is not certain whether this is an intended result.

With respect to W. Va. Code §16-4-9 governing the voluntary submission of individuals to testing at a health department for sexually transmitted diseases, the legislation makes the person submitting to the test "responsible for paying the reasonable costs of testing, either directly or through billing the person's medical provider." The health departments may charge their existing fees or may develop a sliding fee scale. Moreover, if a person elects treatment through the health department, the

person is required to pay for such treatment or the person's insurance provider is to be billed. However, no person is to be refused treatment due to an inability to pay or due to the lack of insurance. Notably, no such protection is proffered for the initial testing.

**VETOED**

**SENATE BILL 102**

Sponsors: Trump, Boso and Guanch  
Effective Date: Vetoed.  
Clerk's Summary: Conforming to federal Law-Enforcement Officers Safety Act.  
Code Affected: Amending W. Va. Code §7-4-1; and adding W. Va.

The proposed legislation had several components.

The first component was to give prosecuting attorneys "the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States or Rule 42 of the West Virginia Rules of Criminal Procedure [i.e., criminal contempt] which occur in the county courthouse and other buildings where court proceedings are held in which the prosecutor or assistant prosecutor is appearing before the court in a criminal matter and in the presence of the prosecuting attorney or assistant prosecuting attorney." Indeed, "the arrest authority of a prosecuting attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy sheriff, within the [stated] geographical limitations."

The second component was to give the prosecuting attorneys the rights set forth in the provisions of 18 U.S.C. §926B, entitled "carrying of concealed firearms by qualified law enforcement officers." A prosecutor's office was to adopt a written policy authorizing the carrying of concealed firearms by prosecutors or assistant prosecutors, requiring the regular qualifying of the prosecutor or the assistants in the use of a firearm "with standards ... which are equal to or exceed those required of sheriff's deputies in the county in which the prosecuting attorney was elected or appointed"; and requiring the issuance of a photographic identification and certification card which identify the prosecuting attorney or assistant prosecuting attorneys as "law enforcement employees" of the prosecuting attorney's office.

The third component was to permit anyone employed by a West Virginia state, county or municipal agency who is a law enforcement officer within the meaning of 18 U.S.C. §926B to receive the necessary identification and certification card, at no cost, to carry a concealed firearm. Under the provisions of the federal law, "qualified law enforcement officer" means an employee of a governmental agency who--**(1)** is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law ...; **(2)** is authorized by the agency to carry a firearm; **(3)** is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers; **(4)** meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;**(5)** is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and**(6)** is not prohibited by Federal law from receiving a firearm." The provision further provided that firearm qualifying was to continue to be offered to "honorably retired or separated former employees" who can then carry a photo identification and certification card that the person is a "qualified retired law-enforcement

officer.”

The Governor’s veto message stated, “[t]he proper role of prosecutors, however, is to represent the state in criminal proceedings; their job should not entail arresting suspects in county courthouses and being conflicted out of prosecuting them.” Moreover, the Governor noted that the Legislature had passed, over his veto, the carrying of a concealed weapon with or without a license, making the special grant of a right to a prosecutor and others to carry a concealed weapon unnecessary, although the right might be limited inside the courthouse.

**SENATE BILL 254**

Sponsor: Trump  
Effective Date: Vetoed.  
Clerk’s Summary: Not allowing county park commissions to prohibit firearms in facilities.  
Code Affected: Amending W. Va. Code §7-11-5.

The affected statute generally gives the county commission the “necessary powers and authority to manage and control all public parks and recreational properties and facilities owned by the county or commission and used as a part of such public parks and recreation system.” The powers and authority included the “right to promulgate rules and regulations concerning the management and control of such parks and recreational facilities.” The legislation as enacted limited this authority by providing that the county commission could not promulgate rules and regulations “which prohibit the possession of firearms.”

The Governor’s veto message stated that “I believe counties are in a better position than the Legislature to evaluate local issues and determine whether firearm prohibitions in county parks and recreation areas are appropriate.” The message concludes: “Accordingly, I veto this bill in deference to county judgment on matters of public safety.”

**SENATE BILL 272**

Sponsors: Blair, Gaunch, Plymale, and Romano  
Effective Date: Vetoed.  
Clerk’s Summary: Allowing investigators from Attorney General’s office to carry concealed weapons.  
Code Affected: Adding W. Va. Code §5-3-6 and W. Va. Code §60-3-24a.

As introduced originally, the legislation permitted the Attorney General to designate “investigators in his or her employ to carry a firearm in the course of performing their official duties.” As passed, an identical provision was added to give the West Virginia Alcohol Beverage Control Commissioner the same authority. Both provisions required the designated employee to successfully complete a firearms training course and to maintain a certification equivalent to that required of a state police officer. Both provisions also required the employee to obtain a license to carry a concealed weapon.

The Governor’s veto message stated that the Alcohol Beverage Control Administration opposed the bill, as the Administration’s statutory authority requires it to utilize the State Police in its enforcement efforts and, therefore, the Administration’s employees do not require the use of firearms in performing their official duties. Accordingly, “in the interests of public safety, it [SB 272] is hereby vetoed.”



