

bill to repeal obsolete language pertaining to licenses to carry  
deadly weapons

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11 A BILL to amend and reenact §5A-4-3, §7-11-5, §8-29B-5, §20-14-  
12 6, §61-3B-1, §61-3B-2 and §61-3B-3 of the code of West  
13 Virginia, 1931, as amended, all relating to repealing  
14 obsolete language pertaining to licenses to carry deadly  
15 weapons.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §5A-4-3, §7-11-5, §8-29B-5, §20-14-6, §61-3B-1, §61-  
18 3B-2 and §61-3B-3 of the code of West Virginia, 1931, as  
19 amended, be amended and reenacted, all to read as follows:

1                   **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

2   **ARTICLE 4. GENERAL SERVICES DIVISION.**

3   **§5A-4-3. Security officers; appointment; oath; carrying**  
4                   **concealed weapons; powers and duties generally, etc.**

5       (a) In addition to the other powers given and assigned to  
6 the secretary in this chapter, ~~he is hereby authorized to~~ the  
7 secretary may appoint bona fide residents of this state to act  
8 as security officers upon any premises owned or leased by the  
9 state of West Virginia and under the jurisdiction of the  
10 secretary, subject to the conditions and restrictions  
11 ~~hereinafter~~ imposed in this section. Before entering upon the  
12 performance of his or her duties as ~~such~~ a security officer  
13 under this section, each person so appointed shall qualify  
14 therefor in the same manner as is required of county officers by  
15 taking and filing an oath of office as required by article one,  
16 chapter six of this code. ~~No such person shall have authority to~~  
17 ~~carry a gun or any other dangerous weapon until he shall have~~  
18 ~~obtained a license therefor in the manner prescribed by section~~  
19 ~~two, article seven, chapter sixty one of this code.~~

20       (b) It shall be the duty of any person so appointed and  
21 qualified to preserve law and order on any premises under the  
22 jurisdiction of the secretary to which he or she may be assigned  
23 by the secretary. For this purpose he or she shall as to  
24 offenses committed on such premises have and may exercise all

1 the powers and authority and shall be subject to all the  
2 responsibilities of a deputy sheriff of the county. The  
3 assignment of security officers to any premises under the  
4 jurisdiction of the secretary shall not be deemed to supersede  
5 in any way the authority or duty of other peace officers to  
6 preserve law and order on such premises.

7 (c) The secretary may at his pleasure revoke the authority  
8 of any ~~such~~ security officer appointed under this section by  
9 filing a notice to that effect in the office of the clerk of  
10 each county in which ~~his~~ the security officer's oath of office  
11 was filed, ~~and in the case of officers licensed to carry a gun~~  
12 ~~or other dangerous weapon, by notifying the clerk of the circuit~~  
13 ~~court of the county in which the license therefor was granted.~~

14 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

15 **ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

16 **§7-11-5. General powers of commission; rules and regulations;**  
17 **misdemeanor offenses; park police authorized.**

18 (a) The parks and recreation commission shall have the  
19 necessary powers and authority to manage and control all public  
20 parks and recreational properties and facilities owned by the  
21 county or commission and used as a part of such public parks and  
22 recreation system, including the right to promulgate rules and  
23 regulations concerning the management and control of such parks

1 and recreational properties and facilities and to enforce any  
2 such rules and regulations so promulgated.

3       **(b)** The parcs and recreation commission shall also have  
4 plenary power and authority to prepare and submit to the county  
5 ~~court~~ commission for adoption rules ~~and regulations~~ regulating  
6 the use of any parks and recreational properties and facilities  
7 under the control of the parcs and recreation commission and  
8 prohibiting any type of use of or activities in connection with  
9 any such properties or facilities, and any such rules and  
10 regulations, if so adopted, shall be duly entered of record in  
11 the order book of the county ~~court~~ commission. The violation of  
12 any such rule ~~and regulation~~ ~~so~~ adopted by the county ~~court~~  
13 commission shall constitute a misdemeanor, and any person  
14 convicted of any such violation shall be punished by a fine of  
15 not less than five dollars nor more than one hundred dollars, or  
16 by imprisonment in jail for a period not exceeding thirty days,  
17 or by both such fine and imprisonment. ~~Justices of the peace of~~  
18 ~~the county shall have concurrent jurisdiction with the circuit~~  
19 ~~court and other courts of record (having criminal jurisdiction)~~  
20 ~~of any misdemeanor offenses arising under this article.~~ The  
21 violation of any such rule ~~and regulation~~ ~~which~~ that also  
22 constitutes the violation of any state law or municipal  
23 ordinance may be prosecuted and punished as a violation of ~~such~~  
24 the applicable state law or municipal ordinance rather than

1 under the provisions of this section. To enforce any such rules  
2 ~~and regulations,~~ to protect and preserve all properties and  
3 facilities under the control of the parks and recreation  
4 commission and to preserve law and order in connection  
5 therewith, the parks and recreation commission shall have  
6 plenary power and authority to provide in its bylaws procedures  
7 for the appointment, supervision and discharge of one or more  
8 park police officers. Whenever any such appointment is made, a  
9 copy of the order of appointment shall be filed by the parks and  
10 recreation commission with the county ~~court~~ commission.

11 (c) In any area under the jurisdiction and control of the  
12 parks and recreation commission, or in connection with any  
13 properties or facilities under the jurisdiction and control of  
14 the parks and recreation commission, or in pursuit of one or  
15 more individuals therefrom, any park police officer so appointed  
16 shall have all of the power and authority which a regularly  
17 appointed deputy sheriff of such county has in enforcing the  
18 criminal laws of the state. ~~Notwithstanding any provisions of~~  
19 ~~this code to the contrary, park police officers appointed as~~  
20 ~~aforesaid shall not be required to obtain a state license to~~  
21 ~~carry a weapon, as required by the provisions of section two,~~  
22 ~~article seven, chapter sixty one of this code. When any such~~  
23 ~~commission has purchased one or more policies of public~~  
24 ~~liability insurance providing the commission and its officers,~~

1 ~~agents and employees insurance coverage for legal liability of~~  
2 ~~said commission and its officers, agents and employees for~~  
3 ~~bodily injury, personal injury or damage (including, but not~~  
4 ~~limited to, false arrest and false imprisonment) and property~~  
5 ~~damage, and affording said commission and its officers, agents~~  
6 ~~and employees insurance coverage against any and all legal~~  
7 ~~liability arising from, growing out of, by reason of or in any~~  
8 ~~way connected with, any acts or omissions of said commission, or~~  
9 ~~its officers, agents or employees in the performance of their~~  
10 ~~official duties, and so long as the coverage aforesaid remains~~  
11 ~~in full force and effect as to such park police officers, then~~  
12 ~~the bond specified in section five, article seven of said~~  
13 ~~chapter sixty one shall not be required as to such park police~~  
14 ~~officers.~~

15 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

16 **ARTICLE 29B. AIRPORT SECURITY.**

17 **§8-29B-5. Jurisdiction of airport police officers; insurance**  
18 **coverage; bonds.**

19 In any area under the jurisdiction and control of the  
20 airport operator, or in connection with the airport, or in  
21 pursuit of one or more individuals therefrom, any airport police  
22 officer shall have (1) all of the power and authority which a  
23 regularly appointed deputy sheriff of a county in this state has  
24 in enforcing the criminal laws of this state; (2) full power and

1 authority to enforce any and all federal laws and rules and  
2 regulations relating to airports, air passengers, baggage  
3 inspection, the screening of air passengers and other airport  
4 security measures; (3) full power and authority to enforce any  
5 and all rules and regulations promulgated by the airport  
6 operator; and (4) the power to search persons, packages,  
7 containers and baggage and the power to arrest persons:  
8 *Provided*, That the foregoing provisions of this section shall  
9 under no circumstances whatever be construed as in any way  
10 limiting the power and authority of a municipal police officer  
11 or deputy sheriff who has been assigned to serve as an airport  
12 police officer which he has by virtue of his being a municipal  
13 police officer or deputy sheriff, and under no circumstances  
14 whatever shall the assignment or appointment or designation of  
15 one or more airport police officers at an airport be deemed in  
16 any way to supersede or limit the power and authority of other  
17 peace officers to preserve law and order at such airport.

18 ~~Consistent with the provisions of section five, article~~  
19 ~~seven, chapter sixty one of this code, any municipal police~~  
20 ~~officer or deputy sheriff assigned as an airport police officer~~  
21 ~~pursuant to the provisions of subsection (b), section four of~~  
22 ~~this article, and (notwithstanding any provision of this code to~~  
23 ~~the contrary) any person appointed or designated as an airport~~  
24 ~~police officer pursuant to the provisions of subsection (c),~~

1 ~~section four of this article, shall not be required to obtain a~~  
2 ~~state license to carry a deadly weapon, as provided for in~~  
3 ~~section two, article seven of said chapter sixty one. Any~~  
4 ~~municipal police officer or deputy sheriff assigned as an~~  
5 ~~airport police officer pursuant to the provisions of subsection~~  
6 ~~(b), section four of this article shall not be required to~~  
7 ~~furnish any bond under section five, article seven of said~~  
8 ~~chapter sixty one other than the bond furnished thereunder as~~  
9 ~~such municipal police officer or deputy sheriff. When one or~~  
10 ~~more policies of public liability insurance are obtained~~  
11 ~~providing insurance coverage for legal liability of an airport~~  
12 ~~police officer for bodily injury, personal injury or damage~~  
13 ~~(including, but not limited to, false arrest and false~~  
14 ~~imprisonment) and property damage, and affording said airport~~  
15 ~~police officer insurance coverage against any and all legal~~  
16 ~~liability arising from, growing out of, or by reason of or in~~  
17 ~~any way connected with, any acts or omissions of said airport~~  
18 ~~police officer in the performance of his official duties, and so~~  
19 ~~long as the coverage aforesaid remains in full force and effect~~  
20 ~~as to such airport police officer, then the bond specified in~~  
21 ~~section five, article seven of said chapter sixty one shall not~~  
22 ~~be required as to such airport police officer; otherwise such~~  
23 ~~bond shall be required and must be furnished.~~

1                                   **CHAPTER 20. NATURAL RESOURCES.**

2   **ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.**

3   **§20-14-6. Hatfield-McCoy recreation area rangers.**

4       (a) The board is hereby authorized to appoint bona fide  
5 residents of this state to act as Hatfield-McCoy recreation area  
6 rangers upon any premises which are part of the Hatfield-McCoy  
7 recreation area, subject to the conditions and restrictions  
8 imposed by this section. Before performing the duties of ranger,  
9 each appointed person shall qualify for the position of ranger  
10 in the same manner as is required of county officers by the  
11 taking and filing of an oath of office as required by section  
12 one, article one, chapter six of this code and by posting an  
13 official bond as required by section one, article two, chapter  
14 six of this code. To facilitate the performance of the duties of  
15 a ranger, a ranger may carry a firearm or other dangerous weapon  
16 while the ranger is on duty.

17       (b) It is the duty of any person appointed and qualified to  
18 preserve law and order on any premises which are part of the  
19 Hatfield-McCoy recreation area, the immediately adjacent  
20 property of landowners who are making land available for public  
21 use under agreement with the authority and on streets, highways  
22 or other public lands utilized by the trails, parking areas or  
23 related recreational facilities and other immediately adjacent  
24 public lands. For this purpose, the ranger shall be considered

1 to be a law-enforcement officer in accordance with the  
2 provisions of section one, article twenty-nine, chapter thirty  
3 of this code and, as to offenses committed within those areas,  
4 have and may exercise all the powers and authority and are  
5 subject to all the requirements and responsibilities of a law-  
6 enforcement officer. The assignment of rangers to the duties  
7 authorized by this section may not supersede in any way the  
8 authority or duty of other peace officers to preserve law and  
9 order on those premises.

10 (c) The salary of all rangers shall be paid by the board.  
11 The board shall furnish each ranger with an official uniform to  
12 be worn while on duty and shall furnish and require each ranger  
13 while on duty to wear a shield with an appropriate inscription  
14 and to carry credentials certifying the person's identity and  
15 authority as a ranger.

16 (d) The board may at its pleasure revoke the authority of  
17 any ranger. The executive director shall report the termination  
18 of employment of a ranger by filing a notice to that effect in  
19 the office of the clerk of each county in which the ranger's  
20 oath of office was filed ~~and in the case of a ranger licensed to~~  
21 ~~carry a gun or other dangerous weapon, by notifying the clerk of~~  
22 ~~the circuit court of the county in which the license for the gun~~  
23 ~~or other dangerous weapon was granted.~~

1                   **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

2   **ARTICLE 3B. TRESPASS.**

3   **§61-3B-1. Definitions.**

4           As used in this article:

5           (1) "Structure" means any building of any kind, either  
6 temporary or permanent, which has a roof over it, together with  
7 the curtilage thereof.

8           (2) "Conveyance" means any motor vehicle, vessel, railroad  
9 car, railroad engine, trailer, aircraft or sleeping car, and "to  
10 enter a conveyance" includes taking apart any portion of the  
11 conveyance.

12           (3) An act is committed "in the course of committing" if it  
13 occurs in an attempt to commit the offense or in flight after  
14 the attempt or commission.

15           (4) "Posted land" is that land upon which reasonably  
16 maintained signs are placed not more than five hundred feet  
17 apart along and at each corner of the boundaries of the land,  
18 upon which signs there appears prominently in letters of not  
19 less than two inches in height the words "no trespassing" and in  
20 addition thereto the name of the owner, lessee or occupant of  
21 the land. The signs shall be placed along the boundary line of  
22 posted land in a manner and in a position as to be clearly  
23 noticeable from outside of the boundary line. It shall not be  
24 necessary to give notice by posting on any enclosed land or

1 place not exceeding five acres in area on which there is a  
2 dwelling house or property that by its nature and use is  
3 obviously private in order to obtain the benefits of this  
4 article pertaining to trespass on enclosed lands.

5 (5) "Cultivated land" is that land which has been cleared  
6 of its natural vegetation and is presently planted with a crop,  
7 orchard, grove, pasture or trees or is fallow land as part of a  
8 crop rotation.

9 (6) "Fenced land" is that land which has been enclosed by a  
10 fence of substantial construction, whether with rails, logs,  
11 post and railing, iron, steel, barbed wire, other wire or other  
12 material, which stands at least three feet in height. For the  
13 purpose of this article, it shall not be necessary to fence any  
14 boundary or part of a boundary of any land which is formed by  
15 water and is posted with signs pursuant to the provisions of  
16 this article.

17 (7) Where lands are posted, cultivated or fenced as  
18 described herein, then such lands, for the purpose of this  
19 article, shall be considered as enclosed and posted.

20 (8) "Trespass" under this article is the willful  
21 unauthorized entry upon, in or under the property of another,  
22 but shall not include the following:

1 (a) Entry by the state, its political subdivisions or by  
2 the officers, agencies or instrumentalities thereof as  
3 authorized and provided by law.

4 (b) The exercise of rights in, under or upon property by  
5 virtue of rights-of-way or easements by a public utility or  
6 other person owning such right-of-way or easement whether by  
7 written or prescriptive right.

8 (c) Permissive entry, whether written or oral, and entry  
9 from a public road by the established private ways to reach a  
10 residence for the purpose of seeking permission shall not be  
11 trespass unless signs are posted prohibiting such entry.

12 (d) Entry performed in the exercise of a property right  
13 under ownership of an interest in, under or upon such property.

14 (e) Entry where no physical damage is done to property in  
15 the performance of surveying to ascertain property boundaries,  
16 and in the performance of necessary work of construction,  
17 maintenance and repair of a common property line fence, or  
18 buildings or appurtenances which are immediately adjacent to the  
19 property line and maintenance of which necessitates entry upon  
20 the adjoining owner's property.

21 (9) "Deadly weapon" has the same meaning as in section two,  
22 article seven of this chapter.

1 **§61-3B-2. Trespass in structure or conveyance.**

2 Any person who knowingly enters in, upon or under a  
3 structure or conveyance without being authorized, licensed or  
4 invited, or having been authorized, licensed or invited is  
5 requested to depart by the owner, tenant or the agent of such  
6 owner or tenant, and refuses to do so, shall be guilty of a  
7 misdemeanor and, upon conviction thereof, shall be fined not  
8 more than one hundred dollars.

9 If the offender is armed with a ~~firearm or other dangerous~~  
10 deadly weapon while in the structure or conveyance, with the  
11 unlawful and felonious intent to do bodily injury to a human  
12 being in said structure or conveyance at the time the offender  
13 knowingly trespasses, such offender shall, notwithstanding ~~the~~  
14 ~~provisions of section one, article seven, chapter sixty one of~~  
15 ~~this code~~ any license or other lawful authorization the offender  
16 may have had to carry the weapon, be guilty of a misdemeanor  
17 and, upon conviction thereof, shall be fined not less than one  
18 hundred dollars nor more than five hundred dollars, ~~or be~~  
19 confined in ~~the county~~ jail for a ~~period not to exceed twelve~~  
20 ~~months~~ more than one year, or both ~~such fine and imprisonment~~.

21 **§61-3B-3. Trespass on property other than structure or**  
22 **conveyance.**

23 (a) Any person who knowingly and without being authorized,  
24 licensed or invited, enters or remains on any property, other

1 than a structure or conveyance, as to which notice against  
2 entering or remaining is either given by actual communication to  
3 such person or by posting, fencing or cultivation, shall be  
4 guilty of a misdemeanor and, upon conviction thereof, shall be  
5 fined not more than one hundred dollars.

6 (b) If the offender defies an order to leave, personally  
7 communicated to him by the owner, tenant or agent of such owner  
8 or tenant, or if the offender opens any door, fence or gate, and  
9 thereby exposes animals, crops or other property to waste,  
10 destruction or freedom, or causes any damage to property by such  
11 trespassing on property other than a structure or conveyance, he  
12 shall be guilty of a misdemeanor and, upon conviction thereof,  
13 shall be fined not less than one hundred dollars nor more than  
14 five hundred dollars, ~~or imprisoned in the county jail for a~~  
15 ~~period not to exceed~~ more than six months, or both ~~such fine and~~  
16 ~~imprisonment~~.

17 (c) If the offender is armed with a ~~firearm or other~~  
18 ~~dangerous~~ deadly weapon, with the unlawful and felonious intent  
19 to do bodily injury to a human being during his commission of  
20 the offense of trespass on property other than a structure or  
21 conveyance, such offender shall, notwithstanding ~~the provisions~~  
22 ~~of section one, article seven, chapter sixty one of this code~~  
23 any license or other lawful authorization the offender may have  
24 had to carry the weapon, be guilty of a misdemeanor and, upon

1 conviction thereof, shall be confined in ~~the county~~ jail for a  
2 ~~term not to exceed~~ more than six months, ~~or~~ fined not more than  
3 one hundred dollars, or both ~~such fine and imprisonment~~.

4 (d) Notwithstanding and in addition to any other penalties  
5 provided by law, any person who performs or causes damage to  
6 property in the course of a willful trespass shall be liable to  
7 the property owner in the amount of twice the amount of such  
8 damage: *Provided*, That the provisions of this article shall not  
9 apply in a labor dispute.

NOTE: The purpose of this bill is to repeal obsolete statutory language pertaining to the carrying of deadly weapons by Department of Administration security officers, county park police officers, and municipal airport police officers. This bill also clarifies references in the trespassing statutes to conform to the present weapons statutes.

Strike-throughs indicate language which would be eliminated; underscoring indicates new language which would be added.

This bill was proposed by Jim Mullins <[jmullins@wvcdl.org](mailto:jmullins@wvcdl.org)>