

# West Virginia Citizens Defense League, Inc.

## West Virginia Gun Owner Protection Act of 2012

The West Virginia Gun Owner Protection Act of 2012 is a comprehensive revision of West Virginia's gun laws that expand the rights of law-abiding gun owners and increase the penalties for the criminal misuse of firearms and other weapons.

This bill makes wide-ranging improvements in West Virginia gun laws, including:

(This analysis begins at §61-7-3)

1. Authorizes concealed carry without a license in most places:
  - a. The proposed revisions to W.Va. Code § 61-7-3 would authorize individuals to carry a concealed weapon without a license in all but a handful of locations, almost of which are subject to specific signage requirements (the form of the required sign is identical to but the required text is different than this [exemplar](#)).
  - b. In most cases, an individual who lawfully carries a concealed weapon without a license is subject to a duty to inform a law-enforcement officer who contacts the person for an official purpose.
  - c. The proposed amendments to §61-7-7 prohibit certain categories of individuals from carrying a concealed weapon in a public place; these categories generally correspond to most states' categories of individuals who are disqualified from obtaining a concealed weapons license. This bill permits an otherwise disqualified person to petition the circuit court for relief from disability.
2. Reforms concealed weapons licensing law:
  - a. Expands scope of license to cover all weapons generally.
  - b. Establishes multi-class licensing system.
    - i. Based on North Dakota's recent success in expanding their reciprocity with other states by creating a two-tier licensing system, WVCDL is proposing a 5-class licensing system in which--depending on a person's age and whether the person has been fingerprinted and/or completed a specific live fire shooting proficiency exercise in addition to a basic demonstration of competence with a handgun--individuals who choose to upgrade to a Class 1 license would qualify for reciprocity in every state that has some form of reciprocity law in effect.
    - ii. Other license classes would have differing levels of reciprocity. WVCDL estimates that Class 3 licenses (the base level of license for licensees at least 21 years of age) would be honored in all states with which West Virginia currently has full reciprocity plus Alabama, Colorado, Georgia, Maine, New Hampshire, and Texas.
    - iii. Reduces minimum licensing age (for Class 4 and 5 licenses) from 21 to 18.
    - iv. Expands permissible forms of proof of training for base (Class 3 or 5) license.
  - c. Establishes nonresident licenses.
  - d. Closes "if background checks are complete" loophole on 45 day time limit for issuing license and require sheriff to issue temporary license or temporary

renewal license not later than the end of the 45-day period unless a regular license is issued.

- e. Improves background check process to qualify all licensees for an exemption under [18 U.S.C. § 922\(t\)\(3\)\(A\)](#) from separate background checks to purchase a firearm from a licensed dealer.
- f. Requires all licensing fees to be used solely for administering the concealed weapons licensing law. Current law gives sheriffs absolute discretion to spend any surpluses at the end of a fiscal year for any official purpose. This law encourages sheriffs to not hire enough staff to process all applications in a timely manner despite adequate funds to do so. Unfortunately, in the most outrageous case of misuse of licensing fees, [former Mercer County Sheriff Danny Wills misappropriated funds from the Mercer County concealed weapons license administration fund to finance his personal drug habit](#), for which he subsequently pleaded guilty to a federal charge of obtaining hydrocodone by misrepresentation, fraud, forgery and subterfuge and [went to prison](#).
- g. Adjusts the expiration and renewal cycle to coincide with the renewal cycle of driver's licenses (which expire every 5 years on the licensee's birthday when the licensee has a birthday evenly divisible by 5). In addition to making the renewal date easier to remember, this revised renewal schedule will evenly distribute application volumes over time and reduce periodic delays in processing that occur during periods of peak application activity. This bill will prorate license fees to correspond to the amount of time for which a license is issued.
- h. Automatically extends licenses issued to servicemembers who are deployed.
- i. Improves process for appealing denial, suspension, or revocation of a license.
  - i. Establishes process for appealing suspension or revocation of license to correspond to process for appealing denial of license.
  - ii. Establishes optional process for informally petitioning sheriff to reconsider denial, suspension, or revocation of license before appealing to circuit court.
  - iii. Places burden of proof on sheriff to justify denial, suspension, or revocation of license by clear and convincing evidence.
  - iv. Requires court to grant a *de novo* review to all matters appealed by an applicant or licensee.
  - v. Expands access to appellate process by requiring award of court costs, attorney fees, and other reasonable costs of litigation to any person who successfully appeals a denial, suspension, or revocation of a license.
- j. Provides optional processes for a licensee to file a notice of change of name or address, obtain a replacement license and, when moving to another county, have his or her license file transferred.
- k. Reduces license fees for a 5-year license from \$90 to \$60. \$15 of this fee reduction is achieved by eliminating a surcharge (tax) dedicated to the Courthouse Facilities Improvement Fund, which has nothing to do with the administration of concealed weapons licenses. However, there is an additional fee for first-time applicants for a Class 1 license to cover fingerprint processing costs (not required for renewals).

- l. Improves process of identifying licensees who have become disqualified from continued licensure and suspending or revoking those licenses. These changes will help expand West Virginia's reciprocity with other states and assist in qualifying West Virginia for addition to the [list](#) of states whose concealed weapons licensees are exempt from federal firearm purchase background checks.
  - m. Requires sheriffs to mail renewal notices to all licensees 60-90 days before a license expires.
  - n. Requires compilation and publication of annual statistical data concerning concealed weapons licenses.
  - o. Requires the Attorney General to annually report to the Legislature on reciprocity with other states and the status of West Virginia concealed weapons licenses as a qualifying alternative to a federal firearm purchase background check.
  - p. Requires the Attorney General to publish & annually update a compendium of West Virginia weapons, self-defense, and use of force laws.
  - q. Closes public access to names, addresses, and other personally-identifying information of all applicants & licensees; prohibits the unauthorized distribution of confidential information; and provides limited access to certain information by political party state executive committees or any nonprofit firearm-related or hunting-related educational or issue-advocacy organization exempt from federal income taxation under § 501(c) of the Internal Revenue Code (such as WVCDL).
  - r. Establishes system of temporary emergency licenses to provide immediate licensure to individuals who have developed exigent circumstances, pending completion of the required training course and normal background check process for a regular license.
  - s. Makes various administrative improvements not listed here in greater detail.
3. Reforms law governing categories of persons prohibited from possessing firearms:
    - a. Conforms state law to federal law regarding the restoration of firearm rights to individuals who have received a pardon or expungement for a disqualifying crime.
    - b. Unlike federal law, current West Virginia law does not automatically restore firearm rights to individuals who have received a pardon or expungement for a disqualifying crime. Furthermore, the absolute bar under current [§61-7-4](#) on issuing a concealed weapons license to anyone who has ever been convicted of a felony, regardless of whether the person has received a pardon or expungement, or had civil rights restored, prevents West Virginia from being able to grant anyone a restoration of firearm rights that is effective under federal law.
    - c. Conforms state law to federal law regarding firearm disabilities for domestic violence convictions and protective orders:
      - i. Several recent federal appellate court decisions have significantly narrowed the scope and applicability of the Lautenberg Amendment, [18 U.S.C. § 922\(g\)\(9\)](#).
      - ii. However, [W.Va. Code § 61-7-7\(a\)\(8\)](#) is written in a manner that, in light of recent federal case law developments, places much broader restrictions on the gun rights of individuals who are no longer barred by federal law from possessing firearms. Additionally, [W.Va. Code §§ 48-27-403 and 502](#) contain provisions that arguably place greater restrictions on the

ability to possess firearms of a person who is subject to a domestic violence protective order than [18 U.S.C. § 922\(g\)\(8\)](#)--especially with regard to protective orders obtained by individuals who do not fall within the narrow relationship categories covered by [18 U.S.C. § 922\(g\)\(8\)](#). These issues were first brought to WVCDL's attention in 2010 during WVCDL's successful campaign to defeat 2010 [HB 4422](#), which has been reintroduced this year as [HB 4042](#).

- d. Expands eligibility for relief from firearm disabilities.
4. Establishes standardized process for local chief law-enforcement official approval of transfer of National Firearms Act weapons (machine guns, short-barreled rifles, short-barreled shotguns, silencers, etc.).
5. Reduces & reforms places where carrying is prohibited:
  - a. Modifies prison contraband statute to apply prohibition on possession of weapons and other prohibited materials to the "secure area of a correctional facility" to which inmates have access and which are posted with specified signage (the form of the required sign is identical to but the required text is different than this [exemplar](#)). The current statute appears to apply to the entire grounds, including unsecured, publicly-accessible vehicle parking areas.
  - b. Repeals State Capitol carry ban.
  - c. Reforms prohibition on weapons on school property:
    - i. Completely exempts nonstudent adults who are licensed to carry concealed weapons. The federal Gun-Free School Zones Act ([18 U.S.C. § 922\(q\)](#)) and state laws in Alabama (Ala. Code [§13A-11-72\(e\)](#)), California (Cal. Penal Code [§ 626.9\(l\)](#)), Delaware (Del. Code [Title 11, § 1457](#)), New Hampshire (no state gun-free schools law), Oregon (Ore. Rev. Stat. [§ 166.370\(3\)\(d\)](#)), and Utah (Utah Code [§§ 76-10-505.5\(3\)\(a\)](#) and [523\(2\)](#)) give people licensed to carry concealed weapons a complete exemption from the prohibitions on carrying weapons on school property. Many other states have various provisions either allowing licensed individuals to leave loaded guns in their cars without the need to unload before entering school grounds (current West Virginia law exempts unloaded guns in cars for anyone) and/or reducing the penalty for violations of state laws from a felony to a misdemeanor for licensed individuals.
    - ii. Requires posting of specific signage at all public entrances to school property providing specific warning of weapons restrictions (the form of the required sign is identical to but the required text is different than this [exemplar](#)).
    - iii. Reduces penalty for violations from a felony to a misdemeanor except in cases in which a person committed the violation with the specific intent to use the weapon in the commission of a crime.
    - iv. Eliminates suspension or revocation of a driver's license as part of the penalty for misdemeanor violations.
  - d. Reforms courthouse carry ban:
    - i. Limits application of courthouse carry ban to specific, designated portions of a courthouse that actually house court offices and which are designated

- as a “court security zone” unless a broader secure restricted access area is established (see below).
- ii. Requires free, secure weapon storage areas at all entrances to areas of a court security zone.
  - iii. Requires posting of specific signage at all entrances to areas of a court security zone where carrying weapons is prohibited (the form of the required sign is identical to but the required text is different than this [exemplar](#)).
- e. Authorizes all state and local government entities to designate all or part of any public building as a secure restricted access area and prohibit possession of weapons inside restricted area if specified security measures are maintained, free, secure weapon storage areas are provided at each entrance to a restricted area, and specified signage is posted at all entrances (the form of the required sign is identical to but the required text is different than this [exemplar](#)).
6. Reforms wanton endangerment involving a firearm statute to limit felony charge of wanton endangerment to cases in which a firearm is discharged. This bill reverses Syllabus Point 5, *State v. Hulbert*, 209 W.Va. 217, 544 S.E.2d 919 (2001) (“Because the offense of wanton endangerment with a firearm is defined, not in terms of whether the firearm is discharged, but merely with reference to the commission of ‘any act,’ the discharge of a firearm is not an element of West Virginia Code § 61-7-12.”) (slip opinion available [here](#)). The *Hulbert* decision effectively eliminated any distinction between the misdemeanor offense of brandishing and the felony offense of wanton endangerment when the weapon involved is a firearm.
  7. Prescribes new, enhanced criminal penalties for the unlawful use or possession of firearms during the commission of felony crimes of violence, felony drug offenses, certain other drug offenses, and certain other criminal acts.
  8. Clarifies statute governing private property weapon restrictions:
    - a. Requires notice of private property owner-imposed carry restrictions, other than those applicable to a private residence, to be indicated by [specified signage](#).
    - b. Clarifies requirement of confrontation & opportunity to cure before carrying weapon in violation of private property owner-imposed restriction constitutes a criminal offense, civilly actionable conduct, or cause for other sanctions.
    - c. Provides immunity to private property owners who voluntarily refrain from restricting the otherwise lawful carrying of weapons.
  9. Right to possess and store weapons in vehicles:
    - a. Prohibits any public or private property owner, employer, educational institution, or contracting entity, from restricting or prohibiting the possession or storage of lawfully-possessed weapons in any private vehicle.
    - b. Provides immunity from liability for the acts or omissions of individuals who store weapons in vehicles as authorized by this section. This bill provides civil remedies and criminal penalties to enforce this section.
  10. Strengthens preemption:
    - a. Eliminates grandfathered municipal ordinances.
    - b. Includes all concealable weapons as well as firearms under preemption.
    - c. Includes state agencies under preemption.

- d. Includes under preemption various quasi-governmental entities that are technically private entities but are effectively controlled by state or local government entities based upon either the appointment of officers or directors or financial support.
  - e. Establishes additional provisions prohibiting direct or indirect registration of firearms or concealable weapons.
  - f. Establishes strong civil remedies and criminal penalties for preemption violations.
11. Provides additional protections to individuals whose firearms or concealable weapons are seized by a law-enforcement officer:
- a. Requires weapons temporarily seized during a law-enforcement contact that were lawfully possessed to be returned to the person at the conclusion of the contact in the same condition & configuration (e.g., if a law-enforcement officer temporarily seized a loaded handgun, the officer would have to return the handgun to the person loaded and permit the person to re-holster it or return it to any other place from which it was taken).
  - b. Requires law-enforcement agencies that seize and retain a weapon to maintain its integrity. This requirement is intended to require seized weapons to be kept clean and in the same condition as they were originally taken so that if the weapons are later returned (either voluntarily or pursuant to a court order), the weapon will not suffer any loss of functionality or other value.
12. Regulates “gun buy-back” programs and disposition of firearms by law-enforcement agencies.
- a. Requires approval of applicable municipal governing body or county commission before any municipal police department or county sheriff’s department may participate in any “gun buy-back” program.
  - b. Requires all acquired guns to be examined for evidence of criminal activity.
  - c. Requires certain efforts to check acquired guns against records of stolen guns and return of stolen guns to lawful owner.
  - d. Requires all guns that are disposed of by any law-enforcement agency (including guns acquired through “gun buy-back” programs, forfeited weapons, and used weapons that are being removed from service) to be offered for sale to licensed dealers through public auction or sealed bids.
13. Requires award of attorney’s fees to successful litigants in certain cases involving an individual’s right to keep and bear arms, including:
- a. Appeals of denials, suspensions, or revocations of licenses to carry concealed weapons.
  - b. Actions to enforce required certification of NFA weapon transfers.
  - c. Successful defense against a lawsuit where a private property owner or employer has immunity for acts or omissions of individuals lawfully carrying weapons.
  - d. Enforcement of an individual’s right to possess and store weapons in a private vehicle.
  - e. Actions to enforce preemption law.
  - f. Actions to enforce anti-registration law.
  - g. Recovery of unlawfully-seized weapon.
  - h. Compelling compliance with requirement to resell certain weapons at public sales.

- i. Certain other actions to enforce an individual's right to keep and bear arms under either the state constitution or statutory law.
14. Updates language in Central State Mental Health Registry statute.
15. Establishes a statute of limitations for most felony weapons offenses.
16. Establishes a process to set aside and expunge certain convictions for misdemeanor crimes of domestic violence:
  - a. This bill will enable individuals who have certain domestic violence-related convictions in West Virginia to petition the circuit court of the county in which the conviction occurred to expunge a conviction. Under federal law, [18 U.S.C. § 921\(a\)\(33\)\(B\)\(ii\)](#), an expunged conviction is disregarded for the purposes of determining whether a person may lawfully possess a firearm.
  - b. This bill establishes a sliding scale of presumptions and burdens of proof based upon the recency of the conviction and whether the person has any other domestic violence-related convictions.
17. Establishes a process to set aside and expunge certain convictions for certain acts made lawful by this bill.
18. Directly amends various state agency rules previously approved by the Legislature to eliminate various restrictions under the Code of State Rules on the possession or carrying of firearms by private citizens engaged in various regulated activities.

(At this point, this analysis reverts to §55-18-3 and goes backward)

19. Provides qualified immunity from civil liability for certain firearm safety instructors who provide instruction in reasonable and accepted firearms safety principles and techniques.
20. Prohibits discrimination against lawful owners of firearms in adoption proceedings.
21. Requires notice to be provided to persons subjected to guardianship or conservatorship proceedings of the potential effect of those proceedings on the person's eligibility to lawfully possess firearms. The current notice lists certain rights that may be affected by the proceedings, but the right to possess firearms is not among them.
22. Requires court or mental hygiene commissioner to make findings regarding whether persons involved in certain mental health proceedings may lawfully possess firearms and provide notice of effect of the proceedings on the individual's ability to lawfully possess firearms.
23. Modifies no-discharge zones: This bill creates an exemption to the areas within which the discharge of firearms is prohibited to exempt from the prohibition on discharging a firearm within 500 feet of a dwelling (1) an occupant of the dwelling if no other homes are located within 500 feet and (2) any person who has the written consent of all owners or lessees of homes within 500 feet.
24. Reforms various hunting-related statutes governing the possession or carrying of firearms:
  - a. West Virginia's hunting laws ([W.Va. Code §§ 20-2-5, 6, 6a, 19a, 42l, and 46e](#)) create a confusing system of regulations concerning the manner in which individuals may carry guns for self-defense purposes when engaging in outdoor activities. This bill would clarify the legality of carrying handguns, either openly or concealed, as it relates to hunting regulations, and exempt individuals licensed to carry concealed handguns from certain regulations on the manner in which

rifles and shotguns must be transported in vehicles or the woods. These regulations date back to when West Virginia had a highly restrictive “may issue” license to carry law that did not distinguish between open and concealed carry and under which it was virtually impossible for the average law-abiding citizen to get a license, and thus hunting was the only reason people could generally carry guns outside their homes. This statute was declared unconstitutional in *State ex rel. City of Princeton v. Buckner*, 180 W.Va. 457, 377 S.E.2d 139 (1988), and subsequently repealed and replaced with no requirement of a license for open carry and a shall -issue law for licenses to carry concealed.

- b. For an example of the confusion that exists over these statutes, see the conflicting advice concerning open carry in a vehicle of the [State Police](#) (open carry in a vehicle is legal) and the [Division of Natural Resources](#) (loaded firearms in vehicles illegal except concealed handguns carried with concealed handgun license) and the Supreme Court of Appeals’s decision in *State ex rel. West Virginia Div. of Nat. Resources v. Cline*, 200 W.Va. 101, 488 S.E.2d 376 (1997) (click [here](#) for majority slip opinion; click [here](#) for Justice Maynard’s dissenting slip opinion).
25. Repeals authorization for municipalities to completely prohibit the carrying of handguns and other concealable weapons.
  26. Authorizes municipalities to regulate or prohibit the discharge of firearms.
  27. Provides all active and retired West Virginia law-enforcement officers the required certification to qualify under federal law to carry concealed firearms nationwide:
    - a. Provides active and retired law-enforcement officers access to the required training and certification to carry concealed firearms nationwide pursuant to the federal Law-Enforcement Officer Safety Act of 2004 ([18 U.S.C. § 926B](#) and [18 U.S.C. § 926C](#)). LEOSA permits qualified law-enforcement officers, whether on or off duty, and qualified retired law-enforcement officers who undergo annual training and certification to carry concealed firearms nationwide notwithstanding state or local laws.
    - b. Requires every West Virginia law-enforcement agency to provide current members and retirees appropriate LEOSA certifications.
    - c. Requires State Police to establish state certification program for retired law enforcement officers who reside in West Virginia, regardless of the agency from which the person retired.
    - d. Provides prosecuting attorneys and assistant prosecuting attorneys required statutory arrest powers to qualify under [18 U.S.C. § 926B](#). The proposed language merely codifies the current arrest powers all prosecuting attorneys already have as private citizens at common law.
  28. Repeals prohibition on deputy sheriff reserves from carrying firearms.
  29. Makes extensive technical cleanup to various sections of the code that contain outdated cross-references to various current or repealed weapons laws.

A copy of this outline is available at <http://www.wvcdl.org/WVCDLbills/WVGOPA2012.html>