

West Virginia Code

Current through 2016 Regular Session and First Extraordinary Session of the West Virginia Legislature

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§ 8-12-5. General powers of every municipality and the governing body thereof. In addition to the powers and authority granted by: **(i)** The Constitution of this State; **(ii)** other provisions of this chapter; **(iii)** other general law; and **(iv)** any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(16) To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, ... or any other dangerous or other deadly weapon of like kind or character: Provided, That with respect to any firearm a

municipality may only arrest, convict and punish someone if they are in violation of an ordinance authorized by subsection 5-a of this article, a state law proscribing certain conduct with a firearm or applicable federal law;

§ 8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and storage of certain weapons and ammunition.

(a) Except as provided by the provisions of this section and the provisions of § 8-12-5 of this article, neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

(b) For the purposes of this section:

(1) "Municipally owned or operated building" means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building or other similar municipal building used for a municipal purpose permitted by state law: Provided, That "municipally owned or operated building" does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(2) "Municipally owned recreation facility" means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program or other similar facility where children are regularly present.

(c) (1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a firearm in municipally owned or operated buildings.

(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a firearm openly or that is not lawfully concealed in a municipally owned recreation facility: Provided, That a municipality may not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.

(3) A person may keep an otherwise lawfully possessed firearm in a motor vehicle in municipal public parking facilities if the vehicle is locked and the firearm is out of view.

(4) A municipality may not prohibit or regulate the carrying or possessing of a firearm on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section: Provided, That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

(d) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a firearm that the person: (1) Upon being requested to do so, left the premises with the firearm or temporarily relinquished the firearm in response to being informed that his or her possession of the firearm was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the firearm.

(e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or possessing of a firearm pursuant to subsection (c) of this section shall prominently post a clear statement at each entrance to all applicable municipally owned or operated buildings or municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

(f) Redress for an alleged violation of this section may be sought through the provisions of chapter 53 [§§ 53-1-1 et seq.] of this code, which may include the awarding of reasonable attorneys fees and costs.

(g) Upon the effective date of this section, § 61-7-14 of this code is inapplicable to municipalities. For the purposes of that section, municipalities may not be considered a person charged with the care, custody and control of real property.

(h) This section does not:

(1) Impair the authority of any municipality, or the governing body thereof, to enact any ordinance or resolution respecting the power to arrest, convict and punish any individual under the provisions of subdivision (16), section 5 of this article or from enforcing any such ordinance or resolution;

(2) Authorize municipalities to restrict the carrying or possessing of firearms, which are otherwise lawfully possessed, on public streets and sidewalks of the municipality: Provided, That whenever pedestrian or vehicular traffic is prohibited in an area of a municipality for the purpose of a temporary event of limited duration, not to exceed 14 days, which is authorized by a municipality, a municipality may prohibit persons who do not have a valid concealed handgun license from possessing a firearm in the area where the event is held; or

(3) Limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.

**Chapter 61. Crimes and Their Punishment.
Article 7. Dangerous Weapons.**

§ 61-7-2. Definitions. As used in this article, unless the context otherwise requires:

(7) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(8) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(9) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" shall include, but not be limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. ... Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.

(10) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

(11) "Firearm" means any weapon which will expel a projectile by action of an explosion.

§ 61-7-3. Carrying a deadly weapon without provisional license or other authorization by persons under twenty-one years of age; penalties.

(a) Any person under 21 years of age and not otherwise prohibited from possessing firearms under § 61-7-7 of this article who carries a concealed deadly weapon, without a state license or other lawful authorization established under the provisions of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and may be imprisoned in jail for not more than 12 months for the first offense; but upon conviction of a second or subsequent offense, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than 1 nor more than 5 years and fined not less than \$1,000 nor more than \$5,000.

(b) The prosecuting attorney in all cases shall ascertain whether or not the charge made by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of such second or subsequent offense and may not be permitted to use discretion in introducing evidence to prove the same on the trial.

§ 61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of \$75, of which \$15 Concealed weapons license may only be issued for pistols and revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. § 922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide United States citizen or legal resident thereof and resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is 21 years of age or older;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the 3 years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this section in the 5 years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. § 921(a)(33), or a misdemeanor offense of assault or battery either under § 61-2-28 of this chapter or subsection (b) or (c), § 61-2-9 of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of § 61-7-7 of this article or federal law, including 18 U. S. C. § 922(g) or (n), from receiving, possessing or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: Provided, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of section 7 of this article or federal law, including 18 U. S. C. § 922(g) or (n).

(d) All persons applying for a license must complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: Provided, That the completed course includes the actual live firing of ammunition by the applicant:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States military, reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section and shall include the instructor's name, signature and NRA or state instructor identification number, if applicable.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under §§ 29-4-1 et seq. of this code. Falsification of any portion of the application constitutes false swearing and is punishable under § 61-5-2 of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within 45 days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$ 25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within 30 days of receipt. The license is valid for 5 years throughout the state, unless sooner revoked.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties in size, appearance and information and shall feature a photograph of the licensee.

(i) The Superintendent of the West Virginia State Police, in cooperation with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within 30 days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a concealed weapon license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the 5 years unless the sheriff of the new county has determined that the person is no longer eligible for a concealed weapon license under this article, and the sheriff shall issue a new license bearing the person's new address and the original expiration date for a fee not to exceed \$5: Provided, That the licensee, within 20 days thereafter, notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(n) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Notwithstanding subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by §§ 7-14-1 et seq. of this code; §§ 8-14-1 et seq. of this code; §§ 15-2-1 et seq. of this code; and §§ 20-7-1 et seq. of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this section are applicable to these applicants.

(q) Information collected under this section, including applications, supporting documents, permits, renewals or any other information that would identify an applicant for or holder of a concealed weapon license, is confidential: Provided: That this information may be disclosed to a law-enforcement agency or officer: **(i)** To determine the validity of a license; **(ii)** to assist in a criminal investigation or prosecution; or **(iii)** for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.

(r) A person who pays fees for training or application pursuant to this article after the effective date of this section is entitled to a tax credit equal to the amount actually paid for training not to exceed \$50: Provided, That if such training was provided for free or for less than \$50, then such tax credit may be applied to the fees associated with the initial application.

(s) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

§ 61-7-4a. Provisional license to carry deadly weapons; how obtained.

(a) Any person who is at least 18 years of age and less than 21 years of age who desires to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for a provisional license, and pay to the sheriff, at the time of application, a fee of \$25, of which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by § 29-26-6 of this code. Provisional licenses may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. § 922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is at least 18 years of age and less than 21 years of age;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the 3 years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside, or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this section within 5 years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. § 921(a)(33), or a misdemeanor offense of assault or battery under either §61-2-28 of this chapter or subsection (b) or (c), §61-2-9 of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction, or is the subject of an

emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed, the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under § 7 of this article or federal law, including 18 U. S. C. § 922(g) or (n), from receiving, possessing or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon;

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For provisional license applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index, and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A provisional license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available does not indicate that receipt of or possession of a firearm by the applicant would be in violation of the provisions of section 7 of this article or federal law, including 18 U. S. C. § 922(g) or (n).

(d) All persons applying for a provisional license must complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: Provided, That the completed course included the actual live firing of ammunition by the applicant:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college, or private or public institution, or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any proof of current or former service in the United States armed forces, armed forces reserves or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant, or a copy of any document which shows successful completion of the course or class, is evidence of qualification under this section. Certificates, affidavits or other documents submitted to show completion of a course or class shall include instructor information and proof of instructor certification, including, if applicable, the instructor's NRA instructor certification number.

(e) All provisional license applications must be notarized by a notary public duly licensed under §§29-4-1 et seq. of this code. Falsification of any portion of the application constitutes false swearing and is punishable under §61-5-2 of this chapter.

(f) The sheriff shall issue a provisional license unless the sheriff determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within 45 days after the application is filed once all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West Virginia State Police within 30 days of receipt. The provisional license is valid until the licensee turns 21 years of age, unless sooner revoked.

(h) Each provisional license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all provisional license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. Duplicate license cards issued shall be uniform across all 55 counties in size, appearance and information and must feature a photograph of the licensee. The provisional license shall be readily distinguishable from a license issued pursuant to § 61-7-4 of this article and shall state: "NOT NICS EXEMPT. This license confers the same rights and privileges to carry a concealed pistol or revolver on the lands or waters of this state as a license issued pursuant to § 61-7-4 of this code, except that this license does not satisfy the requirements of 18 U. S. C. § 922(t)(3). A NICS check must be performed prior to purchase of a firearm from a federally licensed firearm dealer."

(i) The Superintendent of the West Virginia State Police, in coordination with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for provisional licenses and license cards showing that the license has been granted and shall perform any other act required to protect the state and to enforce of section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a provisional license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within 30 days of the denial. The court shall then determine

whether the applicant is entitled to the issuance of a provisional license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(k) If a provisional license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a provisional concealed weapon license moves from the address named in the application to another county within the state, the license remains valid until the licensee turns 21 years of age unless the sheriff of the new county has determined that the person is no longer eligible for a provisional concealed weapon license under this article, and the sheriff shall issue a new provisional license bearing the person's new address and the original expiration date for a fee not to exceed \$5: Provided, That the licensee within 20 days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the provisional license is granted, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police, at any time so requested, a certified list of all provisional licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued provisional concealed weapon licenses.

(n) The sheriff shall deny any application or revoke any existing provisional license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon provisional license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Information collected under this section, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon provisional license, is confidential: Provided. That this information may be disclosed to a law enforcement agency or officer: **(i)** To determine the validity of a provisional license; **(ii)** to assist in a criminal investigation or prosecution; or **(iii)** for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.

(q) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a provisional concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

§ 61-7-5. Revocation of license. A license to carry a deadly weapon shall be deemed revoked at such time as the person licensed becomes unable to meet the criteria for initial licensure set forth in section 4 of this article. Any person licensed under the provisions of this article shall immediately surrender his or her license to the issuing sheriff upon becoming ineligible for continued licensure.

§ 61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age; exemptions from licensing fees.

(a) The provisions in section 3 of this article do not apply to any person at least 18 years of age and fewer than 21 years of age who is:

- (1)** Carrying a deadly weapon upon his or her own premises;
- (2)** Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or
- (3)** Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;
- (4)** A member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;
- (5)** A law-enforcement officer or law-enforcement official or chief executive as defined in § 30-29-1 of this code;
- (6)** An employee of the West Virginia Division of Corrections duly appointed pursuant to § 25-1-11c of this code while the employee is on duty;
- (7)** A member of the United States armed forces, reserve or National Guard;
- (8)** A resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in § 61-7-6a of this article;
- (9)** A federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and
- (10)** A parole officer appointed pursuant to § 62-12-14 of this code in the performance of his or her duties.

(b) The following judicial officers and prosecutors and staff are exempt from paying any application fees or licensure fees

required under this article. However, they shall make application and satisfy all licensure and handgun safety and training requirements to obtain a license as set forth in § 61-7-4 of this article:

- (1) Any justice of the Supreme Court of Appeals of West Virginia;
- (2) Any circuit judge;
- (3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;
- (4) Any family court judge;
- (5) Any magistrate;
- (6) Any prosecuting attorney;
- (7) Any assistant prosecuting attorney; or
- (8) Any duly appointed investigator employed by a prosecuting attorney.

§ 61-7-6a. Reciprocity and recognition; out-of-state concealed handgun permits.

(a) A valid out-of-state permit or license to possess or carry a handgun is valid in this state for the carrying of a concealed handgun, if the following conditions are met:

- (1) The permit or license holder is 21 years of age or older;
- (2) The permit or license is in his or her immediate possession;
- (3) The permit or license holder is not a resident of the State of West Virginia; and
- (4) The Attorney General has been notified by the Governor of the other state that the other state allows residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state or the Attorney General has entered into a written reciprocity agreement with the appropriate official of the other state whereby the state agrees to honor West Virginia concealed handgun licenses in return for same treatment in this state.

(b) A holder of a valid permit or license from another state who is authorized to carry a concealed handgun in this state pursuant to provisions of this section is subject to the same laws and restrictions with respect to carrying a concealed handgun as a resident of West Virginia who is so permitted and must carry the concealed handgun in compliance with the laws of this state.

(c) A license or permit from another state is not valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(d) The West Virginia Attorney General shall seek to obtain recognition of West Virginia concealed handgun licenses and enter into and execute reciprocity agreements on behalf of the State of West Virginia with states for the recognition of concealed handgun permits issued pursuant to this article.

(e) The West Virginia State Police shall maintain a registry of states with which the State of West Virginia has entered into reciprocity agreements or which recognize West Virginia concealed handgun licenses on the criminal information network and make the registry available to law-enforcement officers for investigative purposes.

(f) Every 12 months after the effective date of this section, the West Virginia Attorney General shall make written inquiry of the concealed handgun licensing or permitting authorities in each other state as to: (i) Whether a West Virginia resident may carry a concealed handgun in their state based upon having a valid West Virginia concealed handgun permit; and (ii) whether a West Virginia resident may carry a concealed handgun in that state based upon having a valid West Virginia concealed handgun permit, pursuant to the laws of that state or by the execution of a valid reciprocity agreement between the states.

(g) The West Virginia State Police shall make available to the public a list of states which have entered into reciprocity agreements with the State of West Virginia or that allow residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state.

(h) The West Virginia State Police shall make available to the public a list of states which have entered into reciprocity agreements with the State of West Virginia or that allow residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state.

§ 61-7-7. Persons prohibited from possessing firearms; classifications; right of nonprohibited persons over twenty-one years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in § 61-7-2 of this article, who:

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is habitually addicted to alcohol;
- (3) Is an unlawful user of or habitually addicted to any controlled substance;
- (4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of §§ 27-1-1 et seq. of this code or in similar law of another jurisdiction: Provided, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: Provided, however, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of § 61-2-28 of this chapter or the provisions of subsection (b) or (c), § 61-2-9 of said article or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in the county jail for not less than 90 days nor more than 1 year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in § 60A-2-204, § 60A-2-205 and § 60A-2-206 of this code and who possesses a firearm as such is defined in section 2 of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than 5 years or fined not more than \$5,000, or both. The provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(c) Any person may carry a concealed deadly weapon without a license therefor who is:

(1) At least 21 years of age;

(2) A United States citizen or legal resident thereof;

(3) Not prohibited from possessing a firearm under the provisions of this section; and

(4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. § 922(g) or (n).

(d) As a separate and additional offense to the offense provided for in subsection (a) of this section, and in addition to any other offenses outlined in this code, and except as provided by subsection (e) of this section, any person prohibited by subsection (a) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than 3 years or fined not more than \$5,000, or both.

(e) As a separate and additional offense to the offense described in subsection (b) of this section, and in addition to any other offenses outlined in this code, any person prohibited by subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than 10 years or fined not more than \$10,000, or both.

(f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: Provided, That a person prohibited from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm in accordance with the provisions of § 61-7A-5 of this chapter.

(g) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.

§ 61-7-8. Possession of deadly weapons by minors; prohibitions. Notwithstanding any other provision of this article to the contrary, a person under the age of 18 years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: Provided, That a minor may possess a firearm upon premises owned by said minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property: Provided, however, That nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

A violation of this section by a person under the age of 18 years shall subject the child to the jurisdiction of the circuit court under the provisions of §§ 49-5-1 et seq. of this code, and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent.

§ 61-7-9. Possession of machine guns, penalties. It shall be unlawful for any person to carry, transport, or have in his possession, any machine gun, submachine gun, or any other fully automatic weapon unless he or she has fully complied with applicable federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms.

Any person who violates the provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or shall be confined in the county jail for not less than 90 days nor more than 1 year, or both.

§ 61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

(a) A person may not publicly display and offer for rent or sale, or, where the person is other than a natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same.

(b) Any person who violates the provisions of subsections (a) or (c) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000 or shall be confined in the county jail for not more than 1 year, or both fined and confined, except that where the person violating the provisions of said subsections is other than a natural person, such person shall be fined not more than \$10,000.

(c) A person may not knowingly sell, rent, give or lend, or, where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend, any deadly weapon other than a firearm to a person prohibited from possessing a deadly weapon other than a firearm by any provision of this article.

(d) a person may not knowingly sell, rent, give or lend, or where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent give or lend a firearm or ammunition to a person prohibited by any provision of this article or the provisions of 18 U. S. C. § 922.

(e) Any person who violates any of the provisions of subsection (d) of this section is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$100,000 imprisoned in a state correctional facility for a definite term of years of not less than 3 years nor more than 10 years, or both fined and imprisoned, except that where the person committing an offense punishable under this subsection is other than a natural person, such person shall be fined not more than \$250,000.

(f) Any person who knowingly solicits, persuades, encourages or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate the laws of this state or the United States is guilty of a felony. Any person who willfully procures another to engage in conduct prohibited by this subsection shall be punished as a principal. This subsection does not apply to a law-enforcement officer acting in his or her official capacity. Any person who violates the provisions of this subsection is guilty of a felony, and upon conviction thereof, shall be fined not more than \$5,000, imprisoned in a state correctional facility for a definite term or not less than 1 year nor more than 5 years, or both fined and imprisoned.

§ 61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; penalties. It shall be unlawful for any person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, to carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. Any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$50 nor more than \$1,000, or shall be confined in the county jail not less than 90 days nor more than 1 year, or both.

§ 61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to § 22, article 3 of the Constitution of the State of West Virginia.

(b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school bus as defined in § 17A-1-1 of this code, or in or on a public primary or secondary education building, structure, facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or at a school-sponsored function, or in or on a private primary or secondary education building, structure or facility: Provided, That it shall not be unlawful to possess a firearm or other deadly weapon on or in a private primary or secondary education building, structure or facility when such institution has adopted written policies allowing for possession of firearms on or in the institution's buildings, structures or facilities.

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to § 62-12-5 of this code in the performance of his or her duties;

(C) A retired law-enforcement officer who:

(i) Is employed by a state, county or municipal law-enforcement agency;

(ii) Is covered for liability purposes by his or her employer;

(iii) Is authorized by a county board of education and the school principal to serve as security for a school;

(iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S. C. § 926C(c); and

(v) Meets all of the requirements for handling and using a firearm established by his or her employer, and has qualified with his or her firearm to those requirements;

(D) A person specifically authorized by the board of Education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(E) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

(F) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

(G) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity; or

(H) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than 2 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of subsection (b) of this section shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by §§ 49-5-1 et seq. of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of subsection (b) of this section may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's 19th birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's 19th birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward to the Division of Motor Vehicles.

(e) (1) If a person 18 years of age or older is convicted of violating subsection (b) of this section, and if the person does not act to appeal the conviction within the time periods described in subdivision (2) of this subsection, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of 1 year or, in the event the person is a student enrolled in a secondary school, for a period of 1 year or until the person's 20th birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of § 17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f) (1) It is unlawful for a parent, guardian or custodian of a person less than 18 years of age who knows that the person is in violation of subsection (b) of this section or has reasonable cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than 1 year, or both fined and confined.

(g) (1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than 1 year, or both fined and confined.

(h) (1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than 2 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

§ 61-7-12. Wanton endangerment involving a firearm. Any person who wantonly performs any act with a firearm which creates a substantial risk of death or serious bodily injury to another shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a definite term of years of not less than 1 year nor more than 5 years, or, in the discretion of the court, confined in the county jail for not more than 1 year, or fined not less than \$250 nor more than \$2,500, or both.

For purposes of this section, the term "firearm" shall have the same meaning ascribed to such term as set forth in § 61-7-2 of this article.

§ 61-7-14. Right of certain persons to limit possession of firearms on premises. Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care, custody and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: Provided, That for purposes of this section "person" means an individual or any entity which may acquire title to real property.

Any person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of such firearm or other deadly weapon, upon being requested to do so, or to leave such premises, while in possession of such firearm or other deadly weapon, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the county jail not more than 6 months, or both: Provided, That the provisions of this section shall not apply to those persons set forth in subsections (3) through (6), § 61-7-6 of this code while such persons are acting in an official capacity: Provided, however, That under no circumstances may any person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless such person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

§ 61-7-15a. Use or presentation of a firearm during commission of a felony; penalties. As a separate and distinct offense, and in addition to any and all other offenses provided for in this code, any person who, while engaged in the commission of a felony, uses or presents a firearm shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not more than 10 years.

§ 61-7-16. Chief officer certification to transfer or make certain firearms; definitions; appeal.

(a) When certification of a chief law-enforcement officer is required by federal law or regulation for the making, transfer, receipt or possession of a firearm, the chief law-enforcement officer shall, within 30 days of receipt of such a request, provide such certification upon determining that to his or her knowledge the applicant is not prohibited by federal, state or local law from making, transferring, receiving or possessing the firearm for which application is being made and is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing a firearm. If the chief law-enforcement officer is unable to make a certification as contemplated by this section, he or she shall provide the applicant written notification of the action setting forth the reasons therefor.

(b) For purposes of this section:

(1) "Chief law-enforcement officer" means any official, or his or her designee, that the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or otherwise as eligible to provide the required law-enforcement certification for the making, transfer, receipt or possession of a firearm.

(2) "Certification" means written confirmation by the chief law-enforcement officer necessary under federal law that the applicant seeking to make, transfer, receive or possess a firearm is not to the chief law-enforcement officer's knowledge prohibited by federal, state or local law from making, transferring, receiving or possessing the designated firearm.

(3) "Firearm" has the same meaning as provided in the National Firearms Act, 26 U.S.C. § 5845 (a).

(c) Chief law-enforcement officers and their designees who act in good faith are immune from liability arising from any act or omission related to certifying a responsible person.

(d) An applicant whose request for certification is denied may appeal the chief law-enforcement officer's decision to the circuit court of the applicant's county of residence. If the circuit court finds that the applicant is not prohibited by law from

making, transferring, receiving or possessing a firearm and is not the subject of a proceeding that could result in prohibition, the circuit court shall order the chief law-enforcement officer to issue the certification and may award costs and reasonable attorney's fees to the applicant.

(e) A generalized objection to persons or entities making, transferring, receiving or possessing firearms or particular types of firearms which may be lawfully made, transferred, received or possessed does not constitute a valid basis for refusing certification.

(f) In making the certification decision the chief law-enforcement officer shall require of the applicant only such information as is necessary to identify the applicant for purposes of this section or to determine the disposition of an arrest or proceeding relevant to the applicant's eligibility to lawfully possess or receive a firearm.

§ 61-7-17. Construction of article. Nothing in this article should be construed to abrogate or modify statutory provisions and common law decisions related to defense of self or others.

Article 7A. State Mental Health Registry; Reporting of Persons Proscribed from Firearm Possession Due to Mental Condition to the National Instant Criminal Background Check System; Definitions; Reporting Requirements; Reinstatement of Rights Procedures.

§ 61-7A-2. Definitions. As used in this article and as the terms are deemed to mean in 18 U. S. C. § 922(g) and §61-7-7 of this chapter as each exists as of January 31, 2008:

(1) "**A person adjudicated as a mental defective**" means a person who has been determined by a duly authorized court, tribunal, board or other entity to be mentally ill to the point where he or she has been found to be incompetent to stand trial due to mental illness or insanity, has been found not guilty in a criminal proceeding by reason of mental illness or insanity or has been determined to be unable to handle his or her own affairs due to mental illness or insanity. A child under 14 years of age is not considered "a person adjudicated as a mental defective" for purposes of this article.

(2) "**Committed to a mental institution**" means to have been involuntarily committed for treatment pursuant to the provisions of §§27-1-1 et seq. of this code. Children under 14 years of age are not considered "committed to a mental institution" for purposes of this article. "Committed to a mental institution" does not mean voluntary admission for mental health treatment.

(3) "**Mental institution**" means any facility or part of a facility used for the treatment of persons committed for treatment of mental illness.

§ 61-7A-3. Persons whose names are to be supplied to the central state mental health registry.

(a) The Superintendent of the West Virginia State Police and the Secretary of the Department of Health and Human Resources, or their designees, shall cooperate with the circuit clerk of each county and Administrator of the West Virginia Supreme Court of Appeals in compiling and maintaining a database containing the names and identifying information of persons who have been adjudicated to be mentally defective or who have been committed to a mental institution. The registry shall be maintained by the Administrator of the Supreme Court of Appeals or the superintendent of the West Virginia State Police.

(b) The name of any person who has been adjudicated to be mentally defective or who has been committed to a mental institution shall be provided to the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central state mental health registry. Upon receipt of the information being received by the central state mental health registry it may be transmitted to the National Instant Criminal Background Check System and to county sheriffs;

(c) The Secretary of Department of Human Resources and the circuit clerk of each county shall, as soon as practicable after the effective date of this article, supply to the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central state mental health registry the name and identifying information required by the provisions of subsection (d) of this section of all persons covered by the provisions of this article and shall on an ongoing basis continue to provide such information as it is developed;

(d) The central state mental health registry shall contain the name, address at the time of commitment or adjudication, date of birth, date of commitment or adjudication of all persons who have been adjudicated to be mentally defective or who have been committed to a mental institution.

(e) The central state mental health registry shall provide only such information about a person on the registry to county sheriffs and the National Instant Criminal Background Check System as is necessary to identify registrants; and

(f) On or before January 1, 2010, the central state mental health registry shall contain the name, address at the time of commitment or adjudication, date of birth, date of commitment or adjudication and any other identifying characteristics of all persons who have been adjudicated to be mentally defective or who have been committed to a mental institution. Under no circumstances shall the registry contain information relating to any diagnosis or treatment provided.

(g) To the extent the central state mental health registry contains the names of any children under 14 years of age on the effective date of this article, the Administrator of the West Virginia Supreme Court of Appeals shall take whatever steps are necessary to remove those individuals from the central state mental health registry.

§ 61-7A-4. Confidentiality; limits on use of registry information.

(a) Notwithstanding any provision of this code to the contrary, the Superintendent of the State Police, the Secretary of the Department of Health and Human Resources, the circuit clerks, and the Administrator of the Supreme Court of Appeals

may provide notice to the central state mental health registry and the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. § 922, that a person: **(i)** Has been involuntarily committed to a mental institution; **(ii)** has been adjudicated as a mental defective; or **(iii)** has regained the ability to possess a firearm by order of a circuit court in a proceeding under §61-7A-5 of this article.

(b) The information contained in the central state mental health registry is to be used solely for the purpose of records checks related to firearms purchases and for eligibility for a state license or permit to possess or carry a concealed firearm.

(c) Whenever a person's name and other identifying information has been added to the central state mental health registry, a review of the state concealed handgun registry shall be undertaken and if such review reveals that the person possesses a current concealed handgun license, the sheriff of the county issuing the concealed handgun license shall be informed of the person's change in status.

§ 61-7A-5. Petition to regain right to possess firearms.

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of § 61-7-7 of this chapter or by provisions of federal law by virtue solely of having previously been adjudicated to be mentally defective or to having a prior involuntary commitment to a mental institution pursuant to §§ 27-1-1 et seq. of this code may petition the circuit court of the county of his or her residence to regain the ability to lawfully possess a firearm.

(b) Petitioners prohibited from possession of firearms due to a mental health disability, must include in the petition for relief from disability:

(1) A listing of facilities and location addresses of all prior mental health treatment received by petitioner;

(2) An authorization, signed by the petitioner, for release of mental health records to the prosecuting attorney of the county; and

(3) A verified certificate of mental health examination by a licensed psychologist or psychiatrist occurring within 30 days prior to filing of the petition which supports that the petitioner is competent and not likely to act in a manner dangerous to public safety.

(c) The court may only consider petitions for relief due to mental health adjudications or commitments that occurred in this state, and only give the relief specifically requested in the petition.

(d) In determining whether to grant the petition, the court shall receive and consider at a minimum evidence:

(1) Concerning the circumstances regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4);

(2) The petitioner's record which must include the petitioner's mental health and criminal history records; and

(3) The petitioner's reputation developed through character witness statements, testimony, or other character evidence.

(e) If the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibilities concomitant with the possession of a firearm, will not be likely to act in a manner dangerous to public safety, and that granting the relief will not be contrary to public interest, the court may enter an order allowing the petitioner to possess a firearm. If the order denies petitioner's ability to possess a firearm, the petitioner may appeal the denial, which appeal is to include the record of the circuit court rendering the decision.

(g) The prosecuting attorney or one of his or her assistants shall represent the state in all proceedings for relief to regain firearm rights and provide the court the petitioner's criminal history records.

(h) The written petition, certificate, mental health or substance abuse treatment records and any papers or documents containing substance abuse or mental health information of the petitioner, filed with the circuit court, are confidential. These documents may not be open to inspection by any person other than the prosecuting attorney or one of his or her assistants only for purposes of representing the state in and during these proceedings and by the petitioner and his or her counsel. No other person may inspect these documents, except upon authorization of the petitioner or his or her legal representative or by order of the court, and these records may not be published except upon the authorization of the petitioner or his or her legal representative.

(i) The circuit clerk of each county shall provide the Superintendent of the West Virginia State Police, or his or her designee, and the Administrator of the West Virginia Supreme Court of Appeals, or his or her designee, with a certified copy of any order entered pursuant to the provisions of this section which removes a petitioner's prohibition to possess firearms. If the order restores the petitioner's ability to possess a firearm, petitioner's name shall be promptly removed from the central state mental health registry and the superintendent or administrator shall forthwith inform the Federal Bureau of Investigation, the United States Attorney General, or other federal entity operating the National Instant Criminal Background Check System of the court action.