2025 LEGISLATIVE SESSION

CRIMINAL LAW LEGISLATION SUMMARIES

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NOTE: The "summary" of the legislation given by the legislative staff is not always accurate, but it is provided to give you some idea of the legislative content and some perspective on what may have been originally intended by the introduced legislation. For this reason, you should not rely on the "summary" given by the legislative staff, but, instead, you should read the more extended summary provided by Public Defender Services. But even that summary is the author's interpretation of the legislative changes and the effect of the changes, so it is incumbent upon you, with this foundation, to do independent research if the amended or newly enacted statute relates to a matter in which you are involved.

The sponsors of the legislation have also been provided. If questions arise, you might be in the jurisdiction of a sponsor and could possibly approach the legislator to gain more insight. However, the legislation introduced by the sponsors is often highjacked by a committee and the committee substitute may deviate substantially from what was introduced.

I have listed the House bills, first, in numerical order and then the Senate bills, also in numerical order. The House was seemingly the more active chamber this year for reasons not readily apparent. The bills are not arranged, nor could they effectively be arranged, in any subject matter order.

Finally, I have generally avoided discussion of the increase in fines that often accompany the increase in periods of confinement.

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HOUSE BILL 2042

Summary:	Relating to allowing a guardian ad litem to request the appointment of a court appointed special advocate
Sponsor:	Burkhammer
W. Va. Code:	Amends §46-4-601
Effective Date:	July 6, 2025

As introduced, the proposed legislation added a subsection to the statutory provision governing the filing of a petition to commence a child abuse and neglect proceeding that provides, straightforwardly, "CASA – the guardian ad litem may request the appointment of a court appointed special advocate, which the circuit court may appoint if a court appointed special advocate provides services to the circuit court with jurisdiction over the proceedings…."

The House Judiciary Committee's substituted bill expanded the right to make such a request to the Department of Human Services or any parent who is a party to the proceeding. On the floor of the House, the bill was further amended to provide that any such request be in "accordance with the Rules of Procedure for Child Abuse and Neglect Proceedings." This was the version of the bill that passed.

HOUSE BILL 2066

Summary:	Creating a crime for the destruction of first responder equipment
Sponsor:	Akers, Hall, D. Smith, T. Howell, Drennan, Leavitt, Heckert, Hornby and Kelly
W. Va. Code:	Adds §61-3-60
Effective Date:	July 11, 2025

The newly created criminal offense of "damage, destruction or theft of equipment used by emergency responders" has three elements:

First, a person must "knowingly and willfully" damage, destroy or "commit the larceny of" any equipment or personal property that is owned by the state, a county, a municipality, a volunteer fire department, or a "private entity that has contracted with the state or a county or municipality of the state for the performance of emergency response duties."

Second, the equipment or personal property must be used by emergency responders in the performance of emergency response duties. The section applies whether the equipment or personal property is in use or is maintained in a garage or other building.

Third, the foregoing conduct is chargeable if it "creates a substantial risk of bodily injury or actual bodily injury to another person" or "results in property loss to any person served by the emergency responder" or "results in the interruption of services by emergency responders to the public."

The list of covered emergency responders is expansive, including paid or volunteer firefighters, EMS personnel, law-enforcement agency personnel and, maybe surprisingly, Division of Forestry personnel. Emergency response duties are not limited to actual life saving activities, but can extend to training, administrative meetings, maintenance, or traveling to and from fundraisers. The coverage further extends to any emergency services rendered in the course of natural disasters and extends also to "activities of a county commission, political subdivision, or county 911 public safety answering point in providing emergency responder services."

The offense is a felony punishable by confinement of one to three years.

An expressed legislative intent is that the offense be treated as a separate and distinct offense from any other offenses, which are not specified.

HOUSE BILL 2123

Summary:	Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse
Sponsor:	Akers, Ellington, Rohrbach, Hanshaw, Gearheart, Maynor, Worrell, Hillenbrand, Cooper and Zatezalo
W. Va. Code:	Amends §§61-8D-3,4
Effective Date:	July 9, 2025

The House passed its Judiciary Committee's substitute, but it was the Senate Judiciary's subsequent committee substitute that was enacted into law.

The offenses in W. Va. Code §61-8D-3 ("Section 3") and §61-8D-4 ("Section 4") relate to abusive or negligent conduct of a parent, guardian, custodian or person in a position of trust in relation to a child (the "Offending Parties") that creates a risk of, or actual, injury to a child. Section 3 governs abusive conduct. Section 4 governs negligent conduct. The legislation generally increased the periods of confinement for first offenses and made much harsher the penalties for second and third offenses. As a note, the enhancements are triggered by any previous conviction under either of these sections or under other states' law or federal law when the offense of conviction has the "same essential elements" as the offenses under these sections (the "Prior Conviction" or "Prior Convictions").

i. Abuse or Neglect by Offending Parties that creates a substantial risk of bodily injury to a child.

The penalty for a first offense remains a misdemeanor punishable by confinement up to six months.

If the offender has a Prior Conviction, the legislation makes the offense a felony rather than a misdemeanor as it is currently. The resulting punishment is confinement of one to five years. Third or subsequent offenses are now governed by a new subsection discussed below.

ii. *Abuse or Neglect by Offending Parties that creates a substantial risk of death or serious bodily injury to a child.*

The penalty is increased from confinement for one to five years to confinement for one to ten years.

iii. *Abuse by Offending Parties that causes bodily injury to a child.*

The penalty for the offense is doubled to two to ten years. The legislation still gives discretion to a court to impose a one-year jail sentence.

iv. *Neglect by Offending Parties that causes bodily injury to a child.*

The penalty for the offense is increased from confinement for one to three years to confinement for two to ten years. The legislation still gives discretion to a court to impose a one-year jail sentence.

v. *Abuse by Offending Parties that causes "serious" bodily injury to a child.*

The penalty for the offense is increased from confinement for two to ten years to confinement for five to fifteen years.

vi. *Neglect by Offending Parties that causes "serious" bodily injury to a child.*

The penalty for the offense is increased from confinement for one to ten years to confinement for five to fifteen years.

Section 3 and Section 4 both have a new subsection (e). Section 4's subsection (e) provides: "Any person convicted of a felony offense under this section, who was previously convicted of a felony offense under … [Section 3 or Section 4], or a law of another state or the federal government with the same essential elements of a felony offense contained within either … [Section 3 or Section 4], may be imprisoned for a term up to twice the term otherwise authorized." This provision needs to be carefully analyzed in respect to the offense of creating a substantial risk of bodily injury because only the second offense results in a felony conviction, so a conviction for such an offense as a first offense would not seeming count toward this enhancement.

Section 3's subsection (e) is problematic as it provides: "Any person convicted of a second or subsequent felony offense under this section, who was previously convicted of a felony offense under … [Section 3 or Section 4], or a law of another state or the federal government with the same essential elements of a felony offense contained within either … [Section 3 or Section 4], may be imprisoned for a term up to twice the term otherwise authorized." If this was a second offense under this section, then the remaining provisions are tautological as obviously there was a previous conviction under this section. This appears to be a drafting error and Section 3's language should have mirrored Section 4.

HOUSE BILL 2217

Summary:	Relating to penalties for conspiracy to commit murder
Sponsor:	Steele
W. Va. Code:	Amends §61-10-31
Effective Date:	July 6, 2025

This bill began life with the purpose of increasing the periods of confinement for conspiracies to commit first degree murder, second degree murder, and voluntary manslaughter.

As passed and enacted into law, the legislation increases the penalties for several conspiracy convictions from the historical one to five year sentence of imprisonment.

The first codified increase relates to convictions of conspiring to commit an offense that involves violence or that victimizes a child. The offense is a felony punishable by confinement for a period of three to fifteen years.

Additionally, conspiracy to commit the offense of kidnapping, first degree arson, or sexual assault in the first degree or an offense that is punishable by life imprisonment is a felony punishable by confinement for five to twenty-five years.

HOUSE BILL 2347

Summary:	The Joel Archer Substance Abuse Intervention Act
Sponsor:	Worrell, Hite, Heckert, Chiarelli, Miller, Petitto, Hamilton and Pushkin
W. Va. Code:	Amended §§27-5-1, 1B, 2, 4 & §27-5A-3; adds §27-5-2B and §§27-5A-1,2
Effective Date:	July 11, 2025

At various stages in the lawmaking process, this legislation alternately addressed the mental hygiene process, generally, or the involuntary hospitalization of those with a substance use disorder, specifically.

The original House Bill created "mental hygiene regions." The examination of a person for a probable cause hearing for commitment would be permitted by video conference. The restrictions on those who could do the examination were lessened. Licensed counselors and social workers were included in the list of professionals who could evaluate a person before final commitment.

This version also provided for a 120 day "temporary observation release" of individuals whom the chief medical officer believed would require no further inpatient treatment. The version also provided that a process for final civil commitments was to be devised by a group including "the Public Defender Services."

Meanwhile, Senate Bill 761 was introduced and proposed a new section that addressed the involuntary commitment of those with a substance use disorder.

The committee substitute for Senate 761 did not create a new subsection, but, instead, inserted language regarding substance use disorders into the existing code.

This version of Senate 761 was then amended into House Bill 2347.

Mental health advocates are not pleased with the result of the process and it is anticipated that efforts will be made throughout the year to revise the bill.

With respect to the final legislation, the following language was added: "an application for involuntary hospitalization may be made where the person making the application has reason to believe the individual to be examined has a *substance use disorder,* has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto." Findings of these elements will support probable cause for involuntary hospitalization even if it is perceived that the individual is not likely to cause harm to himself or herself or others.

Notably, the "mere refusal" of substance abuse services is not evidence of lack of judgment. Yet the refusal to be treated is seemingly the linchpin of an involuntary commitment

of a person with a substance use disorder. Apparently, if services are refused, the proof must be that the refusal was irrational and the result of diminished capacity.

Effectively, substance use disorder is now part of the civil commitment spectrum and does not depend entirely on the likelihood of harm to oneself or others.

An immunity from civil liability has been included for persons doing an involuntary custody examination unless "the mental health service provider acted with negligence demonstrated by clear and convincing evidence or in bad faith in performing the examination or rendering his or her opinion."

And, of course, the Second Amendment is protected as a person with substance use disorder who completes a substance use rehabilitation treatment program will not be a prohibited person with respect to possession of a firearm. Also, such a person may petition to be removed from the central state mental heath registry.

The foregoing amendments are to be known as the "Joel Archer Substance Abuse Intervention Act."

The Supreme Court of Appeals of West Virginia is "requested" to promulgate rules to implement the foregoing amendments.

HOUSE BILL 2360

Summary:	Clarifying the victims of crimes against law-enforcement officers
Sponsor:	Kelly
W. Va. Code:	Adds new section, §61-11-27
Effective Date:	July 6, 2025

As introduced, this bill provided that for purposes of W. Va. Code §61-2-10b, i.e., malicious assault, unlawful assault, or battery of a law enforcement officer, W. Va. Code §61-5-17, i.e., obstructing of, or fleeing from, a law enforcement officer, and W. Va. Code §61-5-17a, i.e., obstruction of a law enforcement officer causing death, the term "law enforcement officer" is to be construed as defined in W. Va. Code §30-29-1. That definition includes, for example, county litter officers.

This bill also proposed that the term "law enforcement officer" include "chief executive," "law enforcement official," and "pre-certified law-enforcement officer" as additionally defined in W. Va. Code §30-29-1. Notably, Article 29 of Chapter 30 deals generally with "law enforcement training and certification."

In perhaps a bit of sloppy drafting, W. Va. Code §61-2-10b already references W. Va. Code §30-29-1 and the additional term "chief executive" to determine if it is a law enforcement officer who is being assaulted or battered. This legislation would add, however, "law enforcement official" and "pre-certified law-enforcement officer."

In the final version of the bill, this language is retained. However, the term "law enforcement officer" is further expanded to include, expressly, "any person hired, elected, appointed, or otherwise authorized by this code to engage in or supervise the prevention, detection, or investigation of the criminal laws of this state." An obvious application of the expanded language would be the prosecutor and assistant prosecutors in a county.

HOUSE BILL 2434

Summary:	Relating to establishing the Stop Squatters Act
Sponsor:	Hornby, Maynor, Crouse, Willis, Ward, Chiarelli, Holstein, Funkhouser, and Kimble
W. Va. Code:	Amends §55-3C-1,2; Adds §55-3C-3,4,5,6
Effective Date:	July 10, 2025

The defining element of the "Stop Squatters Act" (as Article 3C is to be known) is the legislative finding that "the right to exclude others from entering and the right to direct others to immediately vacate a person's residential or commercial property are *fundamental property rights."* [emphasis added].

The legislature defines "squatter" as a person who unlawfully occupies a dwelling unit or other structure and who is not entitled under a rental or lease agreement to do so or who is not otherwise authorized by the tenant or owner to do so. A holdover tenant is not a squatter. This is a definition fairly consistent with the current definition except that "or owner" was added to the definition.

If you are a squatter, you are "not considered tenants for purposes of this code and are not entitled to eviction proceedings afforded to lawful tenants."

The legislation creates a summary process for removing a squatter, which will not be discussed.

Instead, a new criminal offense covering squatting is created which raises some potential issues. The offense is referred to in the heading as criminal mischief although those words are not used in the actual language.

A squatter who causes damage of less than $1000 to the subject property is guilty of a misdemeanor and is subject to confinement for a period up to a year. If more than $1000 in damage is found, the offense is a felony subject to confinement for one to ten years. Squatting is currently subject to criminal trespass charges. Accordingly, charging a person with trespass and criminal mischief might entail double jeopardy analysis, although the element of damages for criminal mischief or the element of a firearm for one form of trespass might be distinctions resolving the double jeopardy issue.

Two additional criminal offenses are created by the legislation. An owner or tenant that files a removal petition in bad faith can be charged with false swearing. A person who lists or advertises real property or a commercial building for sale or rent when that person does not

have legal title or authority is guilty of a felony offense subject to confinement for one to ten years.

HOUSE BILL 2871

Summary:	Relating the crime of negligent homicide
Sponsor:	Funkhouser, Hornby, Holstein, Masters, W. Clark, Chiarelli, Hillebrand, Mallow, Horst, Roop, and Kump
W. Va. Code:	Amends §17C-5-1; and §61-2-30
Effective Date:	July 10, 2025

As introduced, only two sections were amended. However the "committee substitute for the committee substitute" for this bill amended numerous sections of West Virginia Code including: §14-2A-3, relating to definitions governing provisions for compensation awards to victims of crimes; §17B-1A-1, relating to the "Driver License Compact"; §17B-3-5, relating to mandatory revocation of a driver's license; §17C-5-1, relating to serious traffic offenses; §17C-5-3, relating to reckless driving; §17C-14-15, the "Electronically Distracted Driving Act"; §17C-19-3, relating to when a person who is arrested must be immediately taken before a magistrate or court; §17E-1-13, relating to commercial driver's licenses; §20-7-18a, relating to homicide by operation of a watercraft; §33-6A-1 & 4, relating to cancellation or non-renewal of automobile liability policies; §49-1-207, relating to definitions governing the provisions of the Child Welfare chapter; and §61-2-30, relating to recognition of embryos or fetuses as distinct victims of certain crimes of violence.

The general purpose of the amended legislation is to remove a generic reference to negligent homicide involving the operation of a motor vehicle or a motorized watercraft. The legislation creates the following offenses to replace "negligent homicide":

i. The operator of a motor vehicle in "reckless disregard" for the safety of others that results in injury to a person, including an embryo or fetus, and a resulting death within one year from the injury is guilty of "vehicular homicide", which is a misdemeanor punishable by confinement for up to one year;

ii. The operator of a motor vehicle in "deliberate disregard" of the safety to others that results injury to a person, including an embryo or fetus, and a resulting death within one year from the injury is guilty of "aggravated vehicular homicide" punishable by confinement for one to five years;

iii. The operator of a motor vehicle in a school zone when children are present in "reckless disregard" for the safety of the children that results in injury to a person, including an embryo or fetus, and a resulting death within one year from the injury is guilty of "vehicular homicide in a school zone" punishable by confinement for two to ten years;

iv. The operator of a motor vehicle in a construction zone in "reckless disregard" for the safety of others that results in injury to a person,

including an embryo or fetus, and a resulting death within one year from the injury is guilty of "vehicular homicide in a construction zone" punishable by confinement for two to ten years;

v. The operator of a motorboat, jet ski, or other motorized vessel in "reckless disregard" for the safety of others that results in injury to a person, including an embryo or fetus, and a resulting death within one year from the injury is guilty of "homicide by operation of motorized watercraft" punishable by confinement for up to a year; and

vi. The operator of a motorboat, jet ski, or other motorized vessel in "deliberate disregard" for the safety of others that results in injury to a person, including an embryo or fetus, and a resulting death within one year from the injury is guilty of the felony offense of "aggravated homicide by use of motorized watercraft" punishable by confinement for one to five years.

Several general notes are: (i) convictions will result in the revocation of a driver's license or the loss of the privilege to operate a motorized watercraft for five years; (ii) any injury to an embryo or fetus will be a separate offense from any injury to the mother; and (iii) many of the statutory provisions are amended only to remove the reference to negligent homicide and insert a reference to the statutory section containing the list of new offenses.

HOUSE BILL 2880

Summary: Relating to parent resource navigators
Sponsor: Burkhammer, Kimble, Mazzocchi, Pinson, and Petitto
W. Va. Code: Amends §49-1-201 and §49-4-405
Effective Date: July 11, 2025

The legislation governs parent resource navigators. Parent resource navigators are defined as: "an individual established through the Court Improvement Program (CIP) or Public Defender Services (PDS) model who is assisting a parent or parents through requirements to be unified or reunified with their child or children." And, notably, the parent resource navigator is made a member of the multi-disciplinary team.

However, several legislators saw this bill as a vehicle for mandating more aggressive actions by the Department of Human Services in certain situations. Accordingly, a battle ensued over whether the bill would be about the use of parent resource navigators in child abuse and neglect proceedings or would it be a mandate regarding operations of the Department of Human Services. In the end, the legislation was about both, potentially raising questions whether the constitutionally mandated "single object" of any legislation was violated.

In the conference to resolve competing versions of the bill, a new section was added that requires the Department of Human Services to provide parents at the onset of an investigation of child abuse and neglect a "guide" that sets forth the steps to be taken in the investigation and the steps that may need be taken to make a home safe for the involved children and that further

provides an overview of the court process, the confidentiality of reports, child visitation, and the right to case appeals.

The conference committee also adopted a more stringent timeline on the reporting procedures for child abuse and neglect. Reports are to be made to a hotline maintained twenty-four hours, seven days a week or through web-based reporting. Any system is to immediately send a report to a "live" person. Any system is also to immediately give a case identifier. Reports by any other means are to be treated as if made through the hotline or the electronic means. These reports are to be retained in the "Comprehensive Child Welfare Information System" in the original format for twelve months. The person receiving a report made through means other than the hotline or web-based system is to make a written record in the foregoing information system.

The conference committee also adopted a requirement that information related to proceedings involving child abuse and neglect is to be available to the Foster Care Ombudsman upon request. The identity of the person making the referral is not to be disclosed, unless the case involves a fatality or near fatality of a child in the foster care system.

A requirement is also imposed that the Bureau for Social Services provide to a managed care organization, the child-placing agency, and the person with custody of a child the medical records necessary to the treatment of the child.

The conference committee included a directive to the Commissioner of the Department of Human Services to update the existing child welfare data dashboard and to update it monthly thereafter. The items to be reported are expanded to include "time to first contact to all children, [and] information on children in non-placement or temporary lodging status." The dashboard is to be updated within forty-eight hours of a near fatality or a fatality of a child. The information is to include "the date of the incident; the child's sex; and the child's age." A notification of a near fatality or fatality is to be sent within twenty-four hours to the Critical Incident Review Team. The dashboard is to link to the final report of the newly created Critical Incident Review Team within twenty-four hours. The dashboard is to include the number of child protective services staff that have been hired but who have not completed training, the number and vacancies of adoption workers, and the number and vacancies of home finders.

A Critical Incident Review Team within the Department of Human Services is created for the purpose of "reviewing fatalities and near fatalities involving children involved in the child welfare system and making recommendations to identify effective prevention and intervention processes to decrease preventable child fatalities and near fatalities in the child welfare system." The members of the Team are identified in statute and include a "representative from the Prosecuting Attorney's Institute" but no representative from Public Defender Services. The work of the Team is exempt from the Freedom of Information Act.

NOTE: The Governor held a press conference on May 28, 2025, to discuss reform of the child welfare system which incorporated many of the provisions of this statute. The Governor emphasized the updated dashboard and the Critical Incident Review Team.

HOUSE BILL 3164

Summary:	Requiring registered sex offenders pay annual fee
Sponsor:	Flanigan, Funkhouser, Pritt, Dillon, Eldridge, Campbell and Kump
W. Va. Code:	Amends §15-2C-2; and §15-12-2
Effective Date:	July 11, 2025

Convicted sex offenders must pay more for the privilege of being placed on the registry as a sex offender. As introduced, the legislation would increase the annual fee from $75 to $250. Notably, the failure to pay cannot be used as grounds for a violation of supervised release. Instead, the fee would have the force and effect of a judgment and the clerk of the county commission would be notified of the non-payment in order to record and index the unpaid amount, presumably creating a lien on any property of the offender in the county of residence.

In the final version, the fee is increased only by $50 to $125. However, the final version also directs the use of the payments which is, first, to "enhance mental health services for current and former employees of the West Virginia State Police" and then for "any other use essential to the general operations of the State Police." The prohibition of non-payment as grounds for violation of terms of supervised release remains, and the ability to create a judgment lien remains.

HOUSE BILL 3338

Summary:	Allow child witness testify remotely in situations deemed traumatic by judge
Sponsor:	Green, Burkhammer, Heckert, Hornby, Chiarelli, Mallow, Browning, Brooks, Martin, Leavitt, and Pinson
W. Va. Code:	Amends §62-6B-2,3
Effective Date:	July 10, 2025

The legislation expands the circumstances in which a child witness may testify in a criminal proceeding by live, closed-circuit television. Perhaps knowing the potential challenges that might be made, the committee substitute somewhat unusually provided a statement of purpose (not part of the statutory language), which was: "the purpose of this bill is to govern child testimony in criminal trial in order to shield them from being intimidated by a defendant while also remaining within the parameters of the confrontation clause."

Currently, the term "child witness" for purposes of permitting the sequestered testimony relates to the child as a victim of enumerated sex offenses. This legislation extends this form of testifying to any child witness in any criminal proceeding, even if the child is not the victim.

Additionally, the current code provides for this means of testifying when one of the factors was that the facts of the case involved bodily injury, or the threat of bodily injury, to the child. This legislation expands the factor to include when the facts of the case involve "physical, sexual or psychological abuse" to the child witness. "Psychological" abuse is seemingly a substantial expansion.

Essentially, in any criminal proceeding, a child who feels intimidated by the defendant may be testifying outside the courtroom and outside the presence of the defendant. The opportunities for alleging Confrontation Clause violations may abound.

HOUSE BILL 3424

Summary:	Removing language regarding short-term loans being provided to released inmates for costs related to reentry into the community
Sponsor:	Kelly
W. Va. Code:	Amends §15A-4-21
Effective Date:	July 10, 2025

W. Va. Code §15A-4-21 authorizes the Commissioner of the Division of Corrections and Rehabilitation, as part of "Corrections Management," to employ or contract for a Director of Housing. The Director of Housing is to work with the Bureau of Community Corrections and the Parole Board to "reduce release delays due to lack of a home plan." This group is also to "develop community housing resources." And, surprisingly, this group is currently directed, but will be no more, to "provide short term loans to released inmates for costs related to reentry into the community." Simply, the language about short term loans is to be removed.

The "NOTE" to the introduced bill states: "The purpose of this bill is to remove language regarding short term loans being provided to released inmates for costs related to reentry into the community *since short term loans have not been provided or secured."* [emphasis added].

HOUSE BILL 3434

Summary:	Relating to the controlled substance schedules and to clean-up errors identified in the code sections
Sponsor:	Kelly
W. Va. Code:	Amends §§60A-204, 206, 208, 210, and 212
Effective Date:	July 10, 2025

As the perennials bloom on the Capitol grounds, so do amendments to the controlled substances schedules.

Notably, this cleanup was introduced "By request of the Department of Homeland Security – West Virginia State Police."

For those who know their drugs:

(i) Added to Schedule I: Brorphine; Fentanyl analog or derivative; para-methoxymethamphetamine (PMMA); 2-Methyl AP-237; gamma-hydroxybutyric acid (also known as GHB, gamma-hydroxybutyrate, sodium oxybate, and sodium oxybutyrate); 4,4'-Dimethylaminorex (4,4'-DMAR); Ethylphenidate; and Mesocarb - [Norfentanyl is removed from Schedule I; and the spelling for Diclazepam is corrected in Schedule I.];

(ii) Added to Schedule III: Perampanel, and its salts, isomers, and salts of isomers;

(iii) Added to Schedule IV: Alfaxalone; Daridorexant; Zuranolone; and Lorcaserin; and

(iv) Added to Schedule V: Ganaxolone.

HOUSE BILL 3456

Summary: Relating to the powers and duties of the Commissioner of the Division of Corrections and Rehabilitation regarding Stevens Correctional Center
Sponsor: Green
W. Va. Code: Adds §15A-3-4A; and amends §15A-3-12
Effective Date: July 8, 2025

Historically, the Division of Corrections and Rehabilitation has contracted with the County Commission for McDowell County to house and incarcerate inmates at the Stevens Correctional Center.

The Center has now been transferred to the Division of Corrections and Rehabilitation together with all its debts and liabilities. Accordingly, this legislation provides that the commissioner of the Division of Corrections and Rehabilitation is to "manage, direct, control and govern Stevens Correctional Center consistent with any other juvenile or adult facility."

Notably, "all county employees of the Stevens Correctional Center shall be transferred to the West Virginia Division of Corrections and Rehabilitation in the state classified service system, subject to a one year probationary period, and shall carry over all rank and accrued annual and sick leave balances."

SENATE BILL 128

Summary: Preventing courts from ordering services at higher rate than Medicaid
Sponsors: Tarr
W. Va. Code: Amends §49-4-108
Effective Date: July 11, 2025

In a child abuse and neglect proceeding, W. Va. Code §49-4-108 provides that the Court may order the Department of Human Services to pay for treatment, therapy, counseling, evaluation, report preparation, consultation, and expert testimony for any party to the proceeding. Other "socially necessary services" can also be ordered. The payment for these services is to be at Medicaid rates, but the Court has discretion to pay a higher rate if the necessary services are not provided within 30 days.

Senator Tarr proposed eliminating the Court's discretion to pay any rate other than the Medicaid rate.

The provisions of the committee substitute enacted into law give the Court continued discretion to order payment at a higher rate for services to be provided to a child that are not

provided within 30 days. The Court has no discretion, however, to order such payment for services provided to other parties to the proceeding.

SENATE BILL 138

Summary:	Enhancing penalties for fleeing officers
Sponsors:	Hamilton and Barlett
W. Va. Code:	Amends §17C-5-2, §61-5-17, & §61-11-18
Effective Date:	June 12, 2025

As introduced, the proposed legislation intended to create a "second" and "third" offense for fleeing from an officer. Increased penalties would attach to the new offenses, including elevating to felonies the misdemeanor offenses of fleeing on foot or fleeing in a vehicle without acting recklessly or causing damage or injury.

The House Judiciary Committee provided a more detailed and expanded final version of the legislation.

W. Va. Code §17C-5-2, governing *Driving under the influence of alcohol, controlled substances, or drugs, penalties,* is amended to provide that a conviction under the revised subsection (j) of W. Va. Code §61-5-17 will be a qualifying previous conviction for a DUI penalty enhancement if the conviction occurred within the fifteen-year period preceding the DUI conviction. Subsection (j) is an offense of fleeing a police officer in a vehicle while under the influence of alcohol, controlled substances, or drugs.

W. Va. Code §61-5-17 governs the various scenarios for fleeing from a "law-enforcement officer, probation officer, parole office, courthouse security office, correctional office, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is trying to make a lawful arrest of or to lawfully detain the person" (the "Law Enforcement Group"). The person who is fleeing must know or have reason to know the Law Enforcement group intended to detain him or her.

Currently, fleeing on foot from the Law Enforcement Group when it is known or reasonably believed to be known that the Law Enforcement Group is attempting to make a lawful arrest of, or to lawfully detain, the person is a misdemeanor resulting in a fine and incarceration up to one year. This legislation provides that the first offense is a misdemeanor punishable by confinement for ten days. The second offense remains a misdemeanor but provides for confinement of thirty days. The third offense also remains a misdemeanor but provides for confinement of "not less than 60 days nor more than one year."

Currently, fleeing from a law enforcement officer, probation officer, or parole officer in a vehicle when "a clear visual or audible signal directing the person to stop" has been given is a misdemeanor subject to fine and confinement up to a year. This legislation provides that a second offense is a felony and subject to confinement of one to three years. A third offense is a felony punishable by confinement of one to five years.

Currently, fleeing from a law enforcement officer, probation officer, or parole officer in a recklessly operated vehicle demonstrating an indifference to the safety of others is a felony subject to a fine and confinement of one to five years. This legislation provides that a second offense is a felony punishable by confinement of two to ten years. A third offense is a felony punishable by confinement of three to fifteen years.

Currently, fleeing in a vehicle from a law enforcement officer, probation officer, or parole officer when a "clear visual or audible signal directing the person to stop" has been given that results in damage to real or personal property during flight is a misdemeanor punishable by fine and confinement of six months to a year. This legislation provides that a second offense is a felony punishable by confinement of one to three years. A third offense is a felony punishable by confinement of two to five years.

Currently, fleeing in a vehicle from a law enforcement officer, probation officer, or parole officer when a "clear visual or audible signal directing the person to stop" has been given that results in bodily injury to a person during flight is a felony punishable by confinement of three to ten years. This legislation provides that a second offense is a felony punishable by confinement of five to ten years. A third offense is a felony punishable by confinement of five to fifteen years.

Currently, fleeing in a vehicle from a law enforcement officer, probation officer, or parole officer when a "clear visual or audible signal directing the person to stop" has been given that results in a death during flight is a felony punishable by confinement of five to fifteen years. The legislation provides that a second offense is punishable by confinement of fifteen years to life. A third offense is a felony punishable by confinement for life.

Currently, fleeing in a vehicle from a law enforcement officer, probation officer, or parole officer when a "clear visual or audible signal directing the person to stop" has been given when the person is impaired is a felony punishable by confinement of three to ten years. This legislation provides that a second offense is a felony punishable by confinement for five to fifteen years. A third offense is felony punishable by confinement for ten to twenty years. This section, W. Va. Code §61-5-17(j), reiterates the amendment to W. Va. Code §17C-5-2(n)(4) that convictions under this section may be used as predicate offense for driving under the influence, second offense driving under the influence, or third offense driving under the influence. This section also provides that a conviction will be treated as a "DUI" by the Division of Motor Vehicles for licensure purposes.

Additionally, a global provision is added, i.e., W. Va. Code §61-5-17(p) that governs all the offenses in the section by limiting prior convictions for enhancement of penalties to those occurring within the fifteen-year period preceding the current offense.

Finally, these additional felony offenses created by the legislation are identified as "qualifying offenses" for the purpose of applying the provisions of the recidivist statute.

SENATE BILL 196

Summary:	Lauren's Law
Sponsors:	Deeds
W. Va. Code:	Amends §§60A-4-401, 409, 414, 416; Adds §60A-4-419; Amends §61-11-8 & §62-12-2
Effective Date:	July 11, 2025

The legislation as introduced and passed through the Senate was almost a complete rewrite of the penalties for possession, sale, and transportation of controlled substances. However, the House's bill amending these sections was amended into the Senate bill. This was the final form of the enacted legislation.

The amendment to W. Va. Code §60A-4-401(a)(i) expands the enhancement of the general penalty for manufacturing, delivering or possessing with intent to manufacture or deliver a controlled substance when the substance is fentanyl. The offense is changed from "knowing that" the substance was fentanyl to "when" the substance is fentanyl. The enhancement is a three-year minimum rather than a one-year minimum.

The penalty in W. Va. Code §60A-4-409(b) for transporting a Schedule I or II narcotic, or causing to be transported such a narcotic, into the state with the intent to deliver or intent to manufacture a controlled substance is increased from one to fifteen years to five to twenty years.

Subsection (c)'s enhancement of the penalties is amended. The penalty is now an indeterminate sentence of fifteen to thirty years, rather than a determinate sentence between two and thirty years. The enhancement applies if the weight of cocaine or cocaine base is one kilogram rather than five. Five or more grams of fentanyl now triggers the enhancement. The "500 grams of substance or material containing a measurable amount of methamphetamine" has been removed from the enhancement. The sentence is described as "mandatory" and, upon conviction, a person is not eligible for probation, home incarceration, or suspension of sentence. This section also applies to the "attempt" to violate the prohibition against transporting controlled substances.

Subsection (d) provides the lesser enhancements and the amendments to this section are to make the enhancements applicable to one to five grams of methamphetamine and less than one gram of fentanyl. The penalty is changed from a determinate sentence to an indeterminate sentence of five to twenty years. The mandatory sentencing language is not included and the prohibition against probation, home incarceration, or suspension of sentence is not found.

The amendments to the conspiracy statute, W. Va. Code §60A-4-414, mirror the amendments previously discussed, except the penalties have slightly lower minimum years.

The amended version of W. Va. Code §60A-4-416, *Drug delivery resulting in death; failure to render aid,* is to be known as "Lauren's Law." The section will now make a distinction between the delivery of a controlled substance or a controlled substance that proximately causes the death of another that is done "without receiving or accepting money or

any other thing of value" and a delivery that is done "in exchange for money or any other thing of value." The former will invoke the current penalty of a determinate sentence between three to fifteen years. The latter will invoke a penalty of a determinate sentence between ten to forty years with parole eligibility arising only after serving a minimum of ten years. The sentence is mandatory and a convicted person is not eligible for probation, home incarceration or suspension of sentence.

The penalty for knowingly failing to seek medical assistance for a person who suffers an overdose is increased from an indeterminate sentence of one to five years to a determinate sentence between two and ten years.

W. Va. Code §60A-4-419 is a new section entitled *Drug kingpin.* "Drug kingpin" is defined as "an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State of West Virginia a controlled dangerous substance." A drug kingpin who is convicted will not be sentenced under the conspiracy statute but, instead, will be sentenced under this section providing for an indeterminate sentence of ten to forty years. The claim that the drugs were just passing through the State of West Virginia is not a defense. The Legislature also expressed its intent that this is a separate and distinct offense from any other offenses in the state code.

The recidivist statute and the parole and probation statute are amended to conform to the amendments to the drug offenses discussed previously.

Notably, with respect to the transportation and conspiracy offenses, a provision is added that: "for purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance." Further, "if a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty."

And, finally, with respect to the transportation and conspiracy offenses, the following admonition is provided: "where the transportation into the state involves two or more controlled substances, the transportation into the state of each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together."

SENATE BILL 198

Summary:	Prohibiting creation, production, distribution, or possession of artificially generated child pornography
Sponsors:	Grady and Deeds
W. Va. Code:	Amends §61-8-28a; and §§61-8C-1,3,3,3a, & 3b; Adds §61-8-3c
Effective Date:	July 9, 2025

As introduced, the intent was to "establish the criminal offenses of creating, producing, distributing, or possessing with intent to distribute artificial intelligence-created visual depictions of child pornography *when no actual minor is depicted.*" [emphasis added].

The House's committee substitute did not create new offenses, but expanded the coverage of existing offenses. This was the version enacted into law.

A new definition was inserted in the provisions governing the offense relating to nonconsensual disclosure of private intimate images. "Fabricated intimate image" is defined as "an image of an identifiable depicted individual that was created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs and depicts computer-generated intimate parts or the intimate parts of another human being as the intimate parts of the depicted individual." Accordingly, the disclosure of a fabricated intimate image of a person with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce the person is also an offense commensurate with the use of an actual image of the person that was intended to be private.

For the offense involving filming sexually explicit conduct of minors, a definition of "visual portrayal" is provided which encompasses "computer-generated child pornography" or a visual portrayal that is "created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs" and the subject of which is either an identifiable minor or indistinguishable from a minor. The offense conduct relates, therefore, to creating "visual portrayals" of a minor rather than limiting the offense to creating photographs or films.

For the offense involving distribution and exhibiting of material depicting minors engaged in sexually explicit conduct, the offense extends to computer-generated child pornography. It is sufficient for this offense "that the material visually portrays a minor, regardless of whether the subject's age is represented to be less than 18 years old or whether the minor subject's actual identity can be ascertained."

The penalties for the foregoing offense are changed: (i) if the conduct involves fifty or fewer images, the period of confinement is capped at five years; (ii) if the conduct involves fifty-one or fewer than three hundred images, the penalty is increased from a term of imprisonment of two to ten years to three to fifteen years; and (iii) 300 or more images results in a period of confinement increased from five to fifteen years to five to twenty years. The conversion of a video clip or movie or similar recording of less than five minutes duration to a number of images is increased from seventy-five to one hundred. For such recordings over five minutes, every two minutes over the initial five minutes is an additional one hundred images.

Potential delinquency of a minor extends as well to improper possession, use, or distribution of computer-generated child pornography.

For all offenses, "it is not a defense that the visual portrayal was created, in whole or part, by digital manipulation, artificial intelligence, or any other means." Also, "it is not a defense … that a minor subject's identity and/or age cannot be ascertained. It is sufficient that the material visually portrays a minor, regardless of whether the subject's age is represented to be less than 18 years old." Also, "it is not a defense … that the minor depicted has attained the age of at least 18 years old at the time of investigation and/or prosecution, as long as the visual portrayal of the minor was originally taken or captured when the subject was under the age of 18 years of age."

Finally, "it is not a defense under this section that the minor depicted is deceased at the time of investigation and/or prosecution, regardless of whether the minor depicted had attained the age of 18 years of age at the time of his or her death."

A new section is created that shields identified person from charges when in possession of, or when distributing, prohibited media or material or a visual portrayal if acting in the performance of official duties: (i) law enforcement officials and contracted investigatory personnel; (ii) prosecuting attorneys; (iii) attorneys acting as officers of the court and acting in the performance of official duties; (iv) judges and magistrates; (v) jurors; and (vi) persons acting in accord with a court order. The Supreme Court of Appeals of West Virginia is "requested" to promulgate rules, protocols, and forms to regulate access to, use, and handling of such material. And a person not listed who "in the course and scope of employment or business" views such images is directed to contact a law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. Doing this is an affirmative defense to an offense related to possession of child pornography.

SENATE BILL 240

Summary: Updating crime of sexual extortion
Sponsors: Hamilton
W. Va. Code: Amends §61-2-13; and adds §61-8B-6
Effective Date: June 12, 2025

As enacted, the legislation first amends the general crime of extortion by providing that one can "threaten" a person by "direct threat, indirect threat, or innuendo." Also, the threat of injury is expanded from "character, person, or property" to include "any other thing of value." Moreover, the motive need not only be to obtain "any thing of value or other consideration" as it now can be to compel the person "against the person's will" to "perform any act." Finally, the threat can be made against not only a spouse or child, but any family or a person who resides in the house at the time of the offense. The maximum penalty for the general crime of extortion is increased from five years of confinement to ten years of confinement. If the threat is made, but nothing of value is obtained, the offense is now a felony rather than a misdemeanor and the penalty is one to three years of confinement.

The new offenses of "sexual extortion" and "aggravated sexual extortion" are created. The offense of "sexual extortion" is committed if a person "knowingly and intentionally discloses, causes to disclose, or threatens to disclose a private image of another person in order to compel or attempt to compel the victim, any member of the victim's family or household … residing in the household at the time of the offense, or his or her spouse or child, *to do any act or refrain from doing any act against his or her will, with the intent to obtain additional private images, anything of value, or other consideration."* [Emphasis added].

Because of the language regarding "anything of value or other consideration," the only distinction between extortion and sexual extortion is that disclosure of "private images" is the basis of the threat and the intent is to cause an action or inaction by the victim.

A first offense of sexual extortion is punished by confinement for one to five years. A second offense is punished by confinement for three to ten years. Subsequent offenses are punished by confinement for ten to twenty years.

If a minor commits the offense, it is treated as a delinquency proceeding.

The offense of "aggravated sexual extortion" is committed (i) if the victim is a minor or "vulnerable person"; or (ii) if the "victim suffers serious bodily injury or death and the finder of fact finds beyond a reasonable doubt that the sexual extortion of the victim was the proximate cause of the serious bodily injury or death." The second prong seemingly embroils the jury in deliberating whether self-harm was compelled by the threatened disclosure of private images. This could be a complex criminal trial and would undoubtedly be a battle of medical and psychological experts.

The penalty for aggravated sexual extortion is confinement of ten to twenty years.

Finally, the venue for prosecution of the foregoing offenses can be the county in which "the threat was either made or received."

MISCELLANEOUS

The West Virginia Sentencing Commission was among the numerous boards or commissions terminated by the enacted provisions of House Bill 3411.

House Bill 3111 provided pay raises for magistrates, circuit court judges and family law judges to take effect in Fiscal Year 2026. The Governor vetoed the bill and, as the session had ended, the veto could not be overridden.

House Bill 2351 provided a ten dollar increase in the rate of compensation for panel attorneys to take effect in Fiscal Year 2026. The Governor vetoed the bill as an unfunded mandate but expressed empathy for the plight of court-appointed counsel.

House Bill 2761 increases the civil matter jurisdiction of the magistrate courts from $10,000 to $20,000.

House Bill 2441 provides that failure of a drug test in a safety sensitive job will affect the level of unemployment compensation benefits available, if any, to a person.

House Bill 3275 provides that the timing of appeals is solely the province of the rulemaking of the Supreme Court of Appeals of West Virginia and removes the statutorily set time frame.

Senate Bill 443 expressly authorizes the Speech-Language Pathology and Audiology Board of Examiners to conduct criminal background checks for licensing. The Board of Examiners does such checks regularly, but several databases are not available unless there is

express statutory authority to do the "criminal" background checks. This legislation provides the federally required expression of authority.

For similar purposes, Senate Bill 462 expressly authorizes criminal background checks to be done by the Board of Occupational Therapy.

Finally, Senate Bill 621 in its essence states "the orders of every court shall be entered in a book or *kept digitally by the clerk of the court*." The court system has entered the technological age.