

2024 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 affected statute has bearing on 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 hijacked by a committee and the committee substitute may deviate substantially from what was introduced.

Finally, I have listed the Senate bills, first, in numerical order and then the House bills also in numerical order. Simply, the bills are not arranged, nor could they effectively be arranged, in any subject matter order.

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SENATE BILL 159

Summary: Prohibiting persons convicted of certain crimes against minors from holding positions on boards of education

Sponsors: Weld, Boley, Chapman, Deeds, Oliverio, Phillips, Roberts, Rucker, Swope, Tarr, Woodrum, Hamilton, Trump, Stuart, Grady, and Jeffries

W. Va. Code: Amends §3-5-7, §18-2-1, §18-5-1A

Effective Date: June 7, 2024

A certificate of announcement to seek election to a position on a county board of education must include a statement in which the candidate swears and affirms that he or she has not been convicted of an offense against a minor under the provisions of W. Va. Code §§61-8A-1, *et seq.*, “Preparation, Distribution, or Exhibition of Obscene Matter to Minors”; W. Va. Code §§61-8B-1, *et seq.*, “Sexual Offenses”; and W. Va. Code §§61-8C-1, *et seq.*, “Filming of Sexually Explicit Conduct of Minors.” This is reinforced in the provisions specifically governing eligibility for membership on a county board of education. *See* W. Va. Code §18-5-1A(h).

Moreover, no person convicted of an offense against a minor under these same statutory provisions may hold office as a member of the State Board of Education.

It is noted in the amendments that this disqualification is in addition to the general disqualification of holding public office when convicted of treason, felony or bribery in any election. *See* W. Va. Code §6-5-5.

In the category of “don’t trust what others tell you the bill is about,” the note to the introduced bill states: “the purpose of the bill is to require that the party affiliation for county school board members be displayed beside their name on the ballot for election.” This was not the intended purpose.

However, in the category of “trust what others tell you the bill should be about,” Delegate Fast successfully amended the bill during its passage to require all candidates in partisan elections for public office to state in their certificate of announcement their party affiliation at the time of filing the certificate of announcement. If the stated party affiliation at the time of filing the certificate of announcement is not verified by the Secretary of State’s office, the clerk of the county commission or the recorder or city clerk, then the certificate of announcement is to be refused.

SENATE BILL 164

Summary: Relating generally to trespassing

Sponsors: Hunt and Deeds

W. Va. Code: Amends §§61-3B-2,3,6 & 7; Adds §61-3B-8

Effective Date: June 7, 2024

The maximum fine for a trespass in a structure or conveyance when armed with a firearm or other dangerous weapon with the intent to do bodily injury to a person who is within the structure or conveyance is increased from \$500 to \$1,000.

The fine for trespassing on private property, other than a structure or conveyance, that is posted, fenced or cultivated when armed with a firearm or other dangerous weapon with the intent to do bodily injury to a person is changed from \$100 to “not less than \$100 nor more than \$1,000.”

The following provision is added to the statute governing trespass on posted or restricted property or in an underground mine site or on a surface mine: “nothing in this section [§61-3B-3] shall be construed to prevent lawful assembly and petition for the redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution, or the United States Constitution, or any statute of this state or the United States.”

The intended purpose of the originally introduced bill was to consolidate in one section of the article governing trespass a penalty for trespass that includes an amount twice that of the damage done to property. This penalty was set forth in the provisions governing trespass in a structure or conveyance, on other property, or in or on mine sites, but was not included in the provisions governing trespass on student residence premises or student facility premises of an institution of higher education or trespass on state government property. A new consolidated provision in §61-3B-8 provides double damages for all trespasses.

The new section also includes as part of this global penalty “the cost of cleanup.”

Finally, the new section gives the presiding court the option to defer entry of the judgment of conviction for trespass for up to six months and to dismiss the charges if the fines are paid within the period of deferment.

SENATE BILL 190

Summary: Modifying definition of sexual contact

Sponsors: Weld, Deeds, Trump, Woelfel, Barrett, Takubo and Caputo

W. Va. Code: Amends §§61-8B-1,3 & 5

Effective Date: June 6, 2024

For the article governing sexual offenses, a definition for “married” is removed.

Moreover, the definition of “sexual contact” is amended to remove the language “where the victim is not married to the actor.” The effect is that the “intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person’s body by the actor’s sex organs” done “for the purpose of gratifying the sexual desire of either party” may be criminalized if additional elements are proved, even if the alleged victim is living with the actor as husband or wife.

Additionally, an element of statutory rape, i.e., sexual assault in the first or third degree, that the younger person be “not married” to the older person is removed.

SENATE BILL 269

Summary: Excluding test strips from the definition of drug paraphernalia

Sponsors: Deeds, Grady, Takubo, Trump, Caputo, Swope, Woodrum, Hunt and Woelfel

W. Va. Code: Amends §47-19-3; §60A-4-403a

Effective Date: January 26, 2024

The recommendation of the Legislative Joint Committee on Health, which was enacted, was that test strips for any controlled substance be removed from the definition of drug paraphernalia. Fentanyl test strips had been removed from the definition in 2022 legislation.

In a somewhat surprising move, however, W. Va. Code §60A-4-403a, which made it a misdemeanor to operate an illegal drug paraphernalia business, was repealed. The proposed repeal was justified by legislative staff on the grounds that an United States District Court decision rendered the provision unconstitutional. The purported decision has not been confirmed at the time of this summary.

SENATE BILL 318

Summary: Modifying process of when parental rights are terminated

Sponsors: Trump, Weld, Woelfel, Deeds, Plymale and Takubo

W. Va. Code: Amends §48-22-502; adds §49-4-117

Effective Date: May 9, 2024

This legislation added two requirements to the petition for adoption. Specifically, if a child for whom the rights of a birth parent were terminated by the court is being adopted, then

the verified petition for adoption must set forth that the order terminating the parental rights has been affirmed on appeal and the time for reconsideration has expired or, if the order is not yet appealed, the time for filing of any appeal has expired. The new section, W. Va. Code §49-4-117, requires the Department of Human Services to provide a certification to the petitioner for the adoption containing this information. The certificate is to be attached to the petition.

SENATE BILL 378

Summary: Prohibiting smoking in vehicle when minor 16 or under is present

Sponsors: Takubo, Grady, Woelfel, and Hamilton

W. Va. Code: Adds §16-9A-11

Effective Date: June 5, 2024

The “Lead Sponsor” is Tom Takubo who specializes in pulmonary care. The intent of the legislation is obvious, therefore.

The legislation defines a “Lit Tobacco Product” as “any lighted pipe, cigarette, cigar, or other lighted device or product containing a tobacco-based product manufactured or made for the purpose of smoking.”

The legislation prohibits not only the smoking of a “lit tobacco product” by a person 18 years or older when a person 16 years of age or younger is in the car – it prohibits the *possession* of such a product. Moreover, the statute seemingly applies to any adult in the car, not just the driver. However, another section seemingly suggests that it is the driver who is to be cited so the driver may be responsible for the acts of other adults in the motor vehicle.

This is a secondary violation and can only be cited when the driver of the motor vehicle is pulled over for violation of another section of the motor vehicle code. Only one violation per motor vehicle can be assessed against the driver even if the motor vehicle is transporting more than one minor. The section does not address what happens when several adults in the motor vehicle have violated the statute.

The violation is a misdemeanor and the punishment is a fine up to \$25. No court costs or other fees can be assessed for this violation.

SENATE BILL 451

Summary: Directing Prosecuting Attorneys Institute to make training available to certain new prosecuting attorneys

Sponsors: Phillips, Hunt, Jeffries, Nelson, Queen, Rucker, Smith, Stuart, Swope, Takubo, Taylor, Trump, Woodrum, Woelfel, Plymale, and Deeds

W. Va. Code: Amends §7-4-6

Effective Date: March 6, 2024

As originally introduced, the proposed legislation made it mandatory that a person attend the training required to be established by the Prosecuting Attorneys’ Institute *before* performing his or her duties as a prosecuting attorney.

One proposed substitute for the legislation provided that the Prosecuting Attorneys' Institute duties and responsibilities include "the establishment of a training program for all newly appointed, newly elected, or newly hired prosecuting attorneys, or assistant prosecuting attorneys, which all newly appointed, newly elected, or newly hired prosecuting attorneys, or assistant prosecuting attorneys, shall be required to complete."

As enacted, however, the new code merely provides for the "establishment of a training program for all newly appointed or newly elected prosecuting attorneys." No mandate exists to take the training.

Notably, this statute already provided for, and continues to provide for, the Institute's "establishment and implementation of general and specialized training programs for prosecuting attorneys, their staffs, and, where determined practical by the executive council and executive director, all statutorily authorized law-enforcement or investigative agencies of the state or its political subdivisions." Accordingly, it is not apparent what the new legislation adds.

SENATE BILL 475

Summary: Relating to recovery residences

Sponsors: Tarr, Woelfel, Takubo, Deeds, Azinger, Plymale, and Jeffries

W. Va. Code: Amends §§16-59-1, 2, & 3; Adds §16-59-4; Amends §16-62-1 & 2

Effective Date: June 7, 2024

The legislation comprehensively regulates establishing and operating recovery residences.

The definition of a "recovery residence" was not changed. Accordingly, "recovery residence" means "a single-family, drug-free, and alcohol-free residential dwelling unit, or other form of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment for the purposes of promoting sustained, long-term recovery from substance use disorder."

The certification of a recovery residence will require compliance with the additional accreditation standards requiring the residence to "protect residents from human trafficking that may occur in the recovery residence setting" and "protect patients from predatory practices that lead to patient brokering."

The legislation requires recovery residences to "collect, retain and submit" to the Department of Human Services "data" that will be specified in a legislative rule proposed by the Department in consultation with the Office of Inspector General, the Superintendent of the West Virginia State Police, the West Virginia Sheriffs' Association and a representative of the West Virginia National Alliance for Recovery Residences. The data to be collected is to allow designated entities to determine if patient brokering or human trafficking is occurring.

The legislation provides a detailed registration process for recovery residences. Registration is with the Office of Health Facility Licensure and Certification. The certifying agency is authorized to revoke a registration immediately if residents are in imminent jeopardy.

Without a valid certificate of compliance that includes registration, a recovery residence will not be permitted to accept referrals from the “Division of Corrections and Rehabilitation, the Parole Board, the county probation offices, day report center, municipal courts, or a medical or clinical treatment facility that receives funds for its operations from the State Treasury.” A violation of this prohibition is a misdemeanor punishable by fines up to \$5,000 for each infraction. Moreover, a recovery residence without a certificate of compliance cannot accept funds that derive from a benefit received from Medicaid, TANF, or SNAP.

The legislation adds recovery residences to the provisions currently prohibiting patient brokering by health care providers and health care facilities. Patient brokering is payment of a “commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind” or engaging “in any split-fee arrangement, in any form whatsoever” to induce “the referral of a patient or patronage to or from a ... recovery residence.” The Office of the Inspector General is to develop a “tool” to facilitate complaints.

SENATE BILL 504

Summary: Relating to felony offense of sexual intercourse, intrusion or contact with student

Sponsors: Clements, Grady, Woelfel, and Deeds

W. Va. Code: Amends §16-8B-11b

Effective Date: June 4, 2024

The separate and distinct crime of sexual intercourse, sexual intrusion, or sexual contact with a student was created in the 2023 Legislative Session and applied to any “teacher, principal, counselor, coach, other employee, or volunteer of any private or public elementary school or secondary school.”

This legislation adds “school resource officer” to the list of persons subject to the criminal offense.

The legislation also creates an exemption for any “student under the age of 18 years currently enrolled in a secondary school and engaged in a wage-earning registered youth apprenticeship program” which includes the “Grow Your Own pathway or any Career Technical Education school service personnel training program.” The student may not be “prosecuted” for a crime of sexual intercourse, sexual intrusion, or sexual contact with a student.

SENATE BILL 539

Summary: Creating cold case database

Sponsors: Takubo, Deeds, Oliverio, Weld, Trump, Maroney, and Woelfel

W. Va. Code: Adds §15A-12-9

Effective Date: June 2, 2024

The note to the bill as introduced is:

NOTE: The purpose of this bill is create the Cold Case database, explaining the types of cases to be included in the Cold Case database,

explaining the state agency developing the Cold Case database, delineating the information that must be provided for inclusion in the Cold Case database for each investigation and delineating the information that may be provided for inclusion in the Cold Case database for each investigation if applicable to either the victim of the crime or the suspect of the crime.

For context, “cold case” is defined as “any investigation into a qualifying crime, a missing person, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved.” Qualifying crimes include most offenses that result in injury to, or the death of, a person. The West Virginia Fusion Center is the state agency mandated to “develop a secure database that contains all information related to each cold case in any jurisdiction in the state.”

SENATE BILL 548

Summary: Clarifying appellate jurisdiction of Intermediate Court of Appeals

Sponsors: Trump

W. Va. Code: Amends §51-11-4

Effective Date: June 6, 2024

As introduced, the bill was intended to give the Intermediate Court of Appeals jurisdiction over matters involving equitable relief except for proceedings seeking writs of habeas corpus.

As enacted, the Intermediate Court of Appeals is given jurisdiction over “all” civil cases, “including ... those in which there is a request for legal or equitable relief.” This inclusiveness is somewhat contradicted, however, by the exclusion of the following from the Intermediate Court of Appeals’ jurisdiction: “Judgments or final orders issued in proceedings where the relief sought is one or more of the following extraordinary remedies: writ of prohibition, writ of mandamus, writ of quo warranto, writ of certiorari, writ of habeas corpus, special receivers, arrests in civil cases, and personal safety orders.” While these matters are designated generically as civil cases, the legislation makes a distinction between proceedings for extraordinary remedies and generic civil matters in which equitable relief is sought.

SENATE BILL 578

Summary: Clarifying offense of burglary

Sponsors: Trump, Woelfel and Deeds

W. Va. Code: Amends §61-3-11

Effective Date: June 7, 2024

This legislation resolved the issue that was addressed by the Supreme Court of Appeals in *State v. Conner*, 2023 WL 3597530. A revision to the burglary statute in 2018 removed the language “of another” following “dwelling house.” In *Conner*, the defendant had broken into his own home in violation of a protective order. The jury instruction in the matter did include this modifier so for this and various reasons, the conviction was affirmed.

This legislation reinserts the “of another” language.

Additionally, however, “of another” is expanded to include instances when, such as the defendant’s circumstances in *Conner*, the person who is breaking and entering “knows that he or she is prohibited from being there.”

SENATE BILL 778

Summary: Amending certain qualifying offenses to enhance sentences of repeat offenders

Sponsors: Weld and Deeds

W. Va. Code: Amends §61-11-18

Effective Date: June 6, 2024

The affected section of the code delineates the “qualifying offense[s]” for enhanced penalties if the offender is previously convicted of one or two felonies. This is the “recidivist” statute.

The amendments address technical corrections and add new qualifying offenses. One technical correction is the reference to the prohibited acts under the Uniform Controlled Substances Act, W. Va. Code §§60A-1-101, *et seq.* Specifically, a reference is currently made to §§60A-4-401(i) and (ii) which do not exist. The corrected reference is to §§60A-4-401(a)(i) and (a)(ii). Similarly, a reference is currently made to §60A-4-409(2) which does not currently exist. The corrected reference is to §60A-4-409(b)(2).

The legislation adds §61-2-9c, *Wanton endangerment involving the use of fire, penalty*, as a qualifying offense. This criminal provision addresses the use of fire when manufacturing or producing an “illegal controlled substance” which creates a “substantial risk of death or serious bodily injury to another.”

The legislation adds the burglary statute, §61-3-11, as a qualifying offense. A felony offense for entry into buildings other than a dwelling and into conveyances is also added. *See* §61-3-12.

Felony convictions under the statutes governing receipt of stolen goods, embezzlement, falsifying accounts, obtaining money under false pretenses, fraudulent use or forgery of credit cards, possession of credit card making equipment, and stealing an identity are also added as qualifying offenses. *See* §§61-3-18, 19, 20, 20a, 21, 22, 24, 24a and 54.

There is no escaping recidivism as the escape statute, §61-5-10, is now added as a qualifying offense when it is charged as a felony. It may seem obscene, but the obscenity statutes, §§61-8A-2, 4, & 5, are added. And to make sure that lessons are learned, the recently enacted felony for sexual acts by a school employee against a student is added as a qualifying offense. *See* §61-8B-11b.

Notably, the “cleanup” legislation needs “cleaning up.” The legislation in section (b) refers to “qualifying offender” when, in context, it should be “qualifying offense.” It has no import, however.

SENATE BILL 837

Summary: Reorganizing offices of Public Defender Corporations to conform to circuit reconfiguration

Sponsors: Weld, Trump, Woelfel, and Plymale

W. Va. Code: Amend §51-2-1

Effective Date: March 9, 2024

In the 2023 Legislative Session, the Judicial Reorganization Act, House Bill 3332, was enacted. Effective January 1, 2025, the legislation reconfigured judicial circuits, redesignated judicial circuits, and added magistrates and/or circuit court judges in various circuits. This reorganization potentially impacts the operations of various public defender corporations.

The challenge for Public Defender Services is measuring this impact which is problematic because the reconfiguration of the corporations is to occur simultaneously with the changes. Moreover, the changes occur in the middle of a fiscal year making the funding of changes challenging.

This legislation was introduced and enacted to give Public Defender Services until July 1, 2025, to determine the impact of the changes in the Judicial Reorganization Act that take effect on January 1, 2025, and to request an appropriate fiscal year budget to fund the necessary adjustments in the indigent defense system.

In its entirety, the amendment to W. Va. Code §51-2-1, *Judicial Circuits; terms of office; legislative findings and declarations; elections, and terms of court*, is: “Notwithstanding any provision of this code to the contrary, public defender corporations organized pursuant to the provisions of §29-21-1 *et seq.* of this code shall have until July 1, 2025, to conform their offices to the judicial circuits established in this section by the amendments to this section enacted during the regular session of the Legislature, 2023.”

HOUSE BILL 4399

Summary: Creating the equitable right to expungement

Sponsors: Nestor, Kump, and Lewis

W. Va. Code: Amends §§61-11-22, 22a & 25

Effective Date: June 7, 2024

Currently, W. Va. Code §§61-11-25 provides for expungement of all charges when the accused has been found not guilty or has the charges dismissed.

This legislation amends the section to provide for expungement of charges which are dismissed following the accused’s “full and successful completion of a pre-trial diversion pursuant to §61-11-22 of the code” or following the “full and successful completion of a deferred adjudication pursuant to §61-11-22a of this code.” Somewhat unnecessarily, the expungement provisions for deferred adjudications specifically exclude charges of domestic assault; domestic battery; and malicious assault, assault, battery and stalking or harassment if the victim is a family

or household member. This is unnecessary because a person is not eligible for a pre-trial diversion or deferred adjudication for these charges and, therefore, the condition of full and successful completion of such a program cannot be met.

A technical correction is made to §§61-11-22 & 22a in that the statutory reference to the definition of “family or household member” is currently cited as §48-27-203 rather than the correct cite, §48-27-204.

HOUSE BILL 4667

Summary: Prohibiting syringe services programs from distributing listed smoking devices

Sponsor: Chiarelli

W. Va. Code: Amends §16-64-3

Effective Date: June 2, 2024

As introduced, the proposal was to ban any “harm reduction program” from “distributing any smoking devices.” Any “harm reduction program” was to include “syringe services programs; substance use disorder treatment programs; screenings; vaccinations; education about overdose prevention; wound care; opioid antagonist distribution and education; and other medical services.” W. Va. Code §16-64-1.

Instead, the enacted provision amends only the statute governing the requirements for “syringe services programs” to set forth that such programs “shall not distribute any smoking devices, including, but not limited to, hand pipes, bubblers, bongs, dab rigs, hookahs, crack pipes, or disposable smoking devices.”

For context, a “syringe services program” is defined as a “community-based program that provides access to sterile syringes, facilitates safe disposal of used syringes, and is part of a harm reduction program.” W. Va. Code §16-64-1.

HOUSE BILL 4845

Summary: To prohibit swatting

Sponsors: Hillenbrand, Chiarelli, McGeehan, C. Pritt, Phillips, Brooks, Shamblin, Thorne, Maynor, Ridenour, and Hanshaw (Mr. Speaker)

W. Va. Code: Amends §61-6-20

Effective Date: June 4, 2024

The original intent of the legislation was to create the “West Virginia Anti-Swatting Act.” A person would be guilty of, and punished for, the act of “swatting” if a person used a “telecommunications device” or “telecommunications service” to “report or cause to be reported false or misleading information to a law enforcement agency, emergency service provider, or public safety answering point, knowing the information to be false or misleading, with reckless disregard as to whether the report may cause bodily harm to any individual as a direct result of an emergency response to the report, and under circumstances where the report is reasonably likely to cause an emergency response from a law enforcement agency, emergency service provider, or public safety answering point and the report does cause an emergency response.”

A less legalistic definition for “swatting” from the Oxford Languages Dictionary is: “the action or practice of making a prank call to emergency services in an attempt to bring about the dispatch of a large number of armed police officers to a particular address.”

As enacted, the wisdom of the legislature was to make the already existing misdemeanor of falsely reporting an emergency incident a felony upon the second or subsequent offense. The punishment is incarceration for an indeterminate term of one to five years and/or a fine between \$5,000 and \$10, 000.

A provision was also added that permits law enforcement agencies or emergency service providers involved in the induced emergency response to submit an itemized statement of the costs incurred in the response. The court can then order the offender to reimburse the affected agency or provider for all or a portion of the cost.

Finally, an exception is added for a person “conducting an authorized emergency drill.”

HOUSE BILL 4940

Summary: A squatter cannot be considered a tenant in WV

Sponsors: Crouse, Lucas, Winzenreid, Petitto, Smith, and Kimble

W. Va. Code: Adds §§37-6-31, 55-3C-1 & 2

Effective Date: June 4, 2024

An urban legend has spread recently, even on ESPN news, about the ability of squatters to become tenants of a residence, requiring commencement of formal eviction proceedings to remove them. New York City and San Francisco have been associated with such accounts.

This West Virginia legislation defines “squatter” as a “person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit.” The term does not apply to a person holding over under leases for periods less than a year.

The legislation provides that “squatting” is not governed by the statutory provisions governing the relationship between landlord and tenant. Moreover, eviction proceedings are not required for an owner to remove a squatter and “such removal shall not be unduly hindered.”

Finally, the legislation provides “squatting is synonymous with trespass and is a criminal act.” Presumably, therefore removal can be achieved by filing a criminal complaint.

HOUSE BILL 4998

Summary: Modifying penalties for third offense shoplifting

Sponsors: Kirby, Nestor, Brooks, Hornbuckle and E. Pritt

W. Va. Code: Amends §61-3A-3

Effective Date: June 5, 2024

Currently, the punishment upon conviction for a third or subsequent offense of shoplifting is an indeterminate sentence of one to ten years with one year mandated to be served. The one-year mandate eliminates the possibility of probation.

This legislation removes the mandatory one-year period of incarceration upon conviction for a third or subsequent shoplifting offense. Accordingly, probation exists as a possible sentencing alternative.

Moreover, if the “court finds that probable cause exists that a person convicted of third or subsequent offense was abusing drugs or alcohol at the time of his or her arrest, it shall order an evaluation of the defendant to determine whether he or she has a substance use disorder.” If a substance use disorder exists, then the court may “order that the defendant undergo treatment for the substance use disorder as part of his or her sentence.”

Additionally, the legislation permits a conviction from out-of-state for shoplifting to be used to determine the number of shoplifting convictions if “that jurisdiction’s offense has the same essential elements of this section, disregarding the value of the property shoplifted.”

Finally, convictions for shoplifting that occurred more than seven years prior to the date of a current offense are not to be counted for the purposes of determining if this is a third or subsequent offense.

HOUSE BILL 4999

Summary: Creating exception to spousal privilege

Sponsors: Kirby, Steele, Brooks and C. Pritt

W. Va. Code: Amends §57-3-3

Effective Date: June 6, 2024

W. Va. Code §57-3-3 governs the testimony of husband and wife in criminal cases. Testimony is generally allowed by one spouse on behalf of the other. However, testimony by one against the other is not allowed without the consent of the spouse against whom the testimony is proffered and cannot be compelled unless it is one of the enumerated offenses that is being prosecuted.

Currently, the exceptions to the disallowance of such testimony extends to offenses committed by one against the other or against a child, father, mother, sister or brother of either of them.

This legislation extends the exception and permits testimony by one spouse against the other if the offense is against a grandchild, a minor, or a person deemed incompetent by mental disease, defect, or disability.

HOUSE BILL 5510

Summary: Clarify law regarding the crime of witness tampering

Sponsors: Winzenreid, Garcia, Fluharty, McGeehan, Zatezalo, Westfall, Mallow and Kimble

W. Va. Code: Amends §61-5-27

Effective Date: June 6, 2024

The legislation as introduced was summarized as a “clarification” of the law regarding the crime of witness tampering.

In reality, the legislation removes the language that is referred to in the heading of the statute as “making public threats directed at inciting lawless action.”

W. Va. Code §61-5-27 currently makes it a felony to use, or attempt to use, intimidation, physical force, harassment, or a fraudulent legal process or official proceeding against (i) a public official or employee with the intent to impede or obstruct the public official or employee from performing his or her official duties; (ii) a juror or witness with the intent to impede or obstruct a juror or witness from performing official duties in an official proceeding; (iii) a person with the intent to influence, delay or prevent testimony of the person in an official proceeding; or (iv) a person with the intent to cause the person to withhold testimony or a record, document or other object from an official proceeding, or to alter, destroy, mutilate, or conceal a record, document, or other object to be produced in an official proceeding, or to be absent from an official proceeding to which the person has been summoned.

The statute also makes it a felony to cause injury or loss to person or property, or attempt to do so, with the intent to retaliate against (i) a public official or employee for performing or not performing an official duty; (ii) a juror or witness for performing official duties in an official proceeding; and (iii) a person for attending, testifying, or participating in an official proceeding or producing a record, document, or other object in an official proceeding.

The statute also penalizes the “threat” to do these acts. Currently, however the threat must be “directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action.”

The enacted legislation removes this language about inciting or producing lawless action and merely penalizes a “threat” to intimidate or harass, or retaliate against, the enumerated persons without regard to the intended effect on public reaction. However, the heading to the statute is not amended to remove the reference to inciting lawless action.

HOUSE BILL 5151

Summary: Relating to defining term fictive kin

Sponsors: Burkhammer, Pinson, Heckert, Winzenreid, Hornby, Riley, W. Hall, Kimble and Petitto

W. Va. Code: Amends §49-1-206

Effective Date: June 7, 2024

In accord with the original intent of the bill, the legislation adds the following language to the definition of “fictive kin” for the purposes of the chapter on Child Welfare, W. Va. Code §§49-1-101, *et seq.*: “foster parents with whom the child has previously been placed.”

Fictive kin are adults who are not relatives to a child but who have an “established, substantial relationship with the child.” Foster parents are now added to the list that includes “teachers, coaches, ministers, [and] parents or family members of the child’s friends.”

As enacted, however, an additional amendment was made to include a definition for “restorative justice program.” The definition is: “a voluntary, community based program which utilizes evidence-based practices that provide an opportunity for a juvenile to accept responsibility for and participate in setting consequences to repair harm caused by the juvenile against the victim and the community by means of facilitated communication including, but not limited to, mediation, dialogues, or family group conferencing, attended voluntarily by the victim, the juvenile, a facilitator, a victim advocate, community members, or supporters of the victim or the juvenile.”

HOUSE BILL 5520

Summary: Relating to juvenile competency

Sponsors: Hillenbrand, Kelly, Steele, Ward, Thorne, Akers, and Garcia

W. Va. Code: §§49-4-727 & 729

Effective Date: June 6, 2024

With the enactment of this legislation, the age at which competence of a child is presumed is lowered from 14 years of age to 13 years of age.

Typically, proceedings are stayed until an issue of a child’s competency is resolved. This legislation permits the child’s attorney, the guardian ad litem, or the prosecuting attorney to “seek,” or the court to “order,” any “pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure or any disposition alternatives set forth in §49-4-734 of ... code for a juvenile presumed incompetent.” Simply, action can be taken on a presumption of incompetency rather than having to wait until the issue of competency is finally resolved.

HOUSE BILL 5662

Summary: Relating to adding “person in a position of trust” to certain crimes

Sponsors: Kelly, Hott & Steele

W. Va. Code: Amends §§61-8D-1, 2, 2a, 3, 3a, 4 & 4a.

Effective Date: June 5, 2024

Currently, the following crimes are directed to a “parent, guardian, or legal custodian”: murder of a child, death of a child by abuse, child abuse resulting in injury, female genital mutilation, child neglect resulting in injury or creating risk of injury, and child neglect resulting in death.

This legislation adds “person in a position of trust in relation to that child” as a person subject to being charged with the foregoing crimes.

The legislation also adds a “person in a position of trust in relating to a child” to the definitions for “Gross Neglect” and “Neglect” in Article 8D, entitled *Child Abuse*.

Finally, the definition for “person in a position of trust in relation to a child” adds the phrase “under law or agreement” as the means by which a person is acting in the “place of a parent and charged with any of a parent’s rights, duties, or responsibilities concerning a child.” While this may seem to be a limiting phrase, the definition also includes “someone responsible for the supervision of a child’s welfare” which is seemingly quite expansive.