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WEST VIRGINIA MUNICIPAL LEAGUE

Annual Judges Training

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A WORD OF CAUTION

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.

COMPLAINTS & CITATION

A case in municipal court begins by filing one of the following documents:

- **Criminal complaint:** This is a signed statement charging a person with violating a municipal ordinance. It contains the facts of the violation, the common name of the offense that is charged, and the specific section number of the ordinance that was violated.

COMPLAINTS & CITATION

- Complaints can be filed by municipal police officers, the city attorney or private citizens acting on their own behalf.
- Complaints can only contain charges that are within the jurisdiction of the municipal court.
- If there is more than one defendant, a separate complaint must be filed for each.

COMPLAINTS & CITATION

- **Criminal citation:** This is a signed statement citing a person for violating a municipal ordinance and is sometimes called a non-traffic citation. It contains the name and address of the person, the specific offense charged, the specific section number of the ordinance that was violated, and the time and place for the person to appear in court.

COMPLAINTS & CITATION

- The citation is issued by an official authorized by law to do so, for example zoning violations are typically cited on criminal citations.
- A copy of the citation is given to the person cited. The original must be filed in municipal court as soon as practical.

COMPLAINTS & CITATION

- **Traffic citation:** This is a standardized form known as the “uniform traffic citation” that is used statewide for enforcement of motor vehicle offenses. The content of this form is set by the Highway and Transportation Department in accordance with state law.
  - The form contains spaces for details about the person cited, the vehicle involved, the conditions at the time of the violation, the specific offense charged, and the police officer’s signature.

COMPLAINTS & CITATION

- The uniform traffic citation is issued by either a state or local traffic enforcement officer.
- A copy of the uniform traffic citation is given to the person cited. The citation copy thus serves as a summons. The original must be filed in municipal court as soon as practical.

COMPLAINTS & CITATION

- If a person is arrested without a warrant, a copy of the complaint is given to him or her prior to transfer to a detention facility. If necessary, the complaint may be placed with the individual's personal belongings. There is no requirement that the complaint be sworn before a notary or judicial officer prior to being given to the person.

CRIMINAL SUMMONS

- The judge may issue a criminal summons for criminal actions within court jurisdiction. The criminal summons orders the defendant to appear before the judge at a stated time and place; no arrest of the defendant is made.
- Service of a summons may be made by mail unless the court directs by local rule that personal service be made. The summons and complaint are served together. An original and multiple copies of the summons are prepared (one copy each for the court and the prosecution).

CRIMINAL SUMMONS

- The original summons is personally served on or mailed to the defendant along with the original complaint. The summons must contain the name of the court and city in which it is filed, the docket number of the case and the defendant to whom it is directed. It must also contain a direction to appear at a certain date and time, and the name and address of the law enforcement entity, prosecutor, or private citizen filing the complaint.

CRIMINAL SUMMONS

- Service must be made at least 10 days before the defendant is required to appear. If service is made by mail, an additional three days are added. Service by mail is complete upon mailing.
- Following personal service, the person making service completes the certificate of service and returns the original and a copy to the court.
- The judge retains a copy of the complaint, summons and certificate of service.

ARREST WITHOUT A WARRANT

- In all municipal court cases, if the defendant is arrested without a warrant, a criminal complaint must be prepared and given to the defendant prior to transferring the defendant to the custody of the detention facility.
  If the defendant is in custody, the complaint should be filed with the municipal court at the time it is given to the defendant. If the court is not open at that time and the defendant remains in custody, the complaint must be filed the next business day. If the defendant is not in custody the next business day, the complaint is to be filed with the court as soon as practicable.

ARREST WITHOUT A WARRANT

- An officer may make a warrantless arrest for a petty misdemeanor only if the officer has probable cause to believe that the suspect is committing a misdemeanor in the officer's presence; that the suspect was present at the scene of a motor vehicle accident; or that the suspect is charged with a crime in another jurisdiction as further explained in

ARREST WITHOUT A WARRANT

- West Virginia statutes provide an exception to this rule in cases where an officer is at the scene of a domestic disturbance and has probable cause to believe that a person has committed an assault or a battery upon a household member. “Household member” is defined as a spouse, former spouse, family member (including a relative, parent, current or former step-parent, current or former in-law, child or co-parent of a child), or a person with whom the victim has had a continuous personal relationship.

PROBABLE CAUSE DETERMINATION

- Under the Fourth Amendment to the United States Constitution, an accused who is detained and unable to meet conditions of release has a right to a probable cause determination. To satisfy this constitutional requirement, the judicial determination of probable cause must be prompt, although delay up to 48 hours may be constitutionally permissible. The burden is on the government to prove a delay beyond 48 hours is reasonable. Weekends and holidays are not to be considered as permissible excuses for delays beyond 48 hours.

PROBABLE CAUSE DETERMINATION

- The probable cause determination is non-adversarial and is usually held in the absence of the defendant and of counsel. A showing of probable cause must be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished.

PROBABLE CAUSE DETERMINATION

- Witnesses are not necessary unless the court believes witnesses might be useful for finding no probable cause. In other words, the judge must find that there was probable cause to arrest the defendant without a warrant.

PROBABLE CAUSE DETERMINATION

- If the complaint and any attached statements fail to make a written showing of probable cause, the police officer or prosecutor may file either an amended complaint or a separate "statement of probable cause" which sets forth sufficient facts to detain the defendant.
- If the court finds that there is no probable cause to believe that the defendant has committed an offense, the court dismisses the complaint without prejudice and orders the release of the defendant.

PROBABLE CAUSE DETERMINATION

- If the court finds probable cause that the defendant committed an offense, the court reviews the conditions of release. If no conditions of release have been set and the offense is a bailable offense, the court sets bail. The court's finding of probable cause must be in writing..

ARREST WARRANT

- Although a criminal summons is the preferred method of acquiring jurisdiction over a defendant in a non-felony criminal action, the judge may determine, if good cause is shown, that the interests of justice will be better served by issuing an arrest warrant. If the defendant is arrested pursuant to a warrant, an additional probable cause determination is not necessary after arrest.
- If the defendant fails to appear in person, or by counsel when it is allowed by statute, at the time and place specified in the summons, the judge may issue a type of arrest warrant known as a "bench warrant."

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ARRAIGNMENT

DEFINITION AND WAIVER OF ARRAIGNMENT

- The arraignment is the proceeding at which the defendant is brought before the judge for the first time after arrest or in response to a criminal summons. An arraignment may be waived by the defendant filing a written plea of not guilty.

EXPLANATION OF RIGHTS

At the arraignment of the defendant, the judge must inform the defendant of all the following:

- The offense charged.
- The maximum penalty and any mandatory minimum penalty provided by law for the offense charged. If a specific penalty is not provided, the defendant is informed of the penalty for a petty misdemeanor, that is, 90 days in jail and/or a five hundred dollar fine.

EXPLANATION OF RIGHTS

- The right to bail, if the person was arrested and is still in custody.
- The right to see, hear, question and cross-examine the witnesses who testify against the defendant at the trial.
- The right to call witnesses to testify for the defense and to have them subpoenaed and required to appear, at no cost to the defendant.
- The right to the assistance of counsel at every stage of the proceedings, if a jail sentence is being considered by the judge.

EXPLANATION OF RIGHTS

- The right to representation by an attorney at the municipality's expense, if the defendant is an indigent and a jail sentence is being considered by the judge.
- The right to remain silent and the fact that any statement made by the defendant may be used against him or her.
- The right to testify at trial, but if the right is exercised the defendant is subject to cross-examination.

REPRESENTATION BY COUNSEL

- After the explanation of rights, the judge determines whether the defendant is represented by counsel.
- If the defendant is not represented by counsel, the judge may allow the defendant reasonable time and opportunity to make telephone calls to seek and consult with counsel before the proceedings continue.

REPRESENTATION BY COUNSEL

- If it appears that the defendant may be indigent, then the judge decides if a jail sentence may be imposed upon a plea of guilty or upon conviction.

REPRESENTATION BY COUNSEL

- If the judge decides that no imprisonment will be imposed, then all of the following apply:
  - The defendant is not entitled to appointed counsel.
  - No determination of indigency is necessary.
  - No waiver of counsel is necessary, except in the case of driving while intoxicated.

REPRESENTATION BY COUNSEL

- If the judge decides to reserve the option to impose a sentence of imprisonment, then a determination of indigency is necessary. In such case, an indigent defendant is entitled to appointed counsel.

REPRESENTATION BY COUNSEL

- In any case in which the judge reserves the option to sentence the defendant to incarceration, the defendant must be represented by counsel or must knowingly and intelligently waive counsel. If counsel is waived, a written waiver should be obtained before the defendant is allowed to appear on his or her own behalf.

REPRESENTATION BY COUNSEL

- Some offenses, for example driving while intoxicated, provide for an enhanced penalty if a defendant is convicted a second or subsequent time for the same offense. If the defendant was sentenced to jail for the first conviction, even if the sentence was suspended, the penalty for the second conviction can be enhanced only if the defendant had been represented by counsel or had waived counsel in the first case. Therefore, a waiver of counsel must always be obtained from a non represented DUI defendant regardless of whether it is a first or subsequent offense.

REPRESENTATION BY COUNSEL

- The judge should not accept a waiver of counsel without being satisfied that the waiver is knowingly, voluntarily and intelligently made and that the defendant is informed of the possible disadvantages of self-representation. In making this determination the judge must consider such factors as the person's age, education, familiarity with English and the complexity of the crime involved. The judge may not force a lawyer upon a criminal defendant when the defendant insists on conducting his or her own defense.

ENTRY OF PLEA

- The defendant is required to plead to the complaint after receiving the explanation of rights and an opportunity to consult with counsel, if counsel is present, unless counsel is not required or is waived.

ENTRY OF PLEA

If the defendant refuses to plead or stands mute, the judge enters a plea of not guilty for the defendant. The plea must be one of the following:

- **Not guilty**.
- ***Nolo contendere*** (no contest), if permitted by the judge. This plea has the same legal effect as a plea of guilty for purposes of the case before the court, but the plea may not be used against the defendant as an admission of guilt in any collateral proceeding (e.g., a civil lawsuit).
- **Guilty.**

ENTRY OF PLEA

- **Not Guilty Plea**
  - If the defendant pleads not guilty, the case is set for trial as soon as possible.
  - At any point in the proceedings, the defendant may request to withdraw a not guilty plea and enter a guilty plea or, if permitted, a *nolo contendere* plea. In determining whether or not to accept the change of plea, the judge applies the standards of knowing and voluntariness discussed in the following slides.

ENTRY OF PLEA

- ***Nolo Contendere* Plea**
  - If the defendant pleads *nolo contendere*, before accepting the plea the judge must be sure that the plea is voluntarily made, that the defendant realizes that the plea of *nolo contendre* will have the same effect as a guilty plea in municipal court, and that the defendant understands the consequences of the plea. The defendant should be personally questioned for these purposes using, even when represented by counsel.

ENTRY OF PLEA

- **Guilty Plea**
  - Before accepting a guilty plea, the judge must make sure that the plea is voluntarily made, that the defendant realizes the consequences of the plea, and that there is a factual basis for the guilty plea. The defendant should be personally questioned for these purposes, even when represented by counsel. The factual basis that is required for the plea of guilty, but not for the plea of *nolo contendere*, may be established by simply asking the defendant: "What did you do that makes you believe you are guilty of this offense?" The answer the defendant gives should establish every element of the offense, including the criminal intent required.

ENTRY OF PLEA

- **Voluntary Nature of Plea**
  - In the case of a *nolo contendere* plea or a guilty plea, the judge should use a checklist to make sure the plea is voluntary and otherwise acceptable and proper.

ENTRY OF PLEA

- For a plea of guilty or *nolo contendere* to be voluntary, it must be of the defendant's own free will, with a full understanding of all rights and possible consequences. The plea must not have been induced by threats or by promises. A plea agreement is not considered a promise that renders the plea involuntary. The judge shall address the defendant personally, in open court, and ask the defendant both of the following questions:
  - Is your guilty plea (or plea of *nolo contendere*) voluntary and not the result of force or threats or promises apart from a plea agreement?
  - Is your willingness to plead guilty (or *nolo contendere*) the result of prior discussions between the attorney for the city and either you or your attorney?

ENTRY OF PLEA

- **Plea Agreement**
  - A plea agreement should be in writing and presented to the judge for approval. The judge must not take any part in the plea discussions or negotiations. The judge's task is to approve or disapprove the agreement negotiated by the parties. If approved, the judge signs the plea agreement. The plea agreement is filed in the court file.

ENTRY OF PLEA

- If the judge rejects the prosecutor's recommendations for reduced or dismissed charges or sentencing, if any, that have been accepted by the defendant, the defendant must be afforded the opportunity to withdraw a plea of guilty or no contest.
- The judge has broad discretion to accept or reject a plea agreement and that discretion will not be disturbed unless abused. Rejection of a plea agreement is not an abuse of discretion.

ENTRY OF PLEA

- When the court approves a plea agreement that includes a limitation on the sentence, it cannot at a later date increase the sentence without permitting the defendant to withdraw his plea of guilty or *nolo contendere*.
  - After a plea of guilty or *nolo contendere* has been accepted, the judge may order a pre-sentence investigation and report.

ENTRY OF PLEA

- If the judge does not accept a plea of guilty or *nolo contendere*, a plea of not guilty is entered and the case is set for trial as soon as possible.
- If a plea agreement is reached which is confirmed in writing on the standard Plea and Disposition Agreement, the defendant waives certain rights. This includes the right to appeal unless constitutional invalidities are later alleged. The defendant also cannot be relieved of one provision of a plea agreement without giving up all of the other benefits received in the bargain.

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DISMISSAL

DEFINITIONS

- Dismissal with prejudice means that the offense which is dismissed may not be charged again in any court.
  - Dismissal without prejudice does not prevent the prosecution from charging the defendant again with the same offense. The prosecution is free to bring another action.

VOLUNTARY DISMISSAL BY PROSECUTION

- The prosecution may file a notice of dismissal at any time before trial. Dismissal is without prejudice unless otherwise stated in the notice of dismissal. The judge signs the notice of dismissal, and the original is filed with the court. The prosecution is responsible for serving the notice of dismissal on the defendant.

VOLUNTARY DISMISSAL BY PROSECUTION

- A specific count or charge in the complaint may be dismissed without dismissing the entire complaint. The notice of dismissal form is modified to indicate the count or charge that is being dismissed.
- Additionally, the prosecution may file a document called a Nolle Prosequi. This document literally means that the prosecution declines to prosecute the case. It is a dismissal of all or some of the charges and does not require the judge's signature. These dismissals are without prejudice unless otherwise stated.

DISMISSAL FOR FAILURE TO PROSECUTE

The judge is required to dismiss a petty misdemeanor complaint with prejudice according to if all of the following conditions are met:

- The charge has been pending for more than 360 days from the date of the arrest, the filing of the complaint, or the filing of a uniform traffic citation against the defendant, whichever is later, and
- The trial has not commenced, and
- The defendant was not responsible for the delay.

DISMISSAL FOR FAILURE TO PROSECUTE

- This is known as a violation of the six-month rule. If the judge determines, after a hearing, that the defendant was responsible for the failure of the court to commence trial, the judge must not dismiss the complaint for failure to prosecute.

DISMISSAL FOR FAILURE TO PROSECUTE

- If the defendant contributed to the delay by a motion for continuance but there was additional delay for which the defendant was not responsible, the court may add to the six-month period the length of the delay caused by the defendant. If in weighing all the factors that caused the delay the court determines that the defendant was not responsible for the failure to commence the trial within six months, the charges must be dismissed with prejudice.

DISMISSAL FOR FAILURE TO PROSECUTE

- Failure to strictly follow pretrial procedures is generally not in itself grounds for dismissal of a criminal complaint.

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OTHER PRELIMINARY MATTERS

DISCOVERY

- Discovery is the process where the parties exchange information that they will be using at trial. Discovery rules were enacted so that there would be full disclosure and no surprises at trial.

DISCOVERY

- The prosecution must disclose and make available for inspection and copying any records, papers, documents or other tangible evidence in its possession, custody and control that meet one or more of the following conditions:
  - Is material to the preparation of the defense.
  - Is intended for use by the prosecution at trial.
  - Was obtained from or belongs to the defendant.

DISCOVERY

- The defendant must disclose and make available to the prosecution for inspection and copying any records, papers, documents or other tangible evidence in the defendant's possession, custody or control that:
  - The defendant intends to introduce in evidence at trial.

DISCOVERY

- The prosecution and defendant must exchange a list of the names and addresses of witnesses each intends to call at trial, along with any recorded statement made by the witness, no later than ten days prior to trial. If requested by a party, any witness on either list must be made available for interview prior to trial.

DISCOVERY

- Each party has a continuing duty to promptly disclose any additional material or witnesses that the party would have previously been required to disclose.

DISCOVERY

- If a party fails to comply with the discovery rule or an order issued pursuant to it, the court may take any of the following actions:
  - Order the party to disclose the information.
  - Grant a continuance.
  - Prohibit the party from calling an undisclosed witness or introducing undisclosed evidence at the trial.
  - Enter any other appropriate order, including holding an attorney or party in contempt of court.

MOTIONS

- Any defense or objection that is capable of determination without trial of the general issue may be raised by motion before trial.
  For example:
  - A defendant challenging a search and seizure may make a motion for return of the property and suppression of its use as evidence in trial.
  - A defendant challenging a confession, admission or other evidence may make a motion to suppress its use as evidence in trial.

MOTIONS

- An application to the court for an order shall be by motion and made in writing, unless the request is made during a hearing or trial. The motion shall state with particularity the grounds on which it is based and shall set forth the specific relief or order sought.

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SEARCHES & SEARCH WARRANTS

GENERAL

- The U.S. and West Virginia Constitutions guarantee citizens the right to be free of unreasonable searches and seizures. U.S. Const., Amend. IV and N.M. Const., Art II, Sec. 10. These provisions give a judge the responsibility to determine when law enforcement officers may reasonably conduct searches.
- Some aspects of the law governing search and seizure are unsettled or evolving. This chapter provides general guidelines for judges, but is not intended to address all issues that may arise.

SEARCH WARRANTS

- Municipal judges have authority to issue search warrants to law enforcement officers to search premises located within the municipality, but only related to offenses within the court's jurisdiction.

SEARCH WARRANTS

- Before issuing a search warrant, the judge must make an independent determination of whether there is probable cause to believe that evidence relating to the commission of a crime exists on the premises or person to be searched.

SEARCH WARRANTS

- Search warrants should not be issued routinely or “rubber stamped.” They should be issued only after the judge carefully and impartially reviews the facts of each case as presented in the affidavit supporting the request for the warrant.
- A search warrant must be specific about the place to be searched and the objects searched for.

ISSUANCE

The court may issue a warrant to search for and seize the following type of property:

- Property that has been obtained or is possessed in a manner that constitutes a violation of a municipal ordinance.
- Property designed or intended for us, or which is or has been used, as the means of committing a violation of a municipal ordinance.
- Property that would be material evidence in a prosecution for a violation of a municipal ordinance.

ISSUANCE

- The warrant must contain or have attached a sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. The probable cause must be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

ISSUANCE

- Before ruling on a request for a warrant, the court may require the person making the affidavit, and any supporting witnesses, to appear personally and testify before the court. In that case, the additional evidence must be put in writing under oath or affirmation and served with the warrant.
- The judge's review is almost always *ex parte*; the subject of the search warrant does not usually receive notice.

EXECUTION & RETURN

- A municipal search warrant must be executed by a municipal police officer, a full-time salaried state or county law enforcement officer, a campus security officer, or a federal civil officer authorized to enforce or assist in enforcing any federal law.

EXECUTION & RETURN

- The inventory of property must be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken.

EXECUTION & RETURN

- The inventory shall be signed by the officer and the person or persons in whose presence the inventory was taken.

- The return to the municipal court must be made promptly after execution of the warrant. The return is accompanied by a written inventory of any property taken.

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SEARCHES WITHOUT WARRANTS

GENERAL

- The law permits law enforcement officers to conduct searches without warrants in certain limited circumstances listed below, where the need or the opportunity for the officer to search immediately is especially obvious. Searches without warrants generally come to the attention of a judge in the form of motions made by defendant to suppress evidence.

GENERAL

- If the prosecutor attempts to introduce evidence that was seized after a warrantless search, the defendant may seek to have the evidence suppressed on the grounds that a warrant should have been obtained.

EVIDENCE IN PLAIN VIEW

- If an officer sees contraband or other incriminating evidence in plain view while he or she is conducting a lawful investigation, the officer may seize such property without benefit of a warrant, and if the seized property establishes probable cause, may make a warrantless arrest. Seeing contraband in plain view does not constitute a search.

EVIDENCE IN PLAIN VIEW

- However, the officer cannot enter a place, such as a vehicle or a home, and seize evidence in plain view without a warrant or some other lawful reason. The officer must be in a place where he or she is allowed to be in order to seize the evidence. For example, if an officer stops a vehicle and, upon approaching the driver, notices illegal drugs on the passenger seat, the officer may not enter the vehicle and seize the drugs. The officer must either get a warrant or consent from the driver to enter the vehicle unless exigent circumstances exist.

SEARCHES OF PERSONS & PLACES

- **Incident to Arrest**
  - An arresting officer may make a valid warrantless search of the person whom he or she is arresting and the portion of the premises within the arrestee's control.
    - The search and seizure will be invalid if the arrest is invalid.
    - The arrest should be made before the search.
    - The search should be made immediately after the arrest.
    - An arrest is not valid if it is merely used as an excuse to search a person or place.

SEARCHES OF PERSONS & PLACES

- A valid warrantless arrest may be made if based upon information obtained from an unidentified informant, if the information is corroborated by other information such as police reports or verification of informant's description by the police.

SEARCHES OF PERSONS & PLACES

- **Exigent Circumstances**
  - Premises may be searched without a warrant if exceptional circumstances exist (also known as "exigent circumstances").
  - A situation requiring swift action to prevent imminent danger of life or serious damage to property: The claim of an extraordinary situation is measured by the facts known to the officers at the time they are called upon to act.

SEARCHES OF PERSONS & PLACES

- **Imminent escape:** This situation is not limited to a chase but also includes those situations where swift action is needed to prevent an escape. The "imminent escape" emergency justifies a warrantless entry into the residence of a suspect for the purpose of an arrest.
- **Contraband:** An officer may search without a warrant when he or she has cause to believe that contraband may be immediately removed or destroyed.

SEARCHES OF PERSONS & PLACES

- Even if a law enforcement officer has legal possession of sealed boxes, the officer may not conduct a warrantless search by opening those boxes without exigent circumstances.

SEARCHES OF PERSONS & PLACES

- **Voluntary Consent**
  - A person may voluntarily consent to a search. By voluntarily consenting the person waives the right to be free from a search without a warrant. Any evidence found during a consensual search may be lawfully seized.

SEARCHES OF PERSONS & PLACES

- The person who consents must know that he or she has a right to refuse a warrantless search.
- The consent must be given voluntarily; that is, the person must not be under duress or be coerced by the officer requesting the search.
- The consent must be clearly and explicitly given. Permission to enter premises is not permission to search the premises.
- The scope of the search must be limited to the consent given.

SEARCHES OF PERSONS & PLACES

- **Consent of Co-Possessor**
  - Where two or more people have common use of or joint access to the premises, a relationship to the premises based on right of occupancy, possession of a key to premises, individually owned property on the premises, or community property interests, and where only the consent of one of these people has been given, the search is a valid consensual search.

SEARCHES OF PERSONS & PLACES

- The police cannot, however, search an area reserved for a non-consenting individual's exclusive use. In other words, if several people live in a house, any one of those people could consent to a search of the "common area" of the house and any area under that person's exclusive control, such as a kitchen or living room, but not another person's bedroom.

SEARCHES OF PERSONS & PLACES

- However, a recent United States Supreme Court case stated that, if two people have equal rights to the premises, and one consents to a search, but the other specifically does not consent, the search may not be done. In this case both parties were present. There is no requirement that law enforcement seek out all joint possessors of a premises prior to searching.

SEARCHES OF PERSONS & PLACES

- **Private Person Conducts Search**
  - A private person who conducts a search for private purposes does not need a search warrant. Security searches made by airline employees acting under federal tariff regulations, for example, are private searches and do not require a search warrant.

SEARCHES OF PERSONS & PLACES

- **Public Schools**
  - Public school officials may conduct a warrantless search of a student's person if he or she has a reasonable suspicion that a crime has been committed or the official has reasonable cause to believe that the search will reveal evidence of the student's violation of school laws or rules.

SEARCHES OF MOTOR VEHICLES

- Probable cause is always needed to search a motor vehicle, whether the vehicle is parked, stopped for a license and registration check, or stopped for an investigation. Because a motor vehicle differs inherently from a residence or office due to its mobility and possibility of movement outside an officer's jurisdiction, a motor vehicle may be searched without a warrant on facts that would not necessarily justify a warrantless search of a residence or office.

SEARCHES OF MOTOR VEHICLES

- The scope of a warrantless search based on probable cause is no narrower and no broader than what would be authorized by a warrant. The scope of a search must be supported by probable cause. If an officer has probable cause to search an automobile for contraband, the officer can search every part of the vehicle (including the trunk), including all containers and packages, where the contraband might be found.

SEARCHES OF MOTOR VEHICLES

- The scope of a warrantless search of an automobile for contraband is not defined by the nature of the container (e.g. luggage or paper bag) in which the contraband is secreted. The object of the search and the places in which there is probable cause to believe that the object may be found define the scope of the search.

SEARCHES OF MOTOR VEHICLES

- Before a vehicle can be stopped, the officer must have an articulable and reasonable suspicion that a motorist is unlicensed, that an automobile is unregistered, or that either the vehicle or occupant is otherwise in violation of the law. The stopping of only certain automobiles and the detaining of the driver in order to check license or registration constitute an infringement of a person's Fourth Amendment rights. The random stopping of vehicles does not constitute a general roadblock.

SEARCHES OF MOTOR VEHICLES

- Random stopping and detaining constitute a "seizure," even if the purpose of the stop is limited and the detention brief.
- At the same time that an automobile may be subject to governmental regulations, a person operating or traveling in an automobile does not lose his or her reasonable expectation of privacy.

SEARCHES OF MOTOR VEHICLES

- For a warrantless search of a vehicle to be valid, there must first be a justifiable reason for stopping the vehicle.
  - An officer may stop a vehicle for the lawful arrest of the driver for a violation of the Motor Vehicle Code. Once the defendant is arrested, the officer may search the defendant and that portion of the vehicle that is within the defendant's reach. In other words, the officer may search the passenger compartment of the vehicle and any containers within the passenger compartment without a warrant. This is known as a search incident to a lawful arrest.

SEARCHES OF MOTOR VEHICLES

- The arresting officer may broaden the search to the entire vehicle if the officer is going to impound the vehicle. This broadened search is an inventory search, not a search incident to a lawful arrest, and may include the trunk as well as the passenger compartment of the vehicle. See below for more information on inventory searches. The existence of a Motor Vehicle Code violation must not be used as an excuse for searching the vehicle for evidence of another crime.

SEARCHES OF MOTOR VEHICLES

- As long as an officer has a reasonable suspicion, not merely a hunch, that a crime has been or is being committed, the officer may stop a vehicle for the purpose of investigating possible criminal activity, even though there is no probable cause to make an arrest. Radio dispatches from investigating officers or an eyewitness description of a vehicle at the scene of a crime are examples of cause for making a valid investigatory stop of a vehicle.

SEARCHES OF MOTOR VEHICLES

- **Roadblocks and Checkpoints**
  - Officers have authority to set up general roadblocks or checkpoints for purposes of checking sobriety, licenses and vehicle registrations. However, this may not be used as an excuse for searching the vehicle for evidence of another crime.

SEARCHES OF MOTOR VEHICLES

- **Arrest for Motor Vehicle Code Violation**
  - After a valid license or registration check or a valid investigatory stop, there is probable cause for a warrantless search of the vehicle if the officer:
    - Sees contraband or other evidence of a crime in plain view. See previous discussion of plain view.
    - Smells marijuana and there are exigent circumstances necessitating immediate action. The mobility of a vehicle is not enough to establish exigency.

SEARCHES OF MOTOR VEHICLES

- As in other searches, if the driver of a vehicle gives consent and consent is unlimited in scope, and if the stop and/or arrest is initially valid, there is no issue of illegal search and any contraband found can be properly seized.

SEARCHES OF MOTOR VEHICLES

- Generally, if it is practical to obtain a warrant to search a vehicle, a search warrant must be obtained. The following situations illustrate when a warrant should be obtained.
  - The vehicle is regularly parked in a specific location, like a person's driveway.
  - The vehicle travels a regular route, for example, a delivery truck.
  - The vehicle is in a garage for repairs.
  - Probable cause to search has developed after a vehicle has been impounded.

SEARCHES OF MOTOR VEHICLES

- **Inventory Search**
  - An inventory search is performed to protect the contents of the vehicle. It is done to ensure that anything the driver has in the vehicle is returned to the driver when the vehicle is released (assuming the items in the vehicle are not contraband). A warrantless inventory search of a vehicle is lawful if all of the following requirements are met:
    - The vehicle is in police control and custody.
    - The inventory is made pursuant to established police regulations.
    - The search is reasonable, to protect the owner's property or to protect the law enforcement officer from false claims or potential danger.

SEARCHES OF MOTOR VEHICLES

- If the evidence of crime that is discovered is property, the possession of which is prohibited by law, no search warrant is required before seizing the property. Inventory searches must be limited to the extent necessary to carry out the caretaking function. If the vehicle is left on the road for a long time before being taken into custody, a warrantless search is not authorized.

SEARCHES OF MOTOR VEHICLES

- An inventory search of a defendant's automobile, lawfully parked at the scene of the crime, made after defendant has been arrested and booked, is lawful. The evidence obtained from the parked car will not be suppressed even if the only connection between the car, the defendant and the crime is that the defendant is the owner of the car and the keys are found in the defendant's possession during booking.

SEARCHES OF MOTOR VEHICLES

- A warrantless search of an automobile will not be invalid just because it reveals evidence of a crime by a passenger who does not own the vehicle because the defendant/passenger does not have a legitimate expectation of privacy in an automobile belonging to another. In other words, the defendant/passenger has no standing to object to a warrantless search of the driver's vehicle, even though the passenger was being transported in the automobile.

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MOTION TO SUPPRESS

GENERAL

- A person contesting a search and seizure may make a motion for return of the property and suppression of its use as evidence. A municipal judge may hear and decide a motion to suppress only if the search and seizure was in connection with a case filed in his or her municipal court.

GENERAL

- At a hearing on a motion to suppress, the judge may receive evidence on any fact related to the motion. Hearsay is admissible.
  A defendant's testimony at a hearing on a motion to suppress cannot be used as substantive evidence against the defendant at trial, unless it is used to impeach his or her testimony at trial.

GENERAL

- In cases where the search and seizure occurred without a warrant and a motion to suppress is made, the prosecution has the burden of proving by a preponderance of the evidence that circumstances existed which justified the officer's acting without a warrant.

GENERAL

- If after a hearing the judge grants a motion to suppress, the property is returned unless otherwise subject to lawful detention, such as illegal drugs or other contraband. Charges may or may not be dismissed based upon the granting of the motion. It is up to the prosecution to determine whether they can prove their case beyond a reasonable doubt without the suppressed evidence.

WHO MAY FILE MOTION

- Filing a motion to suppress the use of seized property as evidence challenges the legality of the search and seizure. Not everyone who claims an illegal search and seizure has a right to challenge it. The constitutional right for a person to be secure from unreasonable searches and seizures is a personal right. Therefore, only a person whose right to privacy has been infringed by a search and seizure has the right to challenge the search and seizure.

GROUNDS FOR SUPPRESSION

- **With a Warrant**
  - When the search was made pursuant to a search warrant, and the "good faith" exception to the exclusionary rule does not apply (see below), the following may be grounds for granting a motion to suppress:
    - The search and seizure was not conducted within the limits and for the reasons stated in the search warrant.
    - The search and seizure was conducted in an unreasonable manner.
    - The property obtained was not described in the warrant.

GROUNDS FOR SUPPRESSION

- There was no substantial basis established by the affidavit for determining the existence of probable cause, or the affidavit upon which the warrant was based is proved to be false and the falsity is known or should have been known by the person making the affidavit.

GROUNDS FOR SUPPRESSION

- The U.S. Supreme Court has adopted a "good faith" exception to the exclusionary rule to the effect that evidence seized by police officers who are acting in reasonable reliance upon a search warrant issued by a detached and neutral judge, but ultimately found to be invalid, is admissible at trial. Suppression of evidence should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule.

GROUNDS FOR SUPPRESSION

- **Without a Warrant**
  - When the search was made without a warrant, the following may be grounds for granting a motion to suppress:
    - The arrest preceding the search, whether with or without an arrest warrant, was invalid.
    - The search following the arrest was made too long after the arrest.
    - The search following the arrest extended beyond that portion of the premises within the arrestee's control.

GROUNDS FOR SUPPRESSION

- The circumstances surrounding the warrantless search were not "exceptional.” For example, there was no imminent peril to life or limb.
- Consent to search was not voluntarily given.
- It was practical under the circumstances to obtain a search warrant to search a motor vehicle.
- The initial stop of the motor vehicle was invalid.

ARREST WARRANTS

- Although the court may issue either a summons or an arrest warrant upon the commencement of a case, the rules contain an explicit preference for a summons. The court is required to issue a summons instead of an arrest warrant unless, in its discretion and for good cause shown, the court finds the interests of justice better served by an arrest warrant.

ISSUANCE

- The following checklist can used as a guide in determining whether to issue an arrest warrant. In every case, the judge must make an independent and unbiased decision based on the information submitted.
- An arrest warrant can be issued only if all of the following requirements, as applicable, are satisfied.

Check Required Elements

_____ 1. A criminal action is commenced by the filing of a complaint o
citation.

_____ 2. A written affidavit for an arrest warrant is submitted.

_____ 3. The affidavit contains: *(check all)*

_____ a. A sworn statement of facts showing probable cause that an offense has been committed.

_____ b. Substantial evidence on which to base showing of probable cause. If hearsay information is supplied by an informer/third party, the affidavit establishes by substantial evidence that: *(check both*)

_____ (1) The informer is believable because: *(check one)*

_____ The informer is a truthful person.

_____ The informer has a particular motive or reason to be truthful about this information.

_____ The information is sufficiently corroborated by other adequate, detailed and trustworthy information.

_____ If there is a deficiency in the believability of the hearsay, it is overcome by independent corroboration of the criminal allegations, and not simply corroboration of innocent details.

_____ (2) The informer has a factual basis for the information provided because: *(check one)*

_____ The informer got the information in a reliable manner.

_____ The information is based on the informer's personal knowledge or on reliable information received by the informer.

_____ If there is a deficiency in the factual basis of the hearsay, it is overcome by independent corroboration of the criminal allegations, and not simply corroboration of innocent details.

_____ c. Information that is sufficiently current to establish that probable cause exists now.

_____ d. An allegation that the offense occurred within the court's jurisdiction.

_____ e. Signature of the person swearing to or affirming the affidavit.

_____ f. Signature and title of a person authorized to administer oaths or affirmations.

_____ g. Date of the oath or affirmation.

_____ 4. *(Optional)* The court may order the person who signed the affidavit, and any of that person's witnesses, to testify under oath prior to issuing an arrest warrant, provided that any such additional evidence is: *(check both)*

_____ a. Put in writing.

_____ b. Supported by oath or affirmation.

CONTENTS

An arrest warrant must contain all of the following elements:

Check Required Elements

____ 1. Be signed by the court.
____ 2. Be directed to a municipal police officer, full-time salaried state or county law enforcement officer, campus security officer or Indian tribal or pueblo law enforcement officer.
____ 3. Identify the defendant, by either: *(check one)*
____ Containing the name of the defendant, if known.
____ If the defendant's name is not known, containing any name or description by which the defendant can be identified with reasonable certainty.
____ 4. Describe and give the section number of the offense charged.
____ 5. Designate where the warrant may be executed, either: *(check one)*
____ Within the county where the municipality is located, for a non-DUI charge.
____ Statewide, for a DUI charge.
____ 6. Direct that the warrant be entered into a law enforcement information system.
____ 7. Command that the defendant be brought before the court.
____ 8. Conform substantially to Criminal Form 9-210.

BENCH WARRANTS

- A bench warrant is a written court order to arrest a person for allegedly violating an order or requirement of the court. The bench warrant commands any authorized officer of the municipality to arrest and bring the person to court to answer the allegation.

BENCH WARRANTS

- Issuance
  - At the time of issuance, the judge indicates on the bench warrant the alleged violation or violations for which it is being issued.
    - If the judge has personal knowledge of the violation, the judge makes a notation to that effect in the file and issues the bench warrant.
    - If the judge does not have personal knowledge of the violation, the judge cannot issue a bench warrant unless a person with knowledge submits an affidavit showing probable cause to issue the warrant.
    - Before issuing a bench warrant for failure to appear as required in a written notice, the judge should first verify that service of the written notice was made.

BENCH WARRANTS

- The judge also indicates on the bench warrant the conditions under which the person can be released (e.g. payment of outstanding court fines or costs) or the amount of bond required for release, if the judge will not be available when the person is arrested.

BENCH WARRANTS

- A bench warrant may be issued for any of the following allegations:
  - A defendant did not appear for a court-ordered appearance.
  - A subpoenaed witness failed to appear at trial or failed to produce subpoenaed documents prior to trial.
  - A defendant violated conditions of release pending trial.

BENCH WARRANTS

- When the defendant is brought before the court, the judge reviews the conditions of release and determines whether to continue them unchanged, amend them or revoke them.
- If a defendant allegedly violated the conditions of release by being indicted or bound over for committing another crime pending trial on the original charge, the court must determine whether the new judge revoked the previous conditions of release when the defendant appeared before that judge on the new charge. If so, the original judge cannot issue a bench warrant.

ISSUANCE

- A person does not have to be subpoenaed in order to appear or to produce documentary evidence. The person may appear and produce the material voluntarily at the request of a party. A subpoena is a court order compelling a person to do one or both of the following:
  - Testify at a specified time and place for a deposition or trial.
  - Produce specified documents or other tangible things.

ISSUANCE

- Subpoenas may be issued by the judge, court clerk, or an attorney who represents a party in the case. At the request of a party, the judge or clerk can issue a blank subpoena that is signed and sealed. The party fills it in before it is served.

ISSUANCE

- For subpoenas to compel the attendance of a witness, the following points apply:
  - The same subpoena cannot be used for more than one witness.
  - The subpoena must contain the name of the court, the name of the case, the name of the person to whom it is directed, and the time and place for the person to attend and give testimony. The subpoena must be signed and dated by the judge or clerk.

ISSUANCE

- For subpoenas to compel the production of documentary evidence such as books, papers or other tangible things (also known as a subpoena *duces tecum*), the following points apply:
  - The subpoena must specify the papers or other documents and the place and time where they are to be produced, which can be before or at the trial. The subpoena must be signed and dated by the judge or clerk.
  - In municipal court, only the defendant can subpoena the opposing party for production of documentary evidence.

SERVICE

- The party requesting the subpoena is responsible for having it served. Usually the court gives the signed subpoena (original and one copy) to the requesting party, who then handles the arrangements for service. Alternatively, the court may give the signed subpoena directly to a police officer or sheriff for service.

SERVICE

Service can be made by one of the following methods:

- In person: by delivering a copy of the subpoena to the named individual within the county in which the municipality is located. Service in person can be made by any of the following people:
- The sheriff, a deputy sheriff or a municipal police officer.
- Any person who is at least eighteen years of age and not a defendant in the case.
- By mail: by sending a copy of the subpoena in the manner provided for serving the summons, complaint and answer.
- Return of service (a signed certificate that the subpoena was served) is made on the original of the subpoena, which is then filed with the court

MOTION TO QUASH

- The person subpoenaed may file with the court a motion to quash the subpoena. Quashing the subpoena relieves the person of the obligation to appear or produce documents.
- A motion to quash a subpoena must be made at or before the time specified in the subpoena for compliance. If the motion is made in writing, a copy must be served on the person who requested the subpoena in the manner provided for service of pleadings and other papers. A hearing is normally held on this motion, after notice to the person subpoenaed and the party who requested the subpoena.

MOTION TO QUASH

- The judge may quash or modify a subpoena under any of the following circumstances:
  - The subpoena is unreasonable or oppressive, e.g. all the records of a business are subpoenaed instead of only those records relevant to the case.

MOTION TO QUASH

- For subpoenas to produce documentary evidence, the judge may require the person who requested the subpoena to pay the reasonable costs of producing the specified materials.
  - The subpoena was improperly issued, e.g. the subpoena fails to specify the time of appearance or the documents to be produced.
  - The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies.

MOTION TO QUASH

- The judge can issue an order on the motion to quash a subpoena in one of the following ways:
  - Orally, but only if both the subpoenaed person and the party who requested the subpoena are present.
  - In writing, and served in the manner provided for service of pleadings and other papers.

FAILURE TO COMPLY

- If a subpoenaed person fails to comply as specified in the subpoena, the judge may do any of the following:
  - Grant a continuance of the proceeding.
  - The party who subpoenaed a witness who failed to appear may agree to have the proceeding take place without the witness.
  - Issue a bench warrant to arrest and bring the person before the court. Normally, the judge consults with the party who requested the subpoena before issuing a bench warrant.

FAILURE TO COMPLY

- After notice and hearing, hold the person in contempt of court if the person does not have an adequate excuse for the failure to comply.
- If the subpoena was served by mail, the judge cannot hold the subpoenaed person in contempt unless additional evidence is presented, beyond just the proof of mailing, that the person actually received the subpoena or that the subpoena was also personally served on the person in accordance with the requirements for personal.

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PROPERTY MAINTENANCE VIOLATIONS

NOXIOUS GROWTH PROHIBITED

- No owner of any lot, or the agent of any owner of any lot or parcel of land in the City, shall permit on such lot or parcel of land any noxious, deleterious and unhealthy growths of vegetation, weeds, grasses and brush.

NOTICE TO CUT, DESTROY, AND REMOVE

- The City Building Inspector, or City Manager if there is no Building Inspector, is hereby authorized, empowered and directed to notify in writing, by registered or certified mail, the owner or the agent of the owner, of any lot or parcel of land in the City, to cut, destroy and remove such noxious, deleterious and unhealthful growths of weeds, grasses, vegetation and brush found growing upon any such lot or parcel of land.

NOTICE TO CUT, DESTROY, AND REMOVE

- Such notice shall be addressed to the last known address of the owner, or agent of the owner, of such lot or parcel of land. The notice shall describe the parcel by tax map and parcel number as well as by street address (postal address if available).

NOTICE TO CUT, DESTROY, AND REMOVE

- Such notice shall clearly state the time within which such action shall be completed, the fine for noncompliance with the notice, and the courses of action available to the City to see that the weeds, grasses, vegetation and brush are cut, destroyed and removed from the lot or parcel of land.

NONCOMPLIANCE BY OWNER

- Upon the failure, neglect or refusal of any such owner or agent so notified to cut, destroy and remove such noxious, deleterious and unhealthful growths of weeds, grasses, vegetation and brush found growing upon any lot or parcel of land in the City, within fifteen days after receipt of the notice, the City, is hereby authorized to issue a warrant on the owner or owner's agent of such property.

NONCOMPLIANCE BY OWNER

- The warrant to carry a maximum fine of up to twenty-five dollars ($25.00) a day for each day that the violations exist after the fifteen day period provided for in the notice.
- If the owner of such lot or parcel of land or his agent, have failed to comply with the notice within thirty days of receipt of the notice..

NONCOMPLIANCE BY OWNER

- The City Manager is hereby authorized to contract for the cutting and removal of such weeds, grasses, vegetation and brush growths to the lowest responsible bidder, (private contractor), or to cut and remove such weeds, grasses, vegetation and brush growths using City forces, in which latter instance an accurate and exact cost of the work shall be maintained.

REMEDIATION

- The cost of the contract for having such weeds, grasses, vegetation and brush growths cut, destroyed and removed, or the cost of cutting, destroying and removing such weeds, grasses, vegetation and brush growths by City forces shall be a debt due the City and collectable in any court of competent jurisdiction, and in addition shall be a lien upon the property of the owner.

FILING OF LIEN

- In the event such noxious, deleterious and unhealthful growths of weeds, grasses, vegetation and brush are cut by either method, the charge therefore shall become a lien against the property in favor of the City, and notice of the lien shall be filed in the office of the clerk of the county court of Berkeley County, West Virginia.

Accumulation of Garbage

- It shall be unlawful and a violation of this ordinance for any person, firm, or corporation to dispose of garbage and refuse in any public, in any manner other then as herein provided

Accumulation of Garbage

- No owner, tenant, or lessee of any private premises shall permit any garbage or refuse to accumulate upon his/her premises for a period exceeding one week.
- Such accumulation shall be disposed of according to and in the manner prescribed by the rules and regulations made and published by Council.

Property Maintenance Code

- There is hereby adopted by Council, the State Building Code, as promulgated by the West Virginia State Fire Commission pursuant to West Virginia Code 29-3-5b and the provisions thereof, which consists of the standards and requirements as set out and as published by the International Code Council and the American National Standards Institute as listed below, and shall have the same force and effect as if set out verbatim in this rule

Property Maintenance Code

- The 2009 edition of the International Property Maintenance Code, First Printing.

PENALTY

- Any person who shall violate any provision of the State Building Code or shall fail to comply with any of the requirements thereof, or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the Code Official, or of a permit or certificate of occupancy issued under the provisions of the City ordinance shall be guilty of a misdemeanor.

DUI Deferral Program

- Defendants charged with a DUI 1st offense, with an alleged blood alcohol concentration (BAC) of less than .15, the opportunity for their charge to be dismissed in the criminal court and eventually expunged from his or her criminal record as if it never occurred.

DUI Deferral Program

- The eligibility requirements, procedures and conditions for which this can occur are set forth in the newly created 17C-5-2(b) of the WV DUI code,
- Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.

Eligibility

- The Defendant must have been charged with driving under the influence first offense;
- The alleged BAC must be less than .15
- The Defendant may not have a prior conviction for driving under the influence anywhere in the United States;

Eligibility

- The Defendant may not have incurred a prior license suspension for driving under the influence anywhere in the United States;
- The Defendant cannot hold a commercial driver's license (CDL).

Procedure

- The Defendant enters a conditional guilty plea to the court without the court signing and entering as a conviction (i.e. holds entry of plea);
- The Defendant is then placed by the court on a period of conditional dismissal / informal probation while the requirements for successful deferral program completion unfold;

Procedure

- Upon successful completion, the Defendant may motion the court for a dismissal of the DUI 1st offense charge;
- The motion for dismissal must be supported by an affidavit from the Defendant themselves and by certification from the WV DMV that the Defendant successfully completed the Motor Vehicle Alcohol Test and Lock Program.

DMV- Hearings

Refusal Review Hearing

- For the purposes of this section, the term “refusal review hearing” refers to a hearing to review a person’s alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement

Refusal Review Hearing

- The court shall enter an order finding that a person did refuse to submit to a secondary chemical test:

Refusal Review Hearing

- At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period unless the person requests a refusal review hearing within the 30 days following the first appearance.

Refusal Review Hearing

- If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that a person charged did refuse to submit to a secondary chemical test; and
- If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order

Refusal Review Hearing

- Refusal review hearing.
  - The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer, requests the hearing within 30 days following his or her first appearance before the court.

Refusal Review Hearing

- Refusal review hearing.
  - The refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

Refusal Review Hearing

- Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test, if the court determines, by a preponderance of the evidence, that:
  - The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation;

Refusal Review Hearing

- The law-enforcement officer requested the arrested person to submit to the chemical test or tests;
- At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings; and
- The arrested person refused to submit to the chemical test or tests requested by the law-enforcement officer.

Refusal Review Hearing

- If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed above did not occur.
- The court shall enter an order finding that the person did not refuse to submit to the secondary chemical test.
- If the court enters such an order, the Commissioner may not revoke the person's license.

Refusal Review Hearing

- The clerk of the court in which the charges are pending shall immediately transmit any order entered to the Commissioner of the Division of Motor Vehicles.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's license to operate a motor vehicle in any of the following circumstances:
  - The person is convicted of an offense described in a municipal ordinance which has the same elements as an offense which requires a minimum period of revocation or suspension.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The person has a term of conditional probation (deferral);
- A court enters an order, finding that the person did refuse to submit to a secondary chemical test; or
- The person is convicted of an offense, appeals the conviction, and the conviction is affirmed by the highest appellate court in which an appeal in the matter is filed.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 10 days from and after the date upon which the sentence is imposed.

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ALTERNATIVE SENTENCING

UPDATE OF LAW

SB 132 CLARIFYING THE OFFENSE OF HARASSMENT; CLARIFYING THAT STALKING AND HARASSMENT ARE SEPARATE CRIMES

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (a) Stalking. — Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, confined in jail for not more than six months, or both fined and confined.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (b) Harassment. — Any person who harasses, or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than $1,000, or both fined and confined.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.
-
- (c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-601, or §48-27-403 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than 90 days nor more than one year, or fined not less than $2,000 nor more than $5,000, or both fined and confined.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and imprisoned.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-27-501 of this code, who has been served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, shall be guilty of a felony and, upon conviction thereof, be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and imprisoned.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been previously served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, is guilty of a felony and , upon conviction thereof, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and confined.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (g) Notwithstanding any provision of this code to the contrary, any person who harasses or stalks another person with the intent to cause the person to physically injure himself or herself, or to take his or her own life, or who continues to harass or stalk another, knowing or having reason to know that the person is likely to physically injure himself or herself, or to take his or her own life based, in whole or in part, on such harassment or stalking, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two years nor more than 10 years.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.
- (h) For the purposes of this section:
- (1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition;

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (2) "Course of conduct" means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third party by any action, method, device, or means:
- (A) Follows, monitors, observes, surveils, or threatens a specific person or persons;
- (B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or
- (C) Interferes with or damages a person's property or pet;

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (3) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.
- (4) "Harasses" means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress and which serves no legitimate or lawful purpose;
- (5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.
- (6) "Repeatedly" means on two or more occasions.
- (i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended, shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.

- (j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.
- (k) It is a condition of bond for any person accused of the offenses described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.
- (l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

SB 132

- §61-2-9a. Stalking, harassment; penalties; definitions.
- (m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules ……..establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

SB 191 RELATING TO COMMUNITY CORRECTIONS

SB 191

- **§62-11C-9. Use of community corrections programs for those not under court supervision.**

- Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges..

SB 191

- **§62-11C-9. Use of community corrections programs for those not under court supervision.**
- If the person charged successfully completes the pretrial diversion program, the matter is to be resolved pursuant to the terms of the pretrial diversion agreement. If the person charged fails to successfully complete the pretrial diversion program, the matter shall be returned to the court□s docket for resolution.

SB 191

- **§62-11C-9. Use of community corrections programs for those not under court supervision.**

- No provision of this article may be construed to limit the prosecutor□s discretion to prosecute an individual who has not fulfilled the terms of a written pretrial diversion by not completing the required supervision or participation in a community corrections program.

SB 191

- **§62-11C-9. Use of community corrections programs for those not under court supervision.**

- Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of §61-11-22 of this code is liable for any applicable court costs. Payment of the court costs shall be made a condition of the pretrial diversion agreement: *Provided,* That financial inability to pay court costs may not be a basis for denying a person a pretrial diversion.

SB 191

- **§62-11C-9. Use of community corrections programs for those not under court supervision.**

- Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a deferred adjudication, Payment of restitution may be made a term and condition of the deferred adjudication: *Provided,* That financial inability to pay restitution may not be a basis for denying a person deferred adjudication.

CSSB 220 REGULATION OF HEMP-DERIVED CANNABINOID PRODUCTS, REGULATION OF KRATOM; CREATING THE SELECT PLANT-BASED DERIVATIVES REGULATION ACT

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- The Legislature finds that certain plant-based derivatives can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of the act is to allow limited, regulated access to certain plant-based derivatives which are naturally occurring and as authorized by the provisions of this article for adults 21 years of age and older: Provided, That, the provisions of this section shall not apply to naturally occurring plant-based derivative products not containing tetrahydrocannabinol content.on.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- (6) "Hemp-derived cannabinoid" means a naturally occurring non-synthetic substance as follows:
- (A) Delta-9 tetrahydrocannabinol with a concentration level consistent with 7 U.S.C. §5940;
- (B) Delta-8 tetrahydrocannabinol;
- (C) Delta-10 tetrahydrocannabinol;
- (D) Hexahydrocannabinol;
- (E) Tetrahydrocannabiphorol (THCp); and
- (F) Tetrahydrocannabivarin (THCv).

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- "Non-naturally occurring derivative" means a product that is contaminated as defined by this article, or a product that, upon result of Department laboratory testing, is found to be in violation of this article or rules promulgated therewith, or a product that is unlawful pursuant to 7 U.S.C. §5940 or otherwise violates applicable federal regulations.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- Developing guidelines for the labeling of hemp-derived cannabinoid products, including but not limited to, a statement which says "KEEP OUT OF REACH OF CHILDREN. CONSULT YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY MEDICATION" and "USE OF THIS PRODUCT MAY IMPACT DRUG TESTING RESULTS";

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- Any hemp-derived product found in this state in violation of this article is hereby declared contraband and any property interest in the hemp-derived product is vested in the State of West Virginia and is subject to seizure, forfeiture, and destruction.

- Any certified law-enforcement officer in this state is authorized to enforce the criminal provisions of this section, and enforcement agents of the Alcohol Beverage Control Commissioner are authorized to enforce the administrative retailer provisions of this section as relating to retail sales.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- The commissioner shall provide the requisite training necessary to enforce the criminal and administrative provisions of this section.

- Any person who manufactures, processes, distributes, sells, or offers for sale any hemp-derived cannabinoid product in this state without a permit to do so is guilty of a crime.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- (1) A first violation of this subsection is a misdemeanor, and upon conviction thereof, a person shall be fined not more than $1,000, confined in jail for not more than one year, or both fined and confined.

- (2) A second or subsequent violation of this subsection is a felony and, upon conviction thereof, a person shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- Any person who processes, distributes, manufactures, sells, or offers to sell any hemp-derived product knowing or having reason to know that the product has been contaminated with a toxic or illegal substance is guilty of a felony, and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for not less than two nor more than 10 years, or both fined and imprisoned.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- Any person who knowingly manufactures, processes, distributes, sells, or offers for sale any hemp-derived cannabinoid product which has not been approved by the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or confined in jail for not more than one year, or both fined and confined.

- Notwithstanding the provisions of subdivision (1) of this subsection, a second or subsequent violation of subdivision (1) of this subsection constitutes a felony and any person convicted thereof shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned for not less than one nor more than three years, or both fined and imprisoned.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- Any person who knowingly distributes, offers for sale, or sells a contaminated hemp-derived cannabinoid product is guilty of a felony and, upon conviction thereof, shall be fined not less than $10,000 nor more than $25,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.
- Any person who knowingly distributes or sells hemp-derived cannabinoid product to a person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

Committee Sub. SB 220

- **§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.**

- Any person under the age of 21 who possesses hemp-derived cannabinoid product is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.
- Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection, constitute a felony and any person convicted thereof, shall be fined not more than $5,000 and imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- The legislature finds that select plant-based derivatives, including kratom, can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of this article is to allow limited regulated assess to kratom for adults 21 years of age and older.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- “Kratom” means a psychoactive preparation that is composed of the crushed or powdered dried leaves of the mitragyna speciosa, a yellow-flowered tropical tree which contains the alkaloids mitragynine and 7-hydroxymitragynine.

- "Kratom product" means a food product, food ingredient, dietary agreement, dietary supplement, or beverage intended or marketed for human consumption containing any part of the leaf of the plant mitragyna speciosa.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- Any person manufacturing, processing, distributing, offering for sale, or selling kratom or kratom products in this state shall have a permit issued by the commissioner and be otherwise authorized to do business in this state. The commissioner may issue permits for manufacturers, processors, and retailers.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- (a) Any website owned, managed, or operated by a person who manufactures, processes, distributes, offers for sale, or sells a product containing kratom or kratom products to persons in this state shall employ a neutral age-screening mechanism that verifies that the user is at least 21 years old, including by using an age-gate, age-screen, or other age-verification mechanism approved by the commissioner.

- (b) Any person or entity distributing, offering to distribute or sell, or selling kratom or kratom products to persons in this state by means other than a direct in-person transaction shall employ an age-verification mechanism approved by the commissioner.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- (a) Any kratom or kratom product found in this state in violation of this article is hereby declared contraband and any property interest in the kratom or kratom product is vested in the State of West Virginia and is subject to seizure and forfeiture and destruction.

- (b) Any certified law enforcement officer in this state may enforce the criminal provisions of this article, and any enforcement agent of the Alcohol Beverage Control Commissioner is authorized to enforce the administrative provisions of this article as it relates to retailers.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- §19-12F-11. Criminal violations; penalties.

- (a) Any person who manufactures, processes, distributes, sells, or offers for sale any kratom or kratom product in this state without a permit is guilty of a crime.
  - (1) A first violation of this subsection is a misdemeanor, and, upon conviction thereof, a person shall be fined not more than $1,000, confined in jail for not more than one year, or both fined and confined.
  - (2) A second or subsequent violation of this subsection is a felony and, upon conviction thereof, a person shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- §19-12F-11. Criminal violations; penalties.
-

- (b) Any person who manufactures, processes, distributes, sells or offers to sell any kratom or kratom product knowing or having reason to know that the product has been contaminated with a toxic or illegal substance is guilty of a felony, and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for not less than two nor more than 10 years, or both fined and imprisoned.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- §19-12F-11. Criminal violations; penalties.
-
- (1) Any person who knowingly manufactures, processes, distributes, sells, or offers for sale any kratom or kratom product which has not been approved by the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $ 5,000 or confined in jail for not more than one year, or both fined and confined.

- (2) Notwithstanding the provisions of subdivision (1) of this subsection, a second or subsequent violation of subdivision (1) of this subsection constitutes a felony and any person convicted thereof, shall be fined not more than $5,000 or imprisoned for not less than one nor more than five years, or both fined and imprisoned.
- .

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- §19-12F-11. Criminal violations; penalties.

- (d) Any person who knowingly manufactures, distributes, offers for sale, or sells contaminated kratom or kratom product is guilty of a felony and, upon conviction thereof, shall be fined not less than $10,000 nor more than $25,000 or imprisoned for not less than one nor more than five years, or both fined and imprisoned.
- (e) Any person who knowingly distributes or sells a kratom or kratom product to a person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned. fined and imprisoned.

Committee Sub. SB 220

- **ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.**

- §19-12F-11. Criminal violations; penalties.

- Any person under the age of 21 who possesses kratom or a kratom product is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.
- Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection constitute a felony and any person convicted thereof, shall be fined not more than $5,000 and imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

SB 546 MODIFYING LANGUAGE UNLESS EXPRESSLY EXEMPTED BY LAW, ALL DELTA TETRAHYDROCANNABINOLS ARE INCLUDED IN SCHEDULE I; AND DECLARING THAT THE PROVISIONS RELATED TO TETRAHYDROCANNABINOLS ARE INAPPLICABLE TO PRODUCTS LAWFULLY MANUFACTURED, DISTRIBUTED, OR POSSESSED PURSUANT TO THE INDUSTRIAL HEMP DEVELOPMENT ACT AND THE MEDICAL CANNABIS ACT.

SB 546

- **§60A-2-204. Schedule I..**

- Any person under the age of 21 who possesses kratom or a kratom product is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined. Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity including, but not limited to the following:
- delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;
- delta-8 Cis or trans tetrahydrocannabinol and its optical isomers; and
- delta-10 Cis or trans tetrahydrocannabinol and its optical isomers;

SB 546

- **§60A-2-204. Schedule I..**

- (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- Delta-8-tetrahydrocannabinol-O (delta-8-THC-0), Delta-9-tetrahydrocannabinol (delta-9-THC-0) and Synthetic and non-naturally occurring cannabinoids.
- The provisions of this section related to tetrahydrocannabinols are inapplicable to products or substances lawfully manufactured, distributed, or possessed under the provisions of §19-12E-1 et seq. and Chapter 16H of this code.
- Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection constitute a felony and any person convicted thereof, shall be fined not more than $5,000 and imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

SB 558 PROHIBITS LAW ENFORCEMENT AGENCIES OF THE STATE FROM POSTING ON SOCIAL MEDIA THE BOOKING PHOTOGRAPHS OF INDIVIDUALS ALLEGED TO HAVE COMMITTED A MINOR OFFENSE;

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- (a) Except as authorized by the provisions of this section, a law enforcement agency may not share on social media the booking photograph of an individual arrested for the alleged commission of a minor offense.

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- (b) As used in this section, unless context clearly indicates, otherwise:
- "Booking photograph" means a photograph or still, non-video image of an individual taken, generated, or otherwise created by a law enforcement agency pursuant to an arrest or while an individual is in the agency's lawful custody.
- "Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of the state: *Provided*, That the Division of Corrections and Rehabilitation and its subordinate organizations may not be considered a law enforcement agency for purposes of this section.

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- "Social media" means a publicly available Internet-based platform that allows a user to produce, post, or curate content and interact with other users via text, images, video, and audio, for the purpose of informing, sharing, promoting, collaborating, or networking.

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- "Minor offense" means an offense that:
- Is a misdemeanor or nonviolent felony eligible for expungement as provided by §61-11-26(a) of this code, and not excepted from eligibility for expungement under §61-11-26(c) of this code: *Provided*, That, for purposes of this section, offenses under §17B-4-3 of this code and misdemeanor offenses under §17C-5-2 of this code, shall be considered minor offenses for purposes of this section.

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- (c) *Exceptions.* — A law enforcement agency may share on social media the booking photograph of an individual arrested for the alleged commission a minor offense, if:
- (1) The individual is convicted of a criminal offense based upon the conduct for which the individual was in custody for at the time the booking photograph was taken;
- (2) A law-enforcement agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and reasonably believes that releasing or disseminating the suspect's booking photograph will assist in locating or apprehending the suspect or reducing or eliminating that threat; or
- (3) A court of competent jurisdiction orders the release or dissemination of the booking photograph based upon a finding that doing so is in furtherance of a legitimate interest.

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- (d) A law-enforcement agency may not be subject to civil action or be held liable when the publication, release, or dissemination of a booking photograph was made by mistake of fact or error, and that publication, release, or dissemination was done in good faith.

SB 558

- **§62-1-6a. Booking photographs of criminal defendants.**
- (e) A law-enforcement agency shall remove the booking photograph from its social media page within 14 days upon the request of the individual who is the subject of the social media post, or that individual's authorized representative, if any of the following have occurred:
- (1) The criminal charge for which the booking photograph was taken has been dismissed;
- (2) A grand jury has declined to return an indictment on the charge for which the booking photograph was taken; or
- (3) A circuit court or jury has entered a judgment of acquittal on the charge for which the booking photograph was taken, or a court of competent jurisdiction has issued an order or opinion reversing, vacating, or otherwise nullifying the conviction for which the booking photograph was taken.

SB 608 RELATING TO DANGEROUS WEAPONS; CORRECTING THE PARTIAL LIST OF ITEMS WHICH ARE CONSIDERED DEADLY WEAPONS; AND REMOVING CERTAIN AGE RESTRICTIONS RELATING TO PEPPER SPRAY.

SB 608

- **ARTICLE 7. DANGEROUS WEAPONS..**

- "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subdivisions (1), (2), (5), (7), (8), (9), (10), (11), (12), (13), (14), and (15), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person.

SB 608

- **ARTICLE 7. DANGEROUS WEAPONS..**

- . "knife" set forth in subdivision (9) of this subsection, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and §61-7-11a of this code,

SB 608

- **ARTICLE 7. DANGEROUS WEAPONS..**

- Additionally, for the purposes of §18A-5-1a of this code and §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and radiological materials.
- Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.
- The term "deadly weapon" does not include pepper spray as defined in subdivision (12) of this subsection when used by any person solely for self-defense purposes.

SB 633 RELATING TO FAILURE TO APPEAR;

SB 633

§62-1-7. Offense arising in other county.

- In all cases where a person is arrested in a county other than where the indictment or charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he or she shall be transported to the regional jail serving the charging county within five days of arrest.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- (a) Any person, who, having been released upon his or her personal recognizance or having been otherwise admitted to bail and released and who shall willfully and without just cause fail to appear as and when it may be required of him or her, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- If any such person was admitted to bail or released after being arrested for, charged or convicted of a felony and, shall thereafter be convicted for a violation of the provisions of subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more than $5,000 or imprisoned not less than one nor more than five years, or both such fine and imprisonment.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined not more the $1,000 or confined in the county jail for not more than one year, or both such fine and confinement.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.
- If any defendant admitted to bail and released fails to appear at a scheduled court appearance, the court may issue a capias or bench warrant for failure to appear if it determines that the defendant was provided effective notice of the court appearance by the court.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- For the purposes of this subsection, "effective notice of the court appearance" means a notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or defendant's counsel, no fewer than 10 days prior to the scheduled court appearance. The court may waive the 10 day requirement upon a finding of emergent circumstances.
- For purposes of capiases for failure to appear after indictment, newspaper publication alone does not constitute effective notice.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- Where the record does not reflect that the person failing to appear received effective notice to appear from the court or where he or she has no documented history of failure to appear, a court, absent good cause shown, may not issue a capias until no fewer than 24 hours have elapsed since the failure to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to prosecution under this section.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
  - Nothing may be construed to limit a court's ability to issue a capias upon credible information of danger to a person or the community, new criminal conduct or a bail violation other than failure to appear.
  - Upon the arrest of a defendant pursuant to a capias in the county in which the indictment or charge is pending, a hearing shall be scheduled and held within five days of the arrest.

SB 633

- **62-1C-17b. Procedures for failure to appear; penalties.**
- Upon the appearance in the county in which the indictment or charge is pending of a defendant against whom a capias has been issued the court shall provide written notice to the sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant or capias is no longer active and order it to be immediately removed from all databases.

HB 2062 RELATING TO MODIFYING E-BIKE REGULATIONS

HB 2062

§17C-1-70. Electric bicycles; definitions.

- **"electric bicycle" means a two or three wheeled vehicle with fully operable pedals and an electric motor of fewer than 750 watts. There is a "three-class system" to differentiate between the models and top-assisted speeds of electric bicycles.**

HB 2062

§17C-1-70. Electric bicycles; definitions.

- **"Class 1" have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph.**
- **"Class 2" have a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the e-bike reaches 20 mph.**
- **"Class 3" have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 28 mph.**

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions

. The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle subject to this chapter, except as otherwise provided by this section and except as to those provisions of this chapter which by their nature can have no application.

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions

. A person owning or operating an electric bicycle is not subject to the provisions of §17A-1-1 et seq., §17B-1-1 et seq., or §17D-1-1 et seq. of this code, relating to registration, title, driver's license, and financial responsibility requirements.

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

- **A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement. If a motor on an electric bicycle is modified so that a limit established in §17C-1-70 of this code is exceeded, that vehicle is no longer an electric bicycle.**

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

- **The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.**

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

- **A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.**
- **Class 2 electric bicycles are permitted to use a throttle to propel the bicycle.**

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

- **Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:**
- **Class 1, and Class 2 electric bicycles being used on roads and trails where traditional, non-electronic bicycle use is allowed will be given the same rights and privileges of a traditional, non-electric bicycle and will be subject to all of the duties of a traditional, non-electric bicycle.**

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

- **A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway: Provided, That the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction**
- **Electric bicycles will not be given special access beyond what traditional or non-electric bicycles are allowed. For example, electric bicycles will not be allowed on roads or trails or in areas where traditional, non-electric bicycle travel is prohibited.**

HB 2062

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

- **A person under 15 years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to the Child Bicycle Safety Act, §17C-11A-1 et seq. of this code.**
- **A person under the influence of alcohol or controlled substances shall not operate a Class 1, Class 2 or Class 3 electric bicycle.**

CS HB 2218 ELECTRONICALLY DISTRACTED DRIVING ACT;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- "Smartwatch" means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or Wi-Fi network;
- "Stand-alone electronic device" means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- "Utility services" means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services, or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way, or associated infrastructure;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- "Wireless telecommunications device" means one of the following portable devices:
- A cellular telephone;
- A portable telephone;
- A text-messaging device;
- A personal digital assistant;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- A stand-alone computer including, but not limited to, a tablet, laptop, or notebook computer;
- A handheld global positioning system receiver;
- A device capable of displaying a video, movie, broadcast television image, or visual image;
- Any substantially similar portable wireless device that is used to initiate or receive communication, information, or data;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- Does not include a
- Smartwatch,
- any type of radio
- subscription-based emergency communication device;
- prescribed medical device;
- amateur or ham radio device, or
- any built-in vehicle equipment for security, navigation, communications, or remote diagnostics; and

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use a wireless telecommunications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- The driver of a school bus shall not use or operate a wireless telecommunications device or two-way radio while loading or unloading passengers.
- The driver of a school bus shall not use or operate a wireless telecommunications device while the bus is in motion nor while stationary in traffic nor at a traffic control signal,
- unless that device is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions involving any stand-alone electronic device or wireless telecommunications device that distracts such driver from the safe operation of the vehicle.

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- No driver may:
- Physically hold or support, with any part of his or her body, a wireless communication device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to the wearing of a smartwatch;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- Write, send, or read any text-based communication including, but not limited to, a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device:
  - *Provided*, That such prohibition shall not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form;
- Make any communication involving a wireless telecommunications device, including a phone call, voice message, or one-way voice communication: *Provided*, That such prohibition shall not apply to a voice operated or hands-free communication feature or function;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- Engage in any form of electronic data retrieval or electronic data communication on a wireless telecommunications device or stand-alone electronic device;
- Manually enter letters, numbers, or symbols into any website, search engine, or application on a wireless telecommunications device or stand-alone electronic device;

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- Watch a video or movie on a wireless telecommunications device or standalone electronic device other than watching data related to the navigation of such vehicle;
- Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device:
  - *Provided*, That such prohibition does not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle; or
- Actively play any game on a wireless telecommunications device or stand-alone electronic device.

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- While operating a commercial motor vehicle on any highway of this state, no driver may:
- Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or
- Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to:
  - No longer be in a seated driving position; or
  - No longer be properly restrained by a safety belt.

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- Each violation of this section shall constitute a separate offense.

- It is a misdemeanor for any driver to violate any of the provisions of this section. Every driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be punished as follows:

HB 2218

§17C-14-15. Electronically Distracted Driving Act.

- first conviction within a 24-month period, a fine of not more than $100;
- second conviction within a 24-month period, a fine of not more than $200;
- third or subsequent conviction within a 24-month period, as measured from the date of any prior conviction or plea:
  - A fine of not more than $350;
  - Three points on the driver's record maintained by the Division of Motor Vehicles; and
  - At the court's discretion, suspension of the driver's license for a period of 90 days;
- Any driver who causes physical harm to property as the proximate result of committing a violation of this section punishable up to 30 days in jail or a fine not less than $100 and not more than $500;

HB 2533 RELATING TO A PERMANENT WINDSHIELD PLACARD TO BE VALID FOR THE DURATION OF THE APPLICANT'S LIFE

HB 2533

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment.

- Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for **unlimited periods of time in parking zones unrestricted as to length of parking time permitted**:
- Provided, That this privilege **does not mean** that the vehicle may park in any zone where stopping, standing, or parking **is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard.**

HB 2533

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment.

- The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment.
- Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and,
  - first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $200;
  - second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300;
  - third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

HB 2533

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment.

- Failure to display a valid, special registration plate or removable windshield placard may not stop, stand, or park a motor vehicle in an area designated, zoned, or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text.

- The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred.

- Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

HB 2533

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment.

- guilty of a misdemeanor and, upon conviction thereof, shall be fined $200;
- second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300;
- third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

HB 2533

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment.

- An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6.

- In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps, or a five-foot access aisle for standard vehicles.

HB 2533

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment.

- Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every 12 or 24 inches apart along with the words "no parking" in painted letters which are at least 12 inches in height.

- All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign.
- Lines or markings on the pavement or curbs for parking spaces and access aisles **may be in any color**, although blue is the generally accepted color for accessible parking.

HB 3354 RELATING TO GENERAL POWERS OF EVERY MUNICIPALITY AND THE GOVERNING BODY THEREOF.

HB 3354

§8-12-5. General powers of every municipality and the governing body thereof.

- REPEALED To regulate the keeping of gunpowder and other combustibles;

- REVISED To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect to any firearm a municipality may only arrest, convict and punish someone if they are in violation of a state law proscribing certain conduct with a firearm;

HB 3479 RELATING TO UNMANNED AERIAL VEHICLES

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- "Aircraft" means any device now known or subsequently invented, used, or designed for flight in the air, including, but not limited to, unmanned aerial vehicles;
- "Targeted facility" means a critical infrastructure facility, as defined in §61-10-34 of this Code.

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- "Unmanned aerial vehicles" means an aircraft that is operated without direct human intervention from inside or on the aircraft and includes the crewmember, the associated support equipment, the control station, data links, telemetry, communications, and navigation equipment necessary to operate the unmanned aircraft, including, but not limited to, drones;
- Unmanned aerial vehicle operator" or "operator" means a person exercising control over an unmanned aerial vehicle during flight.

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- Except as authorized by the provisions of this article, it is unlawful for any person to operate an unmanned aerial vehicle:
- To knowingly and intentionally capture or take photographs, images, video, or audio of another person or the private property of another, without the other person's permission, in a manner that would invade the individual's reasonable expectation of privacy, including, but not limited to, capturing, or recording through a window;
- To knowingly and intentionally view, follow, or contact another person or the private property of another without the other person's permission in a manner that would invade the individual's reasonable expectation of privacy, including, but not limited to, viewing, following, or contacting through a window;

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- Except as authorized by the provisions of this article, it is unlawful for any person to operate an unmanned aerial vehicle:
- To knowingly and intentionally harass another person;
- To violate a restraining order or similar judicial order;
- To act with a willful wanton disregard for the safety of persons or property; or
- To knowingly and intentionally operate an unmanned aerial vehicle in a manner that interferes with the official duties of law enforcement personnel or emergency medical personnel.

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- It is unlawful for any person to operate an unmanned aerial vehicle over the property of a targeted facility to:
- intentionally deploy any substance, material, projectile, or object,
- To conduct surveillance of, or gather evidence and information about such facility, with the intent to do harm to such facility the public or any person, or
- to engage in any attempt to obtain:
  - (i) business trade secrets, proprietary information, or,
  - (ii) protected Federal or state information for the operator's own use or profit.

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- Nothing in this section prohibits a person from operating an unmanned aerial vehicle to conduct surveillance of, gather evidence and information about, or photographically or electronically record the person's own property or immovable property owned by another person under a valid lease, servitude, right-of-way, right of use, permit, license, or other right:
- Provided, That nothing in this section prohibits third persons retained by the owner of immovable property from operating an unmanned aerial vehicle over, or to otherwise conduct surveillance of, gather evidence and information about, or to photographically or electronically record the property:

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- Provided, however, That nothing in this section prohibits a person from operating an unmanned aerial vehicle in connection with production of a motion picture, television program, or similar production if the operation of the unmanned aerial vehicle is authorized by the property owner.

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- The provisions of this section do not apply to a law-enforcement agency acting in compliance with the provisions of this article:
- *Provided*, That a law enforcement agency's operation of an unmanned aerial vehicle for the purpose of surveillance, investigation into crime, or any other purpose related to the enforcement of the criminal laws of this state or those of the United States shall be in accordance the United States Constitution and of the constitution of this state.

- The provisions of this section do not apply to a news organization using a camera-carrying unmanned aerial vehicle at altitudes greater than 400 feet over private property for legitimate newsgathering purposes.

HB 3479

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

- Guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in jail for not more than one year, or both fined and confined.
- Any person who equips an unmanned aerial vehicle with any deadly weapon or operates any unmanned aerial vehicle equipped with any deadly weapon, other than for military purposes in an official capacity, is guilty of a felony
- Any person who operates an unmanned aerial vehicle with the intent to cause damage to or disrupt in any way the flight of a manned aircraft is guilty of a felony

2022 SB 152 – EXPUNGEMENT.

SB152

- **§61-11-26. Expungement of certain criminal convictions; procedures; effect.**
- (a) Eligibility for expungement. —
  - (1) Misdemeanors. —Subject to the limitations set forth in this section, a person convicted of a misdemeanor offense or offenses may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.
  - (2) Nonviolent felonies. — Subject to the limitations set forth in this section, a person convicted of a nonviolent felony offense or offenses arising from the same transaction or series of transactions may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

SB152

- (b) Temporal requirements. —
  - (1) Misdemeanor. — A person is not eligible for expungement pursuant to subdivision (1), subsection (a) of this section until one year after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.
  - (2) More than one misdemeanor. — A person is not eligible for expungement of multiple misdemeanors pursuant to subdivision (1), subsection (a) of this section until two years after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.
  - (3) Nonviolent felonies. — A person is not eligible for expungement of a nonviolent felony pursuant to subdivision (2), subsection (a) of this section until five years after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

SB152

- (c) Limitations on eligibility for expungement. — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:
  - (1) Any felony offense of violence against the person as defined in subdivision (2), subsection (p) of this section or any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer;
  - (2) Any felony offense in which the victim of the crime was a minor as defined in subdivision (3), subsection (p) of this section;
  - (3) Any violation of §61-8B-1 et seq. of this code;
  - (4) Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;
  - (5) Any violation of §61-2-28 of this code, or any offense which violates §61-2-9(b) or §61- 2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of §61-2-28(c) of this code;

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- (6) Any violation of §61-2-29 of this code;
- (7) Any offense of driving under the influence of alcohol or a controlled substance;
- (8) Any offense which violates §17B-4-3 of this code;
- (9) Any offense which violates §61-8-12 or §61-8-19 of this code;
- (10) Any violation of §61-2-9a of this code;

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- (11) Any violation of §61-8B-8 and §61-8B-9 of this code;
- (12) Any violation of §61-3-11 of this code;
- (13) Any conviction for which the sentencing judge made a written finding that the offense was sexually motivated;
- (14) Any offense which violates §17E-1-13(g) of this code; and
- (15) Any offense of conspiracy or attempt to commit a felony set forth in subdivisions (1) through (13), inclusive, of this subsection.

SB152

- (d) Content of petition for expungements. — Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information: Provided, That a petition for the expungement of multiple misdemeanors shall identify and group such information by circuit court, as applicable, from which expungement of a particular conviction or convictions is being sought:
  - (1) The petitioner's current name and all other legal names or aliases by which the petitioner has been known at any time;
  - (2) All of the petitioner's addresses from the date of the offense in connection with which an expungement order is sought to date of the petition;
  - (3) The petitioner's date of birth and Social Security number;
  - (4) The petitioner's date of arrest, the court of jurisdiction, and criminal complaint, indictment, summons, or case number;

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- (5) The statute or statutes and offense or offenses for which the petitioner was charged and of which the petitioner was convicted;
- (6) The names of any victim or victims, or a statement that there were no identifiable victims;
- (7) Whether there is any current order for restitution, protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for restitution, protection, or restraining order rohibiting the petitioner from contacting the victim. If there is a current order, the petitioner shall attach a copy of that order to his or her petition;
- (8) The disposition of the matter and sentence imposed, if any;

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- (9) The grounds on which expungement is sought, including, but not limited to, employment or licensure purposes;
- (10) The steps the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;
- (11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, by the court of any other state, or by any federal court;
- (12) Any supporting documents, sworn statements, affidavits, or other information supporting the petition for expungement.

SB152

- (e) Service of petition for expungement. — The petitioner shall serve a copy of the petition, with any supporting documentation, pursuant to the rules of the trial court upon the following persons or entities:
  - (1) The Superintendent of the State Police;
  - (2) The prosecuting attorney of the county of conviction;
  - (3) The chief of police or other executive head of the municipal police department where the offense was committed;
  - (4) The chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner;
  - (5) The superintendent or warden of any institution in which the petitioner was confined; and
  - (6) The circuit court, magistrate court, or municipal court which disposed of the petitioner's criminal charge.

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- (f) The prosecuting attorney of the county in which expungement is sought shall serve the petition for expungement, accompanying documentation, and any proposed expungement order by first class mail to any identified victims.

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- (g) Notice of opposition. —
  - (1) Upon receipt of a petition for expungement, the persons and entities listed in subsection (e) of this section, and any other interested person or agency that desires to oppose the expungement may, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for expungement.
  - (2) A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner in accordance with trial court rules.
  - (3) The petitioner may file a reply to a notice of opposition no later than 30 days after service of any notice of opposition to the petition for expungement.

SB152

- (h) Burden of proof. — The burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence:
  - (1) That the conviction or convictions for which expungement is sought are the only convictions against the petitioner and that the conviction or convictions are not excluded from expungement by the provisions of this section;
  - (2) That the requisite time has passed since the conviction or convictions or the completion of any sentence of incarceration or period of supervision as set forth in subsection (b) of this section;
  - (3) That the petitioner has no criminal charges pending against him or her;

SB152

- (4) That the expungement is consistent with the public welfare;
- (5) That the petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and
- (6) Any other facts considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

SB152

- (i) Court procedure for petition for expungement. — Within 60 days of the filing of a petition for expungement the circuit court shall:
  - (1) Summarily grant the petition;
  - (2) Set the matter for hearing; or
  - (3) Summarily deny the petition if the court determines that the petition is insufficient or, based upon supporting documentation and sworn statements filed in opposition to the petition, the court determines that the petitioner, as a matter of law, is not entitled to expungement.

SB152

- (j) Hearing on petition for expungement. — If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified.
  - At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence, and post-conviction supervision, including any record of arrest or conviction in any other state or federal court.
  - The court may hear testimony of witnesses and any other matter the court considers proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for expungement with appropriate findings of fact and conclusions of law.

The Governmental Ethics Act

Ethics Act: Use of Public Office for Private Gain

- A public official or employee may not knowingly and intentionally use his or her office or the prestige of his or her office
  - for his or her own private gain, or
  - the private gain of another person

Ethics Act: Soliciting Charitable Contributions

- A public official or employee may not solicit any gift except for a charitable purpose with no direct pecuniary benefit to the official or employee or his or her immediate family

(Soliciting Contributions)

- Nor may an official or employee solicit even a charitable gift from any person who is also an official or employee, and whose position is subordinate to the soliciting official or employee

Accepting Gifts

- No official or employee may knowingly accept any gift, directly or indirectly, from any person whom the official or employee has reason to know
  - is doing or seeking to do business with the public body,
  - is engaged in activities that are regulated by the public body, or
  - has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or non-performance of the official's or employee's official duties

(Accepting Gifts)

- Exceptions: A public official or employee may accept the gifts listed on the next slide IF the gifts do not impair the official's or employee's impartiality and independent judgment and the official or employee did not have reason to think that they were offered for those purposes

- meals and beverages
- ceremonial gifts and awards of insignificant monetary value
- unsolicited gifts of nominal value or trivial items of informational value
- reasonable expenses for food, travel and lodging of the official or employee for a meeting at which
- he or she participates in a panel or speaking engagement

- gifts of tickets or free admission extended to an official or employee to attend charitable, cultural or political events, if the purpose of the gift is a courtesy or ceremony customarily extended to the office
- gifts that are purely private and personal in nature, and
- gifts from relatives by blood or marriage, or a member of the same household

What Amount is Nominal?

$25 for any one gift and

$25 of gifts in the aggregate from the same gifter in one year

Ethics Act: Soliciting Business

- No public official or employee may solicit private business from a subordinate public official or employee whom he or she has the authority to direct, supervise, or control, except that he or she may solicit private business when
  - the solicitation is a general one directed to the public at large through a mailing or other distribution of a letter, pamphlet, handbill, circular or other printed media, or

- is limited to the posting of a notice in a communal work area, or
- is for the sale of property of a kind that the person is not regularly engaged in selling, or
- is made at the location of a private business owned or operated by the person to which the subordinate public official or employee has come on his or her own initiative.

Consequences of Violations

- Public reprimand
- Cease and desist order
- Order of restitution for money, things of value, or services taken or received
- Fine not to exceed $5,000 per violation
- Reimbursement to the Ethics Commission

Bowles Rice

WV CODE OF JUDICIAL CONDUCT

Use of Radar and other Traffic Issues

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser

- The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure' and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the State Police, by police officers of incorporated municipalities in classes one, two and three, as defined in chapter eight-a of this code.

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser

- by police officers of incorporated class four municipalities except upon controlled access or partially controlled access highways,
- and by the sheriff and his or her deputies.

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser

- The evidence so obtained shall be accepted as prima facie evidence of the speed of the vehicle:
  - Provided, That the evidence of speed is obtained and detected by a certified law enforcement officer who has completed training for speed measuring devices used to obtain the speed of the motor vehicle:

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser

- The evidence so obtained shall be accepted as prima facie evidence of the speed of the vehicle:
  - Provided, however, That the Governor's .Committee on Crime, Delinquency and Correction shall, on or before January 1, 2012, establish or certify an eight-hour training and certification program and standards for speed measuring device training that certified law enforcement officers who utilize speed measuring devices must complete or otherwise satisfy in order for any evidence of speed detected by a speed measuring device put forward by the officer to be accepted of prima facie evidence

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser

- The evidence so obtained shall be accepted as prima facie evidence of the speed of the vehicle:
  - All certified law enforcement officers must have completed or otherwise satisfied the requirements of this section prior to January 1, 2013.

Evidence - Shoplifting

§61-3A-1. Shoplifting defined.

- (a) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:
  - (1) Conceals the merchandise upon his or her person or in another manner; or
  - (2) Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or

§61-3A-1. Shoplifting defined.

- (3) Alters, transfers or removes any price marking affixed to the merchandise; or
- (4) Transfers the merchandise from one container to another; or
- (5) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
- (6) Removes a shopping cart from the premises of the mercantile establishment; or

§61-3A-1. Shoplifting defined.

- (7) Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.

§61-3A-1. Shoplifting defined.

- (b) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.

§61-3A-4. Shoplifting constitutes breach of peace; detention.

- An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law-enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes,

§61-3A-4. Shoplifting constitutes breach of peace; detention.

- For the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

§61-3A-2. Evidence.

- (a) Evidence of stated price or ownership of merchandise may include, but is not limited to:
  - (1) The actual merchandise alleged to have been shoplifted; or
  - (2) The unaltered content of the price tag or marking from such merchandise; or
  - (3) Properly identified photographs of such merchandise.

§61-3A-2. Evidence.

- (b) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.

Controlled Substances

Conditional Discharge for First Possession Offenses

- Conditional discharge means the court will accept a guilty plea or verdict but holds off on entering a conviction.
- The Court places the defendant on probation with conditions.

Conditional Discharge for First Possession Offenses

- Conditions usually include remaining law-abiding and abstaining from drugs or alcohol.
- The Court may order the defendant to participate in a drug court or treatment program as a condition of probation if it was for illegally possessed a Schedule I, II, III, or IV drug (other than marijuana

Conditional Discharge for First Possession Offenses

- If the defendant successfully completes probation, the court discharges the person and dismisses the case—meaning there's no conviction.
- After six months, the defendant can ask the Circuit Court to expunge their record.
- A person only gets one shot at discharge and dismissal.

Good Luck