

CODIFIED ORDINANCES OF SHINNSTON
PART FIVE - GENERAL OFFENSES CODE

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CODIFIED ORDINANCES OF SHINNSTON
PART FIVE - GENERAL OFFENSES CODE

ARTICLE 501
Administration and Law Enforcement

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CROSS REFERENCES

See sectional histories for similar State law
Specific types of bribery - see W. Va. Code 3-1-1 et seq.,
15-2-17 et seq., 18-2A-9, 61-10-15 and 61-10-22
Penalty not to exceed that provided in W. Va. Code
Ch. 61 - see W. Va. Code 8-12-5(57)
Crimes against public justice - see W. Va. Code Art. 61-5
Bribery and corrupt practices generally - see W. Va. Code
Art. 61-5A
Failure to comply with lawful order of police officer -
see TRAF. 303.02

501.01 REFUSAL TO AID OFFICER.

No person shall, when required by the Police Chief or any other officer, refuse or neglect to assist him in the execution of his office in a criminal case, in the preservation of the peace or in the apprehension or securing of any person for a breach of the peace or in any case of escape or rescue.
(WVaC 61-5-14)

501.02 OBSTRUCTING OR GIVING FALSE INFORMATION TO AN OFFICER; FLEEING.

(a) No person shall by threats, menaces, acts or otherwise, forcibly or illegally hinder or obstruct, or attempt to hinder or obstruct, any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity.

(b) No person shall, with intent to impede or obstruct a law enforcement officer in the conduct of an investigation of a felony offense, knowingly and willfully make a materially false statement. Provided, that the provisions of this subsection (b) shall not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For the purposes of this subsection, "law enforcement officer" shall not include watchman, state police or college security personnel.

(c) No person shall intentionally flee or attempt to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her.

(d) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop.

(e) For purposes of this section, "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in West Virginia Code 17A-1-1 whether or not it is being operated on a public highway at the time and whether or not it is licensed by the State.

(f) For purposes of this section, "flee" and "fleeing" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer, probation officer, or parole officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop. (WVaC 61-5-17)

(g) No person shall refuse or fail to comply with any lawful order, direction or signal of a police officer.

501.03 FALSE FIRE ALARM.

No person shall make, turn in or telephone, or by use of any means or method of communication aid or abet in the making or turning in of any alarm of fire which he knows to be false at the time of making such alarm. (WVaC 29-3-21)

501.04 FALSE REPORTS CONCERNING BOMBS OR OTHER EXPLOSIVE DEVICES.

(a) No person shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device.

(b) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section for a second offense or whose violation of the subsection results in another suffering serious bodily injury shall be guilty of a felony and prosecuted under appropriate State law. (WVaC 61-6-17)

501.05 IMPERSONATING AN OFFICIAL OR LAW ENFORCEMENT OFFICER.

(a) No person shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or be under the order or direction of any such person. No person not a law-enforcement officer or law-enforcement official shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person.

For purposes of this section, "law-enforcement officer" and "law-enforcement official" shall have the meanings set forth in West Virginia Code 30-29-1 except that such terms shall not include members of the State Division of Public Safety and shall not include individuals hired by non-public entities for the provision of security services.
(WVaC 61-1-9)

(b) No person shall falsely represent himself to be an officer or employee of the Municipality, or exercise or attempt to exercise any of the duties, functions or powers of a Municipal officer. No person not a member of the Fire Department, for the purpose of such false representation, shall wear a uniform or part thereof similar to the uniform worn by a member of the Fire Department.

501.06 ATTEMPTS.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall be subject to the penalty provided in Section 501.99 if the offense is punishable by confinement in jail.
(WVaC 61-11-8)

501.07 CITATION IN LIEU OF ARREST; FAILURE TO APPEAR.

A police officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

- (a) Any misdemeanor, not involving injury to the person, committed in a police officer's presence: provided, that the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and
- (b) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to Section 533.01 of this Code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense, the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance.

(WVaC 62-1-5(a))

501.08 FALSELY REPORTING AN EMERGENCY INCIDENT.

A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed or circulated is false or baseless, he:

- (a) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or
- (b) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or
- (c) Reports to a law enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or
- (d) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles.
(WVaC 61-6-20)

501.09 FALSE REPORT.

No person shall make or give a false report or false information to any police or fire officer of the City.

501.99 PENALTY.

(a) Whoever violates any provision of this Part Five - General Offenses Code for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. Each day such violation continues shall constitute a separate offense.

(b) Whoever violates Section 501.01 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both. (WVaC 61-5-14)

(c) Whoever violates Section 501.02(b) shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than five days, or both.

(d) Whoever violates Section 501.02(d) shall be fined not more than one thousand dollars (\$1,000) and shall be imprisoned not more than thirty days.
(WVaC 61-5-17)

- (e) (1) Except as provided by the provisions of subsection (e)(2) of this section, any person who violates the provisions of Section 501.03 shall be fined for a first offense not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty days, or both; and for a second and each subsequent offense fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than thirty days, or both.
- (2) Any person who violates the provisions of Section 501.03 with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and shall be prosecuted under appropriate state law.
- (f) Whoever violates Section 501.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.
(WVaC 61-6-17)
- (g) Whoever violates Section 501.05(a) shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).
(WVaC 61-1-9)

ARTICLE 505
Animals and Fowl

505.01 Cruelty to animals.	505.04 Barking or howling dogs.
505.02 Cruelty to dogs and cats.	505.05 Hunting prohibited.
505.03 Nuisance conditions prohibited.	505.06 Keeping hogs restricted.
	505.07 Animals at large.
	505.99 Penalty.

CROSS REFERENCES

Authority to regulate the keeping of animals - see
W. Va. Code 8-12-5(26)

Authority to prevent ill-treatment of animals - see
W. Va. Code 8-12-5(27)

Domestic animal tax - see W. Va. Code 8-13-10

Disposing of dead animals - see W. Va. Code 16-9-3

Diseases among domestic animals - see W. Va. Code
Art. 19-9

Dogs generally - see W. Va. Code Art. 19-20

Vaccination of dogs - see W. Va. Code Art. 19-20A

Hunting - see W. Va. Code Art. 20-2

505.01 CRUELTY TO ANIMALS.

(a) No person shall cruelly mistreat, abandon or withhold proper sustenance, including food, water, shelter or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandon any animal to die, or intentionally, knowingly or recklessly leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result, or ride an animal when it is physically unfit, or bait or harass any animal for the purpose of making it perform for a person's amusement, or cruelly chain any animal or use, train or possess any domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(b) No person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, shall knowingly and willfully administer or cause to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting such animal's performance.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which the conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or

county pound as a result.

(d) For the purpose of this section, "controlled substance" has the same meaning ascribed to it by West Virginia Code 60A-1-101(d).

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. Section 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.
(WVaC 61-8-19)

505.02 CRUELTY TO DOGS AND CATS.

No person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dogfighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or maltreating any other dog or cat.

505.03 NUISANCE CONDITIONS PROHIBITED.

No person shall keep or harbor any animal or fowl in the Municipality so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.

505.04 BARKING OR HOWLING DOGS.

No person shall keep or harbor any dog within the Municipality which, by frequent and habitual barking, howling or yelping, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the Municipality. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring such dog.

505.05 HUNTING PROHIBITED.

No person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle or any other means within the corporate limits of the Municipality.

505.06 KEEPING HOGS RESTRICTED.

No person shall keep any hog within 200 feet of any residence, other than the residence of the owner, within the City. This section does not apply to pigs and hogs being transported through the City. (1958 Code Sec. 14-1)

505.07 ANIMALS AT LARGE.

No person shall allow or permit any horse, cow, swine, goat, chicken or other domestic animal or fowl to run at large upon any of the roads, streets or alleys of the City.
(1958 Code Sec. 20-5)

505.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) (1) Whoever violates Section 505.01(a) shall be fined not less than three hundred dollars (\$300.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both, for a first offense. Any person convicted of a second or subsequent violation of Section 505.01(a) shall be imprisoned for not more than thirty days or fined not less than five hundred dollars (\$500.00) nor more than three thousand dollars (\$3,000), or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (a)(2) are complied with.
- (2) A. Notwithstanding any provision of this Code to the contrary, no person who has been convicted of a violation of the provisions of Section 505.01(a) may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.
- B. For any person convicted of a violation of subsection (a) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of the program.
- (3) In addition to any other penalty which can be imposed for a violation of Section 505.01, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a conviction. A violation under this subsection is punishable by a fine not exceeding two thousand dollars (\$2,000) and forfeiture of the animal.
- (b) Whoever violates Section 505.01(b) shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000).
(WVaC 61-8-19)
- (c) Whoever violates Section 505.02 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both. In addition the Humane Officer may remove the dog or cat involved and place it in the pound and such dog or cat shall not be returned to the owner or perpetrator of the act of cruelty, but shall be put up for adoption to a desirable home or given into the care of a humane society or upon the recommendation of a licensed veterinarian shall be humanely destroyed.

ARTICLE 507
Dogs

507.01 Dog defined.	507.06 Redemption of impounded dog; costs.
507.02 Annual head tax imposed.	507.07 Disposition of unclaimed impounded dogs.
507.03 Running at large prohibited; leash required.	507.08 Rabid dogs.
507.04 Impoundment.	
507.05 Impoundment notice.	

CROSS REFERENCES

Animals and fowl - see GEN. OFF. Art. 505
Injury or destruction of property - see GEN. OFF. 533.05

507.01 DOG DEFINED.

For the purposes of this article, "dog" means a dog of either sex, unless otherwise specified. (Passed 4-19-82)

507.02 ANNUAL HEAD TAX IMPOSED.

(a) There is hereby imposed upon each person keeping within the City a dog above the age of six months an annual head tax on each dog so kept by him in the amount of three dollars (\$3.00) whether male or female.

(b) Each person who keeps within the City a dog above the age of six months shall report each such dog to the Assessor of the County at the time of the annual assessment of personal property is made; provided, that when any person any person within the City acquires a dog above the age of six months, or when a dog kept by him within the City attains the age of six months, such person shall then report such dog to the Assessor of the County.

(c) Each person reporting a dog to the County Assessor pursuant to subsection (b) hereof, shall pay to the Assessor the amount of the head tax prescribed in subsection (a) hereof, for each dog he is required to report, and he shall then attach to the collar of each such dog the proper registration tag furnished to him by the Assessor, and retain within his possession the certificate of registration furnished to him by the Assessor for each such dog.

(d) The annual head tax on dogs imposed by subsection (a) hereof is for a fiscal year rather than a calendar year. (Passed 4-19-82)

507.03 RUNNING AT LARGE PROHIBITED; LEASH REQUIRED.

(a) No owner of any dog shall permit such dog to run at large within the City. Any dog found running at large within the City shall be secured and confined and shall be held for a period of five days, during which time the owner of such dog may claim the same upon the payment of the sum of one dollar (\$1.00) for each day that the dog is held in confinement, and after such period of five days has expired, if such dog has not been claimed and the fee above provided paid, then such dog shall be shot or otherwise destroyed.

(b) Any such owner convicted or permitting a dog to run at large within this City shall be fined twenty dollars (\$20.00) upon the first such conviction, thirty dollars (\$30.00) upon the second such conviction, and forty dollars (\$40.00) upon the third or any subsequent such conviction. (Passed 4-19-82)

507.04 IMPOUNDMENT.

The police or other persons designated by the City Manager for such purpose shall cause to be seized and impounded any dog at large in the City or not wearing a vaccination tag as required by West Virginia Code 19-20A-4; provided, that if a dog found in violation of this article is rabid, vicious or otherwise constitutes a danger to human life or limb the officer whose duty it is to impound such dog may destroy it by shooting, if it cannot safely be captured and made secure. (Passed 4-19-82)

507.05 IMPOUNDMENT NOTICE.

(a) If the owner or person in charge of any dog impounded under the provisions of this article is known to the impounding officer, the impounding officer shall promptly notify him of such impoundment, so as to inform him of:

- (1) The dog impounded and a description thereof;
- (2) The date of impoundment;
- (3) The place of impoundment;
- (4) The reason for impoundment;
- (5) The procedure for redemption of his dog;
- (6) The costs of redemption; and
- (7) The consequences of failure to redeem the impounded dog.

(b) If the owner or person in charge of any dog impounded under the provisions of this article is unknown to the impounding officer and cannot be ascertained by reasonable effort within twenty-four hours, the officer shall, within two days following such impoundment, post notices on the City Hall bulletin board and at three other public places within the City, each such notice to contain all the information required by subsection (a)(1) through (7). (Passed 4-19-82)

507.06 REDEMPTION OF IMPOUNDED DOG; COSTS.

(a) The owner or person entitled to possession of any dog impounded under the provisions of this article may redeem such dog at any time prior to the sale or other disposition thereof upon satisfactory proof of his right to possession and payment of:

- (1) The expense, if any, incurred in making the impoundment;
- (2) The expense incurred for sustenance, shelter and care of the impounded dog;
- (3) The expense incurred for giving notice;

- (4) The expense incurred for advertising a sale, retention of an auctioneer and related items; and
- (5) Any other expense actually incurred; provided, that no dog shall be redeemed for less than one dollar (\$1.00) for each day such dog was impounded.

(b) No impounded dog shall be sold, destroyed or otherwise disposed of except by release to its owner or some other person lawfully entitled to its custody until not less than five days have elapsed since its impoundment. (Passed 4-19-82)

507.07 DISPOSITION OF UNCLAIMED IMPOUNDED DOGS.

Impounded dogs not redeemed by their owners or others entitled to their custody within five days of their impoundment may be disposed of in accordance with the law governing the pound; provided, that no dog shall be destroyed except in a humane manner, and no dog shall be destroyed if a responsible person applies for release to his custody and he agrees to provide the dog with a home and subsistence and to abide by the requirements of this article. (Passed 4-19-82)

507.08 RABID DOGS.

(a) No person shall own, keep or harbor any dog known by him, or which, in the exercise of reasonable diligence, he should know, to be suffering with rabies. Any person who shall be convicted of a violation of this subsection shall be compelled to destroy such animal, in addition to any penalty which may be adjudged against him.

(b) Any police officer shall kill by shooting any dog known by him to be suffering with rabies. (Passed 4-19-82)

ARTICLE 509
Disorderly Conduct and Peace Disturbance

509.01	Disorderly conduct.	509.04	Disturbing the peace.
509.02	Loitering on school property.	509.05	Begging.
509.03	Wearing masks, hoods or face coverings.	509.06	Loitering.
		509.99	Penalty.

CROSS REFERENCES

Authority to maintain order - see W. Va. Code 8-12-5 (19), (44)
 Crimes against the peace - see W. Va. Code Art. 61-6
 Intoxication or drinking in public places - see GEN. OFF. 521.06
 Breach of peace with weapon - see GEN. OFF. 545.02

509.01 DISORDERLY CONDUCT.

(a) No person shall, in a public place, any State or Municipal office or office building or any other property owned, leased, occupied or controlled by the State or Municipality, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his lawful capacity: provided, that nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

(b) For purposes of this section:

- (1) "Mobile home park" means a privately-owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.
- (2) "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:
 - A. Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and

- B. Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.
- (3) "Public parking area" means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles. (WVaC 61-6-1b)

509.02 LOITERING ON SCHOOL PROPERTY.

No person, not a student in regular attendance, shall loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal. (WVaC 61-6-14a)

509.03 WEARING MASKS, HOODS OR FACE COVERINGS.

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, while wearing any mask, hood or device whereby any portion of the face is so covered as to conceal the identity of the wearer, shall:

- (1) Come into or appear upon any walk, alley, street, road, highway or other thoroughfare dedicated to public use;
 - (2) Come into or appear in any trading area, concourse, waiting room, lobby or foyer open to, used by or frequented by the general public;
 - (3) Come into or appear upon or within any of the grounds or buildings owned, leased, maintained or operated by the State or Municipality;
 - (4) Ask, request, or demand entrance or admission to the premises, enclosure, dwelling or place of business of any other person within this Municipality; or
 - (5) Attend or participate in any meeting upon private property of another unless written permission for such meeting has first been obtained from the owner or occupant thereof.
- (b) The provisions of this section do not apply to any person:
- (1) Under sixteen years of age;
 - (2) Wearing a traditional holiday costume;
 - (3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;
 - (4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;
 - (5) Wearing a mask, hood or device prescribed for civil defense drills, exercises or emergencies; or
 - (6) Wearing a mask, hood or device for the sole purpose of protection from the elements or while participating in a winter sport. (WVaC 61-6-22)

509.04 DISTURBING THE PEACE.

No person shall:

- (a) On any street, highway, public building, in or on a public or private conveyance, or public place, engage in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed.
- (b) Willfully, or being intoxicated, whether willfully or not, disrupt any meeting of the governing body of any political subdivision of this State or a division or agency thereof, or of any school, literary society or place of religious worship, or

any other meeting open to the public, if such disruption prevents or interferes with the orderly conduct of such meeting or has a direct tendency to cause acts of violence by the person or persons at whom, individually, such disruption is directed.

- (c) Engage in fighting, or threaten to harm persons or property unlawfully.
- (d) Make offensively coarse utterance, gesture or display, or communicate unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace.
- (e) Insult, taunt or challenge another under circumstances in which such conduct is likely to provoke a violent response.
- (f) Hinder or prevent the movement of persons or vehicles on a public street, road, highway right of way or to, from, within or upon public or private property, so as to interfere with the rights of others, by any act which serves no lawful and reasonable purpose.
- (g) Create a condition which presents a risk of physical harm to persons or property.
- (h) Urinate or defecate in any public place or upon the property of any other person, except this section shall not apply to the use of restrooms and/or bathrooms.

Nothing described herein shall be interpreted or construed to prevent any constitutionally protected activity including but not necessarily limited to exercise of one's constitutionally guaranteed rights of freedom of speech or assembly. No person may be convicted under this section when his sole intent for engaging in the activities for which he was arrested was to exercise one or more of the rights guaranteed to him under the Constitution of the United States or the State Constitution or to exercise any other rights guaranteed to that person by law.

509.05 BEGGING.

No person shall beg or solicit contributions on any of the roads, streets, alleys or public property in the City.

509.06 LOITERING.

(a) For the purposes of this section, the term "loiter" shall include, but is not restricted to, standing, lounging, sitting, lying or strolling about idly, whether alone or in company with other loiterers.

(b) No person shall loiter on any of the sidewalks, streets, public places or vacant lots, or in public buildings or the entranceways thereof, or in or upon other places open to the public, and there conduct himself in a manner annoying to persons passing by or occupants of adjacent buildings; or shall insult, threaten, intimidate or in any manner interfere with, or impede the progress of, any other person then and there conducting himself in a lawful and orderly manner.

(c) No person shall loiter on any of the sidewalks, streets, public places or vacant lots, or in public buildings or the entranceways thereof, or in or upon other places open to the public after being ordered to forthwith depart therefrom by a person then and there in charge of such building or place, or by a police officer.

(d) No person, not the owner or tenant of any premises within the City, shall enter after dark and loiter or sleep therein without the consent of such owner or tenant.

(e) This section shall not apply to any person or assembly of persons waiting, assembled or standing in line in an orderly manner for any lawful purpose incident to the building or other place mentioned in this section, nor shall it be construed to restrict the right to lawful assembly, picketing, public speaking or other lawful means of expressing public opinion not in contravention of other laws or ordinances. (Passed 8-8-89.)

509.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 509.01 shall be fined not more than one hundred dollars (\$100.00).
(WVaC 61-6-16)
- (b) Whoever violates Section 509.02 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.
(WVaC 61-6-14a)
- (c) Whoever violates Section 509.06 shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars (\$100.00).
(Passed 4-2-90.)

**ARTICLE 513
Gambling**

- | | |
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| <p>513.01 Keeping or exhibiting gambling apparatus.</p> <p>513.02 Permitting gambling apparatus on premises.</p> <p>513.03 Acting as lookout or guard for keeper of gambling apparatus.</p> <p>513.04 Playing on gambling apparatus; hotels, public places.</p> <p>513.05 Making wager for value or furnishing money to another for wager.</p> | <p>513.06 Permitting gambling at public places.</p> <p>513.07 Cheating or fraudulent actions while gambling or making a wager.</p> <p>513.08 Poolrooms and pool tickets.</p> <p>513.09 Lotteries and raffles.</p> <p>513.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Gambling at fairs prohibited - see W. Va. Code
 19-7-8
 Pari-mutuel system of wagering at race track permitted -
 see W. Va. Code 19-23-9
 Gaming contracts - see W. Va. Code Art. 55-9
 Crimes against public policy - see W. Va. Code Art. 61-10

513.01 KEEPING OR EXHIBITING GAMBLING APPARATUS.

No person shall keep or exhibit a gaming table, commonly called an A.B.C. or E.O. table, faro bank, keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination or which has no name, whether the game, table, bank, machine or device is played with cards, dice or otherwise, or be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table or upon such gaming device, may be seized by order of the Police Court and the money so seized shall be forfeited to the Municipality and paid into the Municipal Treasury and the table, faro bank, machine or gaming device shall be completely destroyed. However, the provisions of this section shall not extend to coin-operated nonpayout machines with free play features or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

(WVaC 61-10-1)

513.02 PERMITTING GAMBLING APPARATUS ON PREMISES.

No person shall knowingly permit a gaming table, bank or device, as mentioned in Section 513.01, to be kept or exhibited on any premises in his occupation.
(WVaC 61-10-2)

513.03 ACTING AS LOOKOUT OR GUARD FOR KEEPER OF GAMBLING APPARATUS.

No person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any gaming table, bank or device as mentioned in Section 513.01, nor resist, nor by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, nor unlawfully take the same from the person seizing it.
(WVaC 61-10-3)

513.04 PLAYING ON GAMBLING APPARATUS; HOTELS, PUBLIC PLACES.

No person shall bet or play at any gaming table, bank or device as mentioned in Section 513.01, or, at any hotel or tavern, other public place or place of public resort, play at any game except bowling, chess or backgammon, draughts or a licensed game, or bet on the side of those who play at any game, whether or not the game is permitted or licensed.
(WVaC 61-10-4)

513.05 MAKING WAGER FOR VALUE OR FURNISHING MONEY TO ANOTHER FOR WAGER.

No person shall, at any place, public or private, bet or wage money or other thing of value on any game of chance, or knowingly furnish any money or other thing of value to any other person to bet or wage on any such game.
(WVaC 61-10-5)

513.06 PERMITTING GAMBLING AT PUBLIC PLACES.

No keeper of a hotel, tavern or other public place shall permit unlawful gaming at his house, or at any outhouse, booth, arbor or other place appurtenant thereto.
(WVaC 61-10-6)

513.07 CHEATING OR FRAUDULENT ACTIONS WHILE GAMBLING OR MAKING A WAGER.

No person playing at any game or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game or making a wager, shall cheat, or by fraudulent means win or acquire for himself, or another, money or any other valuable thing.
(WVaC 61-10-9)

513.08 POOLROOMS AND POOL TICKETS.

"Poolroom", wherever used in this section, means any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science or other sport or contest. No person shall set up or promote, or be connected with or interested in the management or operation of any poolroom. The buying, selling or transferring of tickets or chances in any lottery is hereby prohibited.
(WVaC 61-10-10)

513.09 LOTTERIES AND RAFFLES.

Except as otherwise provided by law, no person shall set up, promote or be concerned in managing or drawing a lottery or raffle for money or other thing of value; knowingly permit such lottery in any house under his control; knowingly permit money or other property to be raffled for in such house or to be won therein by throwing or using dice or by any other game of chance; knowingly permit the sale in such house of any chance or ticket, or share of a ticket in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person or to entitle him to a prize, or a share of or interest in a prize to be drawn in a lottery. No person shall for himself or any other person, buy, sell, transfer or have in his possession for the purpose of sale or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket, or a share of a ticket, in a lottery or any such writing, certificate, bill, token or device. However, this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as "policy" or "numbers".
(WVaC 61-10-11)

513.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 513.04 or 513.06 shall be fined not more than one hundred dollars (\$100.00).
- (b) Whoever violates Section 513.05 shall be fined not more than three hundred dollars (\$300.00).

ARTICLE 517
Indecency and Obscenity

- | | |
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| <p>517.01 Operating a place for or permitting or engaging in prostitution, lewdness or assignation.</p> <p>517.02 Detention of person in place of prostitution.</p> <p>517.03 Pandering.</p> <p>517.04 Pimping.</p> <p>517.05 Profane swearing and drunkenness.</p> | <p>517.06 Obscene or harassing telephone calls.</p> <p>517.07 Indecent exposure.</p> <p>517.08 Invasion of privacy by looking.</p> <p>517.09 Preparation, distribution or exhibition of obscene matter to minors.</p> <p>517.10 Sale or display of obscene matter.</p> <p>517.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to prohibit distribution of obscene literature - see W. Va. Code 8-12-5(17)
 Authority to suppress houses of ill fame - see W. Va. Code 8-12-5(18)
 Authority to prevent indecent practices - see W. Va. Code 8-12-5(19)
 Equitable remedies - see W. Va. Code Art. 61-9

517.01 OPERATING A PLACE FOR OR PERMITTING OR ENGAGING IN PROSTITUTION, LEWDNESS OR ASSIGNATION.

(a) No person shall keep, set up, maintain or operate any house, place, building, hotel, tourist camp, other structure or part thereof, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or own any place, house, hotel, tourist camp, other structure or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness or assignation, or let, sublet or rent any such place, premises or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises or conveyance for prostitution, lewdness or assignation; or offer, or offer to secure another for the purpose of prostitution or for any other lewd or indecent act; or receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp or other structure, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain there for such purpose; or for another or others, direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or aid, abet or participate in the doing of any acts herein

prohibited. Whoever violates this subsection (a) shall, for a first offense, be guilty of a misdemeanor.

(b) No person shall engage in prostitution, lewdness or assignation, or solicit, induce, entice or procure another to commit an act of prostitution, lewdness or assignation; or reside in, enter or remain in any house, place, building, hotel, tourist camp or other structure, or enter or remain in any vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or aid, abet or participate in the doing of any of the acts herein prohibited.

Whoever violates this subsection (b) shall, for a first or second offense, be guilty of a misdemeanor.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting or renting any house, place, building, hotel, tourist camp or other structure which is used for the purpose of prostitution, lewdness or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. "Tourist camp" includes any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp or other structure, and of the person or persons who reside in or frequent them, and of the defendant or defendants, shall be admissible in evidence in support of the charge.

(WVaC 61-8-5)

517.02 DETENTION OF PERSON IN PLACE OF PROSTITUTION.

(a) No person shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; shall, directly or indirectly, keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor if the person so kept, held, detained or restrained under this section is not a minor.

(WVaC 61-8-6)

517.03 PANDERING.

(a) No person shall procure an inmate for a house of prostitution, or by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person. No person shall, by promises, threats, violence or any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, to enter any place in which prostitution is encouraged or allowed within this Municipality, or to come into or leave this Municipality for the purpose of prostitution, or shall procure any person to become an inmate of a house of ill fame within this Municipality or to come into or leave this Municipality for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this Municipality, or to come into or leave this Municipality for the purpose of prostitution.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this Municipality, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in the municipality or county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor for the first offense unless the inmate referred to in this section is a minor.
(WVaC 61-8-7)

517.04 PIMPING.

(a) No person knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor unless the prostitute referred to in this section is a minor.
(WVaC 61-8-8)

517.05 PROFANE SWEARING AND DRUNKENNESS.

No person having arrived at the age of discretion shall profanely curse or swear or get drunk in public.
(WVaC 61-8-15)

517.06 OBSCENE OR HARASSING TELEPHONE CALLS.

- (a) No person with intent to harass or abuse another by means of telephone shall:
- (1) Make any comment, request, suggestion or proposal which is obscene; or
 - (2) Make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to harass any person at the called number; or
 - (3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
 - (4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or
 - (5) Threaten to commit a crime against any person or property.

(b) No person shall knowingly permit any telephone under his control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.
(WVaC 61-8-16)

517.07 INDECENT EXPOSURE.

No person shall intentionally expose his or her sex organs or anus or the sex organs or anus of another person, or intentionally cause such exposure by another or engage in any overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm.
(WVaC 61-8-9)

517.08 INVASION OF PRIVACY BY LOOKING.

No person shall unlawfully enter upon the property of another or secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary.

**517.09 PREPARATION, DISTRIBUTION OR EXHIBITION OF
OBSCENE MATTER TO MINORS.**

(a) Definitions of terms used in this section, and any variations thereof required by the context, shall have the meaning ascribed to them as follows:

- (1) "Distribute" means to transfer possession of, whether with or without consideration.
- (2) "Employee" means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than his salary or wages.
- (3) "Exhibit" means to display or offer for viewing, whether with or without consideration.
- (4) "Knowingly" means to display or offer for viewing, whether with or without consideration.
- (5) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or any statue or other figure, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (6) "Minor" means any individual under the age of eighteen years.
- (7) "Obscene matter" means to the average individual, applying contemporary State standards, matter which:
 - A. Considered as a whole, appeals to the prurient interests;
 - B. Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibition of the genitals; and
 - C. Considered as a whole, lacks serious literary, artistic, political or scientific value.
- (8) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (9) "Prepare" means to produce, publish or print.
- (10) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window showcase, display case or similar public place, so that the material within the meaning of "obscene matter" is easily visible from a public thoroughfare, from the property of others or from commercial or business premises generally open to minors at the time of such placing.

(b) No person shall knowingly send or cause to be sent or bring or cause to be brought into this Municipality any obscene matter for distribution, exhibition or public display to a minor, or in this Municipality prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or offer to prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or have in his possession with the intent to distribute, exhibit or make a public display of, any obscene matter to a minor.

(c) No employees shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher or when such employee distributes, prepares or exhibits obscene matter while acting within the scope of his employment.

(d) Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with knowledge of its content or character.

(e) No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.

(f) No person who, with knowledge that a person is a minor under eighteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under eighteen years of age, shall hire, employ or use such minor to do or assist in doing any of the acts described in subsection (a)(7)B. hereof.
(WVaC Art. 61-8A)

517.10 SALE OR DISPLAY OF OBSCENE MATTER.

(a) Definitions. For the purposes of this section:

- (1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.
- (2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (3) "Individual" means any human being regardless of age.
- (4) "Obscene" means matter which the average individual applying contemporary community standards would find
 - A. Taken as a whole, appeals to the prurient interest;
 - B. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and
 - C. The matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:
 1. Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
 2. Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.
- (5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

- (6) "Prepare" means to produce, publish or print.
- (7) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display sack, window, showcase, display case or similar public places so that material can be purchased or viewed by individuals.

(b) Individual Relief. The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by the attorney for the Municipality or a representative thereof or any citizen of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

(c) Activities Prohibited. No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of any obscene matter to any individual.

(d) Employees Not Prosecuted. No employee shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

(e) Exceptions. Nothing in this section shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States. (WVaC 8-12-5(b))

517.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 517.01(a), or 517.07 shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (b) Whoever violates Section 517.01(b) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, and for a second offense shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (c) Whoever violates Section 517.10 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both.

ARTICLE 521
Liquor Control, Controlled Substances and Marijuana

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|---------------|--|---------------|---|
| 521.01 | Definitions. | 521.08 | Unlawful purchase of non-intoxicating beer. |
| 521.02 | Article not applicable to certain uses by physicians, druggists and others. | 521.09 | Acts prohibited by private club licensee. |
| 521.03 | Prohibited acts generally. | 521.10 | Unlawful purchase from private club. |
| 521.04 | Unlawful sale or possession by alcoholic liquor licensee. | 521.11 | Acts prohibited by wine dealers. |
| 521.05 | Unlawful purchase of alcoholic liquors from State agency. | 521.12 | Unlawful purchase of wine. |
| 521.06 | Intoxication or drinking in public places; illegal possession. | 521.13 | Unlawful purchase from retail liquor licensee. |
| 521.07 | Acts prohibited by non-intoxicating beer licensee. | 521.14 | Illegal possession of controlled substances and marijuana. |
| | | 521.15 | Provisions for violations of Section 521.14. |
| | | 521.99 | Penalty. |

CROSS REFERENCES

See sectional histories for similar State law
 Authority to regulate liquor sales - see W. Va. Code 8-12-5(20)
 Nonintoxicating beer - see W. Va. Code Art. 11-16
 Local option - see W. Va. Code Art. 60-5
 Search warrants - see W. Va. Code 60-6-18
 Public drunkenness - see GEN. OFF. 517.05

521.01 DEFINITIONS.

For the purposes of this article, unless the context clearly indicates otherwise, the following definitions shall apply:

- (a) "Alcoholic liquor" includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.
- (b) "Beer" means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.
- (c) "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.
- (d) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.

- (e) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent (0.5%) alcohol by volume, but not more than four and two-tenths percent (4.2%) of alcohol by weight, or six percent (6%) by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in this article shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparation included within this definition.
- (f) "Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.
- (g) "Public place" means any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement. "Public place" does not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 or the Codified Ordinances to sell alcoholic liquors for consumption on the premises.
- (h) "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal, proprietor, agent or employee.
- (i) "Selling" includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.
- (j) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar.
(WvaC 60-1-5)

**521.02 ARTICLE NOT APPLICABLE TO CERTAIN USES BY
PHYSICIANS, DRUGGISTS AND OTHERS.**

The provisions of this article shall not prevent:

- (a) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;
- (b) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;
- (c) A physician, dentist or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;
- (d) Hospitals, sanitariums or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;
- (e) Religious organizations from using wine for sacramental purposes.
(WvaC 60-6-5)

521.03 PROHIBITED ACTS GENERALLY.

No person shall:

- (a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
- (b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
- (c) Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6;
- (d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
- (e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
- (f) Advertise any alcoholic liquor in this State except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;
- (g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner.
(WVaC 60-6-7)
- (h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or nonintoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

- (a) Sell alcoholic liquors of a kind other than that which is permissible under West Virginia Code Chapter 60;
- (b) Sell beer to which wine, spirits or alcohol has been added;
- (c) Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the West Virginia Alcohol Beverage Control Commissioner;
(WVaC 60-6-8)
- (d)
 - (1) Sell alcoholic liquors or nonintoxicating beer to a person who is:
 - A. Less than twenty-one years of age;
 - B. An habitual drunkard;
 - C. Intoxicated;
 - D. Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
 - E. Mentally incompetent.
 - (2) It shall be a defense to a violation of subsection (d)(1)A. hereof if the seller shows that the purchaser:
 - A. Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
 - B. Produced evidence of other facts that reasonably indicated at the

time of sale that the purchaser was at least the required age.
(WVaC 60-3-22)

- (e) Keep on the premises covered by his license any alcoholic liquor other than that which is authorized by West Virginia Code Chapter 60.
(WVaC 60-6-8)

521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM STATE AGENCY.

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.
- (b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source.
(WVaC 60-3-22a)

521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES; ILLEGAL POSSESSION.

No person shall:

- (a) Appear in a public place in an intoxicated condition;
- (b) Drink alcoholic liquor or nonintoxicating beer or have an open container of alcoholic liquor or nonintoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane or other public place;
- (c) Drink alcoholic liquor or nonintoxicating beer in a motor vehicle on any highway, street, alley or in a public garage. No person shall possess an open container of nonintoxicating beer or alcoholic liquor in a motor vehicle except in a place which can be reached only by leaving the vehicle;
- (d) Tender a drink of alcoholic liquor to another person in a public place;
- (e) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commissioner, without having first obtained written authority from the Commissioner therefor;
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.

Whoever violates subsection (e) or (f) hereof is guilty of a misdemeanor for a first offense.
(WVaC 60-6-9)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

- (a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7, where the hours shall conform with the hours of sale of alcoholic liquors;

(b) No licensee, his, her, its or their servants, agents or employees shall sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;

(c) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subsection. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(e) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(f) No brewer or distributor shall give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: provided that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the nonintoxicating Beer Commissioner.

(g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(i) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;

(j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: provided, that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;

(k) No retail licensee shall sell or dispense nonintoxicating beer as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this State;

(l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: provided, that no licensee shall have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time;

(n) No distributor shall sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(o) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;

(p) No Class B retailer shall permit the consumption of nonintoxicating beer upon his licensed premises;

(q) No Class A licensee, his, her, its or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;

(r) No distributor shall sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and

(s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.

(t) Any person who violates any provision of this section, or any rule, regulation or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be punished as provided in Section 521.99.

(u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreation activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.
(WVaC 11-16-18)

521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve nonintoxicating beer.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver nonintoxicating beer.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years for the purpose of purchasing nonintoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase nonintoxicating beer.

(c) No person shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage.
(WVaC 11-16-19)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

(a) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premises shall:

- (1) Sell or offer for sale any alcoholic liquors other than from the original package or container;
- (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;
- (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;
- (4) Sell, give away, or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;
- (5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a.m. and 1:00 p.m. on Sunday;
- (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;
- (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;
- (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of the private club or a guest of such member;
- (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the Commissioner;

- (10) A. Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;
- B. Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or
- (11) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.

(b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.
(WVaC 60-7-12)

521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.

(a) No person under the age of twenty-one years shall order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a private club licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Provided, that nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing nonintoxicating beer, wine or alcoholic liquors from a private club licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase nonintoxicating beer, wine or alcoholic liquors from a licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee.
(WVaC 60-7-12a)

521.11 ACTS PROHIBITED BY WINE DEALERS.

It shall be unlawful:

- (a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of West Virginia Code 60-8-6, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in West Virginia Code 60-1-5a;

- (b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;
- (c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mental incompetent or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: provided that the provisions of West Virginia Code 60-3A-25a shall apply to sales of wine;
- (d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;
- (e) For a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine, or an agent specifically authorized by any of the above enumerated persons to make a sale of the wine to a West Virginia distributor: provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor licensed as such in this State: provided, however, that nothing herein is considered to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor may be temporarily out of stock. The Alcohol Beverage Commissioner shall promulgate rules necessary to carry out the provision of this subsection;
- (f) For a person to violate any reasonable rule or regulation promulgated by the Alcohol Beverage Control Commissioner under West Virginia Code Article 60-8.
- (g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery of wine under the provisions of this article. With the prior approval of the Commissioner a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons, under the age of eighteen years shall be clearly indicated on the licensee's license.
(WVaC 60-8-20)

521.12 UNLAWFUL PURCHASE OF WINE.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve wine or other alcoholic liquor.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase wine or other alcoholic liquors.

(c) No person shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one years to whom they are not related by blood or marriage.

(WVaC 60-8-20a)

521.13 UNLAWFUL PURCHASE FROM RETAIL LIQUOR LICENSEE.

(a) No person under the age of twenty-one years shall purchase, consume, sell, serve or possess alcoholic liquor.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years shall, for the purpose of purchasing liquor from a retail licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase liquor from a retail licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source.

(d) No person while on the premises of a retail outlet shall consume liquor or break the seal on any package or bottle of liquor.
(WVaC 60-3A-24)

521.14 ILLEGAL POSSESSION OF CONTROLLED SUBSTANCES AND MARIJUANA.

No person shall:

- (a) Consume or use any controlled substance including marijuana on any public sidewalk, walkway, entranceway, street, lane or other public place.
- (b) Consume or use any controlled substance including marijuana in a motor vehicle on any highway, street, alley or in any other public place.
- (c) Tender or sell any controlled substance including marijuana to another person in a public place.
- (d) Possess any controlled substance including marijuana.
- (e) Possess any controlled substance including marijuana, which was manufactured or acquired in violation of the provisions of West Virginia Code, Chapter 60A.
- (f) Possess any paraphernalia as listed in WV Code Section 60A-4-403a., typically associated with the consumption of any controlled substance including marijuana.
(Passed 1-13-00)

521.15 PROVISIONS FOR VIOLATIONS OF SECTION 521.14.

Any person who is in violation of possession of any controlled substance including marijuana in which the amount recovered is less than 15 grams as referenced in Section 521.14(d) and (e) and/or is in violation of the possession of paraphernalia as referenced in Section 521.14(f), is guilty of a misdemeanor, and will be referred to the Shinnston Municipal Court.

(Passed 1-13-00)

521.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 521.05(a), 521.08(b), 521.12(b) or 521.13(b) shall be fined not more than fifty dollars (\$50.00), or imprisoned for not more than seventy-two hours, or both, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.
- (b) Whoever violates Section 521.05(b), 521.08(c), 521.12(c) or 521.13(c) or (d) shall be fined not more than one hundred dollars (\$100.00), or imprisoned for not more than ten days, or both.
(WVaC 11-16-19, 60-3-22a, 60-8-20a, 60-3A-24)
- (c) Whoever violates Section 521.06(a) shall be sentenced in accordance with the following options:

- (1) Upon first offense, a fine of not more than one hundred dollars (\$100.00). If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judge may delay sentencing until the program is completed and upon completion may dismiss the charges;
- (2) Upon conviction for a second offense, a fine of not more than one hundred dollars (\$100.00) and not more than thirty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center;
- (3) Upon third and subsequent convictions, a fine of not more than one hundred dollars (\$100.00) and not less than five nor more than thirty days in jail or a fine of not more than one hundred dollars (\$100.00) and completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center: provided that three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: provided, however that for the educational counseling programs described in this subsection the community mental health-mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual. A person charged with a violation of Section 521.06(a) who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 27-6A.
- (d) Whoever violates Section 521.06(b) shall be fined not more than one hundred dollars (\$100.00); upon a second or subsequent violation shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than 30 days or both.
- (e) Whoever violates Section 521.06(c) shall be fined not more than one hundred dollars (\$100.00), or confined in jail not more than thirty days, or both.
(WVaC 60-6-9)
- (f) Whoever violates Section 521.06(d) or (e) is guilty of a misdemeanor for a first offense and shall be fined not more than five hundred dollars (\$500.00).
(WVaC 60-6-9)
- (g) Whoever violates Section 521.08(a), 521.12(a) or 521.13(a) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than seventy-two hours, or both, or in lieu thereof, may, for the first offense, be placed on probation for a period not to exceed one year.
(WVaC 11-16-19, 60-8-20a, 60-3A-24)
- (h) Whoever violates Section 521.09 shall be fined not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000), or imprisoned not more than thirty days, or both.
(WVaC 60-7-12)
- (i) Whoever violates Section 521.10(a) or (b) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, and in addition may, for the first offense be placed on probation for a period not to exceed one year.
- (j) Whoever violates Section 521.10(c) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ten days, or both.
(WVaC 60-7-12a)
- (k) Any person in violation of Section 521.15 relating to less than 15 grams of any controlled substance including marijuana and/or paraphernalia typically

associated with the consumption of a controlled substance including marijuana will be fined not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1000), plus all approved court costs. (Passed 1-13-00)

ARTICLE 525
Minors

525.01 Contributing to delinquency or neglect of minor. 525.02 Cruelty to children. 525.03 Parental liability for acts of children.	525.04 Abandoned airtight containers. 525.05 Tobacco usage restrictions. 525.06 Curfew. 525.99 Penalty.
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CROSS REFERENCES

See sectional histories for similar State law
Delinquent child defined - see W. Va. Code 49-1-4
Jurisdiction of municipal court - see W. Va. Code
49-5-1(b)
Contributing to delinquency of minor - see W. Va. Code
49-7-7 et seq.

525.01 CONTRIBUTING TO DELINQUENCY OR NEGLECT OF MINOR.

No person shall by any act or omission contribute to, encourage or tend to cause the delinquency or neglect of any child, including, but not limited to, aiding or encouraging any such child to habitually or continually refuse to respond, without just cause, to the lawful supervision of such child's parent, guardian or custodian or to be habitually absent from school without just cause.

(WVaC 49-7-7)

525.02 CRUELTY TO CHILDREN.

No person shall cruelly ill treat, abuse or inflict unnecessary cruel punishment upon, any infant or minor child, and no person, having the care, custody or control of any minor child, shall willfully abandon or neglect the minor child.

In addition to any penalty provided under this section and any restitution which may be ordered by the court, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(WVaC 61-8-24)

525.03 PARENTAL LIABILITY FOR ACTS OF CHILDREN.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed that specified in West Virginia Code 55-7A-2 for damages which are the proximate result of any one or a combination of the following acts of the minor child:

- (a) The malicious and willful injury to the person of another; or
- (b) The malicious and willful injury or damage to the property of another, whether the property be real, personal, or mixed; or
- (c) The malicious and willful setting fire to a forest or wooded area belonging to another; or
- (d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" means the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this section shall include, but are not limited to, the State, any municipal corporation, county commission and board of education, or other political subdivision of this State or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages, based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this section.

(WVaC 55-7A-2)

525.04 ABANDONED AIRTIGHT CONTAINERS.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater than two feet without first removing all entry doors therefrom. (WVaC 61-2-26)

525.05 TOBACCO USAGE RESTRICTIONS.

(a) Sale or Gift of Tobacco to Persons Under Eighteen. No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

- (1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product; or
- (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.

(b) Any firm or corporation that violates any provision of subsection (a)(1) or (2) hereof and any individual who violates any provision of subsection (a)(1) hereof shall be fined twenty-five dollars (\$25.00) for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: at least one hundred dollars (\$100.00) but not more than two hundred dollars (\$200.00) for the second offense, if it occurs within two years of the first conviction; at least two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00) for the third offense, if it occurs within two years of the first conviction; at least two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00) for the fourth offense, if it occurs within five years of the

first conviction; and at least one thousand dollars (\$1,000) but not more than five thousand dollars (\$5,000) for the fifth and any subsequent offenses, if the fifth or subsequent offense occurs within five years of the first conviction.

(c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form, for the first offense shall be fined not more than one hundred dollars (\$100.00); upon conviction thereof for a second or subsequent offense shall be fined not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00). (WVaC 16-9A-2)

(d) Use or Possession of Tobacco by Persons Under the Age of Eighteen Years. No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product; provided, that minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to West Virginia Code 16-9A-7 shall not be deemed to violate the provisions of this subsection (d). Any person violating the provisions of this subsection (d) shall for the first violation be fined twenty-five dollars (\$25.00) and be required to serve eight hours of community service; for a second violation, the person shall be fined fifty dollars (\$50.00) and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined one hundred dollars (\$100.00) and be required to serve twenty-four hours of community service. (WVaC 16-9A-3)

525.06 CURFEW.

(a) No minor under the age of eighteen years shall loiter, idle, wander or play in or upon the streets, highways, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places between the hours of 11:00 p.m. and 6:00 a.m. of the following day; provided, that the provisions of this section shall not apply to a minor accompanied by his parents, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his parent, guardian or other adult person having the care and custody of the minor, or while the minor is legally employed and is going to or from the place of such employment or is engaged in the duties thereof.

(b) Any minor violating the provisions of subsection (a) hereof, shall be deemed a delinquent child.

(c) No parent, guardian or other adult person having the care and custody of a minor under the age of eighteen years, shall knowingly permit such minor to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places between the hours of 11:00 p.m. and 6:00 a.m. (Passed 3-23-76)

525.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

Whoever violates Section 525.04 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

ARTICLE 529
Offenses Relating to Persons

529.01 Assault and battery.	529.03 Controlled substances.
529.02 Assault and battery on school employees.	529.04 Breathing, inhaling, or drinking certain intoxicating compounds.
	529.99 Penalty.

CROSS REFERENCES

Uniform Controlled Substances Act - see W. Va. Code
Ch. 60A

State law provisions - see W. Va. Code Art. 61-2

Harassing telephone calls - see GEN. OFF. 517.06

Intoxication or drinking in public places - see GEN.
OFF. 521.06

529.01 ASSAULT AND BATTERY.

(a) Assault. No person shall unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Battery. No person shall unlawfully and intentionally make physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally cause physical harm to another person.
(WVaC 61-2-9)

529.02 ASSAULT AND BATTERY ON SCHOOL EMPLOYEES.

- (a) No person shall commit an assault:
- (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or
 - (2) By unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

- (b) No person shall commit a battery:
- (1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or
 - (2) By unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

(c) For the purposes of this section, “school employee” means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a “school employee” includes a student teacher.
(WVaC 61-2-15)

529.03 CONTROLLED SUBSTANCES.

(a) Except as authorized by West Virginia Code Chapter 60A, no person shall manufacture, deliver or possess with intent to manufacturer or deliver, a controlled substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(b) Except as authorized by West Virginia Code Chapter 60A, no person shall create, deliver or possess with intent to deliver a counterfeit substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(c) No person shall knowingly or intentionally possess a controlled substance as defined in West Virginia Code 60A-1-101 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by West Virginia Code Chapter 60A.
(WVaC 60A-4-401)

- (d) No person shall knowingly or intentionally:
- (1) Create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
 - (2) Create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance or the container or label of a counterfeit substance or an imitation controlled substance.

The provisions of subsection (d)(1) hereof shall not apply to a practitioner who administers or dispenses a placebo.
(WVaC 60A-4-401)

529.04 BREATHING, INHALING, OR DRINKING CERTAIN INTOXICATING COMPOUNDS.

(a) No person shall intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichloroethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property or releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the auditory, visual or mental processes. For the purposes of this section, any condition so induced shall be deemed to be an intoxicated condition.

(b) This section does not apply to:

- (1) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or
- (2) To any alcoholic liquor or nonintoxicating beer as defined in West Virginia Code 60-1-5.
(WVaC 61-8-11)

529.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

Whoever violates Section 529.01(a), 529.02(a) or 529.04 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

ARTICLE 533
Offenses Relating to Property

<p>533.01 Shoplifting.</p> <p>533.02 Trespass.</p> <p>533.03 Petit larceny.</p> <p>533.04 Dealing with stolen goods.</p> <p>533.05 Injury or destruction of property or monuments.</p> <p>533.06 Tampering with and theft of utilities; CATV.</p>	<p>533.07 Littering and deposit of garbage, rubbish, junk, etc.</p> <p>533.08 Barricades and warning lights; abandoned excavations.</p> <p>533.09 Unauthorized use of dumpsters.</p> <p>533.99 Penalty.</p>
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CROSS REFERENCES

See sectional histories for similar State law
Authority to regulate advertising - see W. Va. Code
8-12-5(31)
State law provisions - see W. Va. Code Art. 61-3

533.01 SHOPLIFTING.

(a) General Definitions.

- (1) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.
- (2) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (3) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.
- (4) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.
- (5) "Merchandise" means any goods, foodstuffs, wares or personal property or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.

- (6) "Value of the merchandise" means the merchant's stated price of the merchandise, or in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in subsection (b) hereof, the difference between the merchant's stated price of the merchandise and the altered price.
(WVaC 61-3A-6)

(b) Shoplifting Defined.

- (1) 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:
- A. Conceals the merchandise upon his or her person or in another manner; or
 - B. Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
 - C. Alters, transfers or removes any price marking affixed to the merchandise; or
 - D. Transfers the merchandise from one container to another; or
 - E. Causes cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
 - F. Removes a shopping cart from the premises of the mercantile establishment.
 - G. 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.
- (2) 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.
(WVaC 61-3A-1)

(c) 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, 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.
(WVaC 61-3A-4)

(d) Evidence.

- (1) Evidence of stated price or ownership of merchandise may include, but is not limited to:
- A. The actual merchandise alleged to have been shoplifted; or

- B. The unaltered content of the price tag or marking from such merchandise; or
 - C. Properly identified photographs of such merchandise.
- (2) 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.
(WvaC 61-3A-2)
- (e) Civil Liability.
- (1) General rule. Any person who commits any of the acts described in this section shall be civilly liable:
- A. To restore the merchandise to the mercantile establishment; and
 - B. If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and
 - C. For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and
 - D. In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars (\$50.00) or double the value of the merchandise whichever is higher.
- (2) Costs and attorneys' fees. A merchant who is a prevailing party under this section is entitled to costs.
- (3) Effect of conviction. A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by subsection (f) hereof is not entitled to recover the penalty imposed by this section.
- (4) Right to demand payment. The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit such damages or penalty prior to the commencement of any legal action.
(WvaC 61-3A-5)
- (f) Penalty. A person convicted of shoplifting shall be punished as follows:
- (1) First offense conviction. Upon a first shoplifting conviction:
- A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not more than two hundred fifty dollars (\$250.00).
 - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.

- (2) Second offense conviction. Upon a second shoplifting conviction:
- A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.
- B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than five hundred dollars (\$500.00) and shall be confined in jail not more than thirty days.
- (3) Mandatory penalty. In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars (\$50.00), or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.
- (4) Prior convictions. In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.
(WVaC 61-3A-3)

533.02 TRESPASS.

- (a) Definitions. As used in this section:
- (1) "Structure" means any building of any kind either temporary or permanent, which has a roof over it, together with the curtilage thereof.
- (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
- (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
- (4) "Posted land" means that land upon which reasonably maintained signs are placed not more than 500 feet apart along and at each corner of the boundaries of the land upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this section pertaining to trespass on enclosed lands.

- (5) "Cultivated land" means that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.
 - (6) "Fenced land" means that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this section it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this section.
 - (7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this section, shall be considered as enclosed and posted.
 - (8) "Trespass" means the willful unauthorized entry upon, in or under the property of another, but shall not include the following:
 - A. Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.
 - B. The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility or other person owning such right of way or easement whether by written or prescriptive right.
 - C. Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.
 - D. Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.
 - E. Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.
- (WVaC 61-3B-1)

(b) Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be fined not more than one hundred dollars (\$100.00). If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in such structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a).
(WVaC 61-3B-2)

(c) Trespass on Property Other than Structure or Conveyance.

- (1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined not more than one hundred dollars (\$100.00).
- (2) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be subject to the penalty provided in Section 501.99(a).
- (3) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be imprisoned not more than thirty days, or fined not more than one hundred dollars (\$100.00), or both.
- (4) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, provided, that the provisions of this section shall not apply in a labor dispute.
(WVaC 61-3B-3)

533.03 PETIT LARCENY.

No person shall commit petit larceny as defined in West Virginia Code 61-3-13 within the City.

533.04 DEALING WITH STOLEN GOODS.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, any stolen goods or other thing of value which he knows or has reason to believe has been stolen, he shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender is not convicted.

(WVaC 61-3-18)

533.05 INJURY OR DESTRUCTION OF PROPERTY OR MONUMENTS.

(a) No person shall unlawfully, but not feloniously, take and carry away or destroy, tamper with, injure or deface any property, real or personal, not his own.

(b) No person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of the Municipality, tract or lot of land, or any tree marked for that purpose.

(WVaC 61-3-30)

533.06 TAMPERING WITH AND THEFT OF UTILITIES; CATV.

(a) No person with intent to injure or defraud shall procure, make or cause to be made, any pipe, tube, wire or other conductor of gas, water or electric energy, and connect the same, or cause it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action.

(WVaC 61-3-44)

(b) No person with intent to injure or defraud shall connect, or cause to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, or with any main, service pipe or other pipe or conduit for conducting gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, gas or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor. (WVaC 61-3-45)

(c) No person shall make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a CATV system within the Municipality for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission, without payment for the service.

(d) No person, without the consent of the owner, shall willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

533.07 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.

(a) No person shall, without lawful authority, place or dispose of in any manner, upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall cause or allow trash, garbage, waste, rubbish, refuse or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.

533.08 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

533.09 UNAUTHORIZED USE OF DUMPSTERS.

No person without authorization shall dump garbage or trash, or assist in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section.

(WVaC 61-3-53)

533.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 533.05(b) shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

(b) Any person convicted of a violation of Section 533.09 shall be subject to the following penalties:

(1) Upon a first conviction, the defendant shall be fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).

(2) Upon a second conviction, the defendant shall be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).

(3) Upon any subsequent conviction in excess of a second conviction, the defendant shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000) or imprisoned not more than

thirty days, or both.

Notwithstanding the provisions of West Virginia Code 61-11A-4 or West Virginia Code 50-3-2a, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received. (WVaC 61-5-33)

ARTICLE 541
Railroads

541.01 Obstructing railroad crossings.

541.02 Trespassing.
541.99 Penalty.

CROSS REFERENCES

Authority to eliminate grade crossings - see W. Va.
Code 17-10-7

Grant of right of way - see W. Va. Code 31-2-13

Stopping at grade crossing - see TRAF. 343.01 et seq.

541.01 OBSTRUCTING RAILROAD CROSSINGS.

(a) Definitions. As used in this section:

- (1) "Carrier," "railroad" or "railroad company" means a common carrier by railroad.
- (2) "Train" or "trains" means engines, cars and any type of railroad equipment or rolling stock, or any part thereof, capable of blocking any crossing of a railroad track or tracks and any public street, road or highway.

(b) Blocking of Crossing Prohibited; Time Limit.

- (1) No railroad company, except in an emergency, shall order, allow or permit the operation of or operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway for a period longer than ten minutes. This subsection does not apply to an obstruction of any such street, road or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading or unloading operations.
- (2) Upon receiving notification from a law-enforcement officer, member of a fire department, operator of an emergency medical vehicle, or a member of an emergency services provider that emergency circumstances require the immediate clearing of a public highway railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances by the train crew or dispatcher, the railroad shall immediately clear the crossing, consistent with the safe operation of the train.

(c) Responsibility of Railroad Company. The railroad company shall be solely responsible for the acts of its agents and employees in violating any provision of this section.

(d) Presumption. There shall be a rebuttable presumption that a train is operated by the carrier whose marks, numbers, signs and symbols of identification appear on the engine or caboose of such train.

(e) Service of Process. Process issuing for a violation of this section may be served upon the engineer or conductor of the train causing a violation of the provisions of this section or any other officer, agent or attorney-in-fact of the railroad company authorized by law to receive service of summons or other process issuing against such railroad company.
(WVaC Art. 31-2A)

541.02 TRESPASSING.

No person not a passenger or employee, shall be found trespassing upon any railroad or traction car or train of any railroad, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; nor shall any person drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public or private crossings.
(WVaC 61-3-43)

541.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(1) shall be fined not less than one hundred fifty dollars (\$150.00); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two hundred fifty dollars (\$250.00); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than three hundred fifty dollars (\$350.00).
- (b) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(2) shall be fined not less than one thousand dollars (\$1,000); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two thousand five hundred dollars (\$2,500); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than five thousand dollars (\$5,000).
(WVaC 31-2A-6)
- (c) Whoever violates Section 541.02 shall be fined not more than twenty-five dollars (\$25.00) or imprisoned not more than thirty days, or both.

ARTICLE 545
Weapons and Explosives

<p>545.01 Definitions.</p> <p>545.02 Carrying concealed deadly weapons without license.</p> <p>545.03 Exceptions as to prohibitions against carrying concealed deadly weapons.</p> <p>545.04 Persons prohibited from possession of firearms.</p> <p>545.05 Possession of deadly weapons by minors prohibited.</p>	<p>545.06 Possession of machine guns.</p> <p>545.07 Display or sale of deadly weapons.</p> <p>545.08 Brandishing deadly weapons.</p> <p>545.09 Possessing deadly weapons on premises of educational facilities.</p> <p>545.10 Fireworks sale, possession and discharge.</p> <p>545.11 Discharging firearms.</p> <p>545.12 Throwing or shooting missiles.</p> <p>545.99 Penalty.</p>
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to prohibit carrying weapons - see W. Va. Code 8-12-5(16)
 Limitations on power to restrict ownership - see W. Va. Code 8-2-5a
 Dangerous weapons - see W. Va. Code Art. 61-7

545.01 DEFINITIONS.

As used in this article, unless the context otherwise requires:

- (a) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. "Blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag or slapjack.
- (b) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

- (c) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. "Knife" includes, but is not limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.
- (d) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.
- (e) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.
- (f) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The term "metallic or false knuckles" includes any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.
- (g) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.
- (h) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.
- (i) "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 subsections (a) to (h) hereof inclusive, or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of West Virginia Code 18-3-1a and 61-7-11a, in addition to the definition of "knife" set forth in subsection (c) hereof, "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 West Virginia Code 18-3-1a and 61-7-11a, "deadly weapon" includes explosives, 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.
- (j) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.

- (k) "Firearm" means any weapon which will expel a projectile by action of an explosion.
- (l) "Controlled substance" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(d).
- (m) "Drug" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(l). (WVaC 61-7-2)

545.02 CARRYING CONCEALED DEADLY WEAPONS WITHOUT LICENSE.

(a) No person shall carry a concealed deadly weapon, without a State license or other lawful authorization established under the provisions of West Virginia Code 61-7-4 et seq.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor. (WVaC 61-7-3)

545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED DEADLY WEAPONS.

The licensure provisions set forth in West Virginia Code Article 61-7 shall not apply to:

- (a) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site, and returning to his or her home, residence or place of business;
- (b) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from the State, or from the United States for the purpose of target practice, from carrying any pistol, as defined in Section 545.01(g), unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;
- (c) Any law-enforcement officer or law-enforcement official as such are defined in West Virginia Code 30-29-1;
- (d) Any employee of the West Virginia Department of Corrections duly appointed pursuant to the provisions of West Virginia Code 28-5-5 while such employee is on duty;
- (e) Any member of the armed forces of the United States or the militia of the State while such member is on duty;
- (f) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;
- (g) Any resident of another state who has been issued a license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with this State.
- (h) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty.
(WVaC 61-7-6)

545.04 PERSONS PROHIBITED FROM POSSESSION OF FIREARMS.

(a) Except as provided for in this section, no person shall possess a firearm such as is defined in Section 545.01 who:

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is addicted to alcohol;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution;
- (5) Being an alien is illegally or unlawfully in the United States;
- (6) Has been discharged from the armed forces under dishonorable conditions;
- (7) Is subject to a domestic violence protective order that:
 - A. Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;
 - B. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - C.
 1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 2. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (8) Has been convicted in any court of a misdemeanor crime of domestic violence.

(b) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law.

(WVaC 61-7-7)

545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.

(a) Notwithstanding any other provision of this article to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: provided, that a minor may possess a firearm upon premises owned by such minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property. Nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

(b) A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of West Virginia Code 49-5-1 et seq., and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent. (WVaC 61-7-8)

545.06 POSSESSION OF MACHINE GUNS.

No person shall carry, transport or have in his possession, any machine gun, submachine gun or any other fully automatic weapon unless he or she has fully complied with applicable Federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms. (WVaC 61-7-9)

545.07 DISPLAY OR SALE OF DEADLY WEAPONS.

No person shall publicly display and offer for rent or sale, or, where the person is other than a natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same. (WVaC 61-7-10)

545.08 BRANDISHING DEADLY WEAPONS.

No person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, shall carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. (WVaC 61-7-11)

545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.

(EDITOR'S NOTE: Former Section 545.09 which was derived from West Virginia Code 61-7-11a is no longer included in the Codified Ordinances. By Acts 1995 Chapter 90, the West Virginia Legislature reclassified such offense as a felony. Charges for possessing deadly weapons on premises of educational facilities should now be filed under state law.)

545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.

(a) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided in West Virginia Code 11-12-86:

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.
- (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.
- (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
- (4) Trick noisemakers which produce a small report designed to surprise the user and which include:
 - A. A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.
 - B. A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.
 - C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.
- (5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.
- (6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.
(WVaC 29-3-23)

(b) Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided, permits for the supervised display of fireworks may be granted upon application to the State Fire Marshal and after approval of the Police and Fire Chiefs, and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, and of the Police Chief shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars (\$1,000) conditioned on compliance with the provisions of this section and West Virginia Code Article 29-3 and the regulations of the State Fire Commission, provided, that the Municipality shall not be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public.
(WVaC 29-3-24)

545.11 DISCHARGING FIREARMS.

(a) No person shall discharge any air gun, rifle, shotgun, revolver, pistol or other firearm within the corporate limits of the Municipality.

(b) This section does not apply when firearms are used in self defense, in the discharge of official duty or when otherwise lawfully authorized.

545.12 THROWING OR SHOOTING MISSILES.

No person shall throw, shoot or propel an arrow, missile, pellet, stone, metal or other similar substance capable of causing physical harm to persons or property, in or on any public place, in or on the property of another, or from any private property into or onto any public place or the property of another. This section does not apply to supervised archery ranges or instruction nor when otherwise lawfully authorized.

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99(a) for general Code penalty if no specific penalty is provided.)

Whoever violates Section 545.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.

