WEST VIRGINIA CODE CHAPTER 15 ARTICLE 2D

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§15-2D-1. Legislative findings.

The Legislature finds and declares that citizens, state employees and visitors who park, attend functions, conduct business or work at the capitol complex and other state facilities should be safe and secure. The Legislature further finds and declares that it is in the public interest to establish a division within the Department of Homeland Security for the purpose of providing safety and security to individuals who visit, conduct business or work at the capitol complex and other state facilities. The legislature further finds there is a compelling interest in the safety of school facilities throughout the state and that it is in the public interest to dedicate within the West Virginia Department of Homeland Security a law enforcement unit focused on primary and secondary school safety matters.

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§15-2D-2. Duties and powers of the director and officers.

(a) The state facilities protection division within the Department of Homeland Security shall hereafter be designated the Division of Protective Services. The purpose of the division is to provide safety and security at the capitol complex and other state facilities: *Provided*, That nothing in this section shall be construed as limiting the law-enforcement authority of the division set forth in §15-2d-3 of this code.

(b) The Governor shall appoint, with the advice and consent of the Senate, the director of the division whose qualifications shall include at least 10 years of service as a law-enforcement officer with at least three years in a supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States Military institution.

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§15-2D-3. Duties and powers of the director and officers.

(a) The director is responsible for the control and supervision of the division. The director and any officer of the division may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and any officer of the division shall also have such powers throughout the State of West Virginia in investigating and performing law-enforcement duties for offenses committed on the Capitol Complex or related to the division's security and protection duties at the Capitol Complex and throughout the state relating to offenses and activities occurring on any property owned, leased, or operated by the State of West Virginia when undertaken at the request of the agency occupying the property: *Provided*, That nothing in this article shall be construed as to obligate the director or the division to provide, or be responsible for providing, security at state facilities outside the Capitol Complex.

(b)(1) The director shall establish a School Safety Unit within the Division of Protective Services. Officers shall be assigned to the School Safety Unit at the discretion of the director. The officers assigned to the School Safety Unit shall primarily be charged to make school safety inspections and to make recommendations to appropriate county school superintendents, principals, or other school administrators, regarding school safety. The officers assigned to the School Safety Unit shall also be authorized to respond to and investigate all school safety matters, in consultation with county boards of education: *Provided*, That any officer of the School Safety Unit shall have statewide jurisdiction and powers of general law enforcement and arrest for violations of law committed in their presence.

(2) The director, in consultation with the Law Enforcement Professional Standards Subcommittee of the Governor’s Committee on Crime, Delinquency and Correction, shall establish minimum recommendations for training for employment, job-entry, and in-service training curricula, and provide written certification, for school safety officers as described in §18-5-52, which training and certification shall be administered and provided in the manner approved by the director. Such training standards may include:

(A) Relevant state and federal laws;

(B) School and personal liability issues;

(C) Security awareness in the school environment;

(D) Mediation and conflict resolution, including de-escalation techniques such as a physical alternative to restraint;

(E) Disaster and emergency response;

(F) Working with students with disabilities, autism spectrum disorders, mental health needs,

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substance use disorders, and past traumatic experiences; and

(G) Student behavioral dynamics, including child and adolescent development and brain research. The Division of Protective Services School Safety Unit may establish an advisory committee consisting of local school board, public charter school, and private or religious school representatives and school security personnel to assist in the development of the standards and certification requirements in this subdivision.

(3) For purposes of this section, "school safety officer" means an individual who is employed by a local school board, public charter school, or private or religious school for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of the policies of the school board, public charter school, or private or religious school, and reasonably detaining any individual committing an offense that constitutes a breach of the peace, as defined in §18-5-52, on school property, school buses, or at school-sponsored events, and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

(c) Any officer of the division shall be certified as a law-enforcement officer by the Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this code.

(d) The director may:

(1) Employ necessary personnel, all of whom shall be classified exempt, assign them the duties necessary for the efficient management and operation of the division, and specify members who may carry, without license, weapons designated by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security at the Capitol Complex and other state facilities. The provisions of §5A-3-3 of this code do not apply to purchases made pursuant to this subdivision;

(4) Establish and provide standard uniforms, arms, weapons, and other enforcement equipment authorized for use by members of the division and shall provide for the periodic inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property furnished to members of the division by the State of West Virginia is and remains the property of the state;

(5) Appoint security officers to provide security on premises owned or leased by the State of West Virginia;

(6) Consistent with the provisions in §15-2D-5 of this code, provide security for the Speaker of the House of Delegates, the President of the Senate, the Governor, or a justice of the Supreme Court of Appeals;

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(7) Gather information from a broad base of employees at and visitors to the Capitol Complex to determine their security needs and develop a comprehensive plan to maintain and improve security at the Capitol Complex based upon those needs;

(8) Assess safety and security needs and make recommendations for safety and security at any proposed or existing state facility as determined by the Secretary of the Department of Homeland Security, upon request of the secretary of the department to which the facility is or will be assigned: *Provided*, That records of such assessments, and any other records determined by the Secretary of the Department of Homeland Security to compromise the safety and security at any proposed or existing state facility, including primary and secondary schools, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 *et seq*. of this code; and

(9) Enter into an interagency agreement with the Secretary of the Department of Homeland Security and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the Governor, the President of the Senate, and the Speaker of the House of Delegates, and a copy shall be filed in the office of the Secretary of State and shall be a public record.

(e) The director shall:

(1) Propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code. The rules shall, at a minimum, establish ranks and the duties of officers within the membership of the division.

(2) Consistent with subsection (b) of this section, provide services to all public primary and secondary schools in furtherance of the purposes of the School Safety Unit: *Provided*, That the director may provide services to any private primary and secondary schools in the state upon request.

(3) Deliver a monthly status report to the Speaker of the House of Delegates and the President of the Senate.

(4) Require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical information, to have its employees submit to a fingerprint-based state and federal background inquiry through the state repository, and require a new employee who is employed to provide services on the grounds or in the building of the Capitol Complex to submit to an employment eligibility check through E-verify.

(i) After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol Complex for purposes of verifying

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compliance with this section.

(ii) All current service providers shall, within 90 days of the amendment and reenactment of this section by the 80th Legislature, ensure that all of its employees who are providing services on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or critical information submit to a fingerprint-based state and federal background inquiry through the state repository.

(iii) Any contract entered into, amended, or renewed by an agency or entity of state government with a service provider shall contain a provision reserving the right to prohibit specific employees thereof from accessing sensitive or critical information or to be present at the Capitol Complex based upon results addressed from a criminal background check.

(iv) For purposes of this section, the term "service provider" means any person or company that provides employees to a state agency or entity of state government to work on the grounds or in the buildings that make up the Capitol Complex or who have access to sensitive or critical information.

(v) In accordance with the provisions of Public Law 92-544 the criminal background check information will be released to the Director of the Division of Protective Services.

(5) Be required to provide his or her approval prior to the installation of any and all electronic security systems purchased by any state agency which are designed to connect to the division's command center.

(f) Effective July 1, 2017, the Director of Security and security officers of the Department of Arts, Culture, and History shall be made part of, and be under the supervision and direction of, the Division of Protective Services. Security for all Capitol Complex properties of the Department of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

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§15-2D-4. Oath of office.

(a) The director and each member of the division shall take and subscribe to an oath of office in conformity with article IV, section five of the Constitution of the State of West Virginia.

(b) Any member serving on the effective date of this article shall take and subscribe to the oath within thirty days of the effective date of this section. Any member hired subsequent to the effective date of this section shall take and subscribe to the oath before entering upon the discharge of his or her duties. All oaths shall be filed and preserved in the office of the Division of Protective Services.

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§15-2D-5. Application of article.

(a) The provisions of this article shall not apply to the West Virginia Senate, the West Virginia House of Delegates, the West Virginia Legislature or the West Virginia Supreme Court of Appeals, or to any part of the capitol complex under the supervision or control of the West Virginia Senate, the West Virginia House of Delegates, the West Virginia Legislature or the West Virginia Supreme Court of Appeals, unless agreed to by the president of the West Virginia Senate, the speaker of the West Virginia House of Delegates, or jointly by the president of the West Virginia Senate and speaker of the West Virginia House of Delegates, or by order of the West Virginia Supreme Court of Appeals, and then only to the extent that the president of the West Virginia Senate, the speaker of the West Virginia House of Delegates or the West Virginia Supreme Court of Appeals agrees to such application, and then only to that part of the capitol complex under the supervision or control of the respective houses of the Legislature, individually or jointly, or of the court.

(b) The provisions of this article shall not limit or eliminate the jurisdiction of law-enforcement agencies at any state facility or the duty of law-enforcement agencies to respond to calls at any state facility.

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§15-2D-6.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§15-2D-7. Security enforcement fund.

There is hereby created in the state Treasury a special revenue fund designated the "security enforcement fund." The money of the fund shall be made available for investment under the provisions of article six, chapter twelve of this code. The fund shall consist of all gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, corporation, association or other entity, and all interest or other return accruing to the fund.

The money in the fund shall be used for the operation of the division and for the costs and expenses incurred pursuant to this article. Any balance including accrued interest in the fund at the end of any fiscal year shall not revert to the General Fund but shall remain in the fund for those purposes.

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§15-2D-8. Awarding service weapon upon retirement of Division of Protective Services member.

(a) Upon the retirement of a member of the Division of Protective Services, including the Director of the Division of Protective Services and Deputy Director of the Division of Protective Services, the Division of Protective Services shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the member is retiring honorably with a minimum of 10 years of service; or

(2) The member is retiring with less than 10 years of service based upon a determination that the employee is totally physically disabled as a result of his or her service with the Division of Protective Services.

(b) Notwithstanding the provisions of subsection (a) of this section, the Division of Protective Services shall not award a service weapon to any member whom the Division of Protective Services:(1) Knows is prohibited from possessing a firearm by state or federal law, (2) has reason to believe such retiring member to be mentally incapacitated, or (3) has reason to believe the retiring member constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the Division of Protective Services may offer the service weapon for sale, at fair market value, to any active or retired Division of Protective Services member. The Director of the Division of Protective Services, or his or her designee, may use the proceeds from any sales to offset the cost of new service weapons. The disposal of service weapons pursuant to this section does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.

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