WEST VIRGINIA CODE: §18-5-54

§18-5-54. Public school West Virginia Guardian Program.

(a) Purpose. — County boards of education may contract with an independent contractor who is a former state trooper, former deputy sheriff, former state fire marshal, former Department of Natural Resources police officer, former municipal police officer, or former federal law-enforcement officer to provide West Virginia Guardian services as that term is defined in this section. The purpose of the contract is to provide public safety and/or security on public school grounds and buildings. Any county board may contract with as many independent contractors as the board considers necessary.

(b) Definitions. — For purposes of this section, the following words have the following meanings:

"Contract" means an agreement between a county board and an independent contractor who has been certified by the county sheriff relating to the procurement of public safety or security services.

"County board" means the same as that term is defined in §18-1-1 and used in §18-5-1 *et seq*.

"Independent contractor" means the same as that term is used in §21-5I-4.

"Public safety or security" means the protection of students, faculty, and staff of a public school from violence, exposure to weapons, and threats on school grounds.

"Former deputy sheriff" means the same as that term is used in §7-14C-1, but who has retired from service.

"Former municipal police officer" means the same as that term is used in §8-22A-2 and includes officers who were members pursuant to the provisions of §8-22A-16, but who are retired from service.

"Former natural resources police officer" means the same as that term is used in §20-18-2, but who is retired from service.

"Former state fire marshal" means the same as that term is used in §15A-10-1 *et seq*., but who is retired from service.

"Former state trooper" means a state police officer employed pursuant to the provisions of §15-2-1 *et seq*., or §15-2A-1 *et seq*. and who has retired pursuant to the provisions of §15-2-27 or §15-2A-6 of this code.

"Former federal law-enforcement officer" means a federal law-enforcement officer employed pursuant to the provisions of §15-10-5(b), who was classified as a Criminal Investigation

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Series 1811 investigator, and who has retired from service.

"West Virginia Guardian" means an independent contractor certified by the county sheriff as meeting the qualifications set forth in this section and who is under contract to a county board for the purposes of providing public safety and/or security on school grounds. Persons contracted to provide these services shall include a retired state trooper, a retired state fire marshal, a retired Department of Natural Resources police officer, a former municipal police officer, a retired federal law-enforcement officer, or a retired deputy sheriff. A West Virginia Guardian is considered an authorized individual for purposes of the Gun-Free School Zones Act of 1990, 18 U.S.C. §921 and §922.

(c) Authority. — Notwithstanding the provisions of §61-7-11a or any applicable rule, an independent contractor acting as a West Virginia Guardian may carry weapons upon meeting all the requirements of this section. A West Virginia Guardian is not law enforcement and has no authority to arrest. They are to provide public safety and/or security to protect life and property as set forth in this section. Guardians shall wear apparel that makes them readily identifiable as a Guardian while performing the duties as set forth in in this section.

(d) Requirements for participation. — Prior to entering into a contract with a West Virginia Guardian, the Guardian shall apply for a permit from the county sheriff of the county in which the Guardian will provide services to the county board and, at that time, pay a fee of $50. The county sheriff shall require an applicant to provide proof that he or she:

(1) Is a citizen of the United States and the State of West Virginia;

(2) Has received a high school diploma or a high school equivalency diploma;

(3) Has met and passed all the requirements for a concealed carry permit as set forth in §61-7-4;

(4) Has completed and passed all the following training courses and/or examinations:

(A) The Law Enforcement Professional Standards program. The cost of this program is to be paid by the independent contractor;

(B) A fitness for duty examination which shall include a physical examination, vision examination, psychiatric examination, and a pre-employment drug screen within one year of beginning a contract with a county board and upon initiating a new contract following the expiration of all contract extension options. The cost of these each shall be paid by the independent contractor;

(C) A firearm and less than lethal use of force course. To maintain firearm proficiency, the independent contractor shall complete yearly training in firearm and less than lethal use of force course; and

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(D) Training on crisis de-escalation techniques, disaster and emergency response, bomb threats, performing their duties in the presence of students with disabilities including, but not limited to, students with autism spectrum disorders, and cardiopulmonary resuscitation.

(5) Is retired from his or her employment as a state trooper, a deputy sheriff, a municipal officer, a Division of Natural Resources police officer, a State Fire Marshal, or federal law enforcement;

(6) Is current in any obligation, including taxes, to the State of West Virginia; and

(7) Any other requirements imposed by the county board which may include, but are not limited to, a pre-employment written examination and a pre-employment polygraph exam. A county board may also require an independent contractor to carry appropriate liability insurance at his or her expense.

The permit application fee received by the sheriff shall be deposited by the sheriff into a guardian program fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this fund are to be expended by the sheriff to pay the costs associated with issuing Guardian permits. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

Meeting all of the requirements as set forth in this subsection does not guarantee a contract will be extended to the applicant. The county sheriff may, in his or her reasonable judgment, decline to certify to a county board a person as eligible for participation as a guardian.

(e) Exclusions from participation. — Any of the following shall preclude an independent contractor from participation as a West Virginia Guardian:

(1) Having not retired from either service to the State of West Virginia as a state trooper, a municipal police officer, a Department of Natural Resources police officer, a former State Fire Marshal, or a deputy sheriff or service as a federal law-enforcement officer;

(2) There is credible evidence of illegal drug use by the independent contractor in the preceding five-year period; or

(3) A disqualifying criminal offense. These shall include, but are not limited to:

(A) Domestic violence as set forth in §61-2-28;

(B) Driving under the influence as set forth in §17C-5-2;

(C) Child abuse as set forth in §61-8D-1 *et seq.*;

(D) Unlawful manufacture, delivery, or possession with intent to deliver any controlled

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substance as set forth in §60A-4-1 *et seq*.; and

(E) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county board.

(f) Insurance coverage. —

A county board contracting for the services of a West Virginia Guardian shall maintain adequate insurance for liability, property loss, and the personal injury of students and other personnel to the extent permitted by the Board of Risk and Insurance Management pursuant to §29-12-5a in addition to any appropriate liability insurance coverage required by subdivision (d)(7) of this section.

(g) Miscellaneous. —

(1) In contracting for the services set forth in this section, county boards may not be subject to purchasing requirements set forth in §5A-3-1 *et seq*.

(2) Nothing in this section requires a county board to enter into a contract for guardian services. Participation by a county board is voluntary and subject to the availability of county funds. Any county board that opts to participate shall do so at its own expense and any additional funds provided by county entities or private donations. The provisions of this section place no obligation for the state to appropriate money for the purposes set forth in this section.

(3) As an independent contractor, a West Virginia Guardian is not eligible for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia Guardian, or any other state-sponsored or -offered state benefit plan.

(4) Notwithstanding any other provision of this code or federal law to the contrary, nothing in this section shall be construed to create an employer-and-employee relationship.

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