WEST VIRGINIA CODE: §60-6-9

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person may not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Tender a drink of alcoholic liquor to another person in a public place;

(4) Operate a business without a license issued under §60-1-1 et seq. of this code which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice, and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a "bring your own bottle", "bring your own booze", or "BYOB" establishments;

(5) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of a citation, transport the individual to the individual's present residence, or arrange for the transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is

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released from the emergency room, the officer may proceed as described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;

(2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested, or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than $5 nor more than $100. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours' duration at the nearest community mental health – mental retardation center, the judicial officer 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 less than $5 nor more than $100 and not more than 60 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 less than $5 nor more than $100 and not less than five nor more than 60 days in jail or a fine of not less than $5 nor more than $100 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

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public intoxication within the preceding six months is considered evidence of alcoholism. 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.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100; and upon a second or subsequent conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than $100 nor more than $500; and upon conviction of second or subsequent offense, he or she is guilty of a felony and, shall be confined in a state correctional facility for a period of not less than one year nor more than three years.

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