WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 400

(By Senator Bowman, et al.)

PASSED March 9, 1996
In Effect NINETY DAYS FROM Passage
ENROLLED

Senate Bill No. 400

(By Senators Bowman, Wooton, Anderson, Buckalew, Deem, Dittmar, Miller, Oliverio, Ross, Scott and Wiedebusch)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to repeal sections seven and eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-e, all relating to criminal offenses involving explosives; definitions; penalties cumulative; illegal possession of destructive devices, explosive materials or incendiary devices; criminal use of destructive devices, explosive materials or incendiary devices; causing death or injury, penalties; causing death or injury to an explosives detection animal; manufacture, purchase, sale, advertising for sale, transporting or possession or use of hoax bomb; possession or use of hoax bomb in commission of a felony; theft of explosive material from storage magazines or buildings; receipt, possession, storage, sale or transportation of stolen explosive material; wanton endanger-
ment involving destructive devices, explosive materials or incendiary devices; exemptions; contraband, seizure and forfeiture; legislative findings; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article three-e, all to read as follows:

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

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

2 (a) "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

3 “Destructive device” does not include a firearm as such is defined in section two, article seven of this chapter or model rockets and their components as defined in section twenty-three, article three, chapter twenty-nine of this code.

4 (b) “Explosive material” means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a
sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes or fireworks defined in section twenty-three, article three, chapter twenty-nine of this code which are not used in violation of this article. Also included are all explosive materials listed annually by the office of the state fire marshal and published in the state register, said publication being hereby mandated.

(c) "Hoax bomb" means any device or object that by its design, construction, content or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device.

(d) "Incendiary device" means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: Provided, That no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device.

(e) "Legal authority" means that right as expressly stated by statute or law.

(f) "Person" shall mean an individual, corporation, company, association, firm, partnership, society or joint stock company.

(g) "Storage magazine" is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage
62 of explosive materials.


1 It is the intention of the Legislature in enacting this
2 article that all criminal offenses and penalties defined in
3 this article shall be cumulative and shall be in addition
4 to any other offenses and penalties provided for by law.
5 The Legislature contemplates and authorizes separate
6 and consecutive sentences for the offenses defined in this
7 article and other offenses provided for or defined by law.
8 The Legislature declares as a matter of law that for the
9 offenses defined in this article that involve injuries or
10 death to persons those offenses are separate offenses as
11 to each person whose injury or death results from the
12 conduct proscribed by this article.

§61-3E-3. Illegal possession of destructive devices, explosive
materials or incendiary devices; penalty.

1 Any person who possesses or manufactures any explo-
2 sive material without first obtaining a permit to use
3 explosives from the office of the state fire marshal or
4 who possesses or manufacturers any destructive device
5 or incendiary device shall be guilty of a felony, and, upon
6 conviction thereof, shall be committed to the custody of
7 the division of corrections for not less than one nor more
8 than ten years or fined not more than five thousand
9 dollars, or both.

§61-3E-4. Criminal use of destructive device, explosive
material or incendiary device; penalty.

1 Any person who unlawfully and intentionally damages
2 the property of another or attempts to damage the
3 property of another by the use of a destructive device,
4 explosive material or incendiary device shall be guilty of
5 a felony, and, upon conviction thereof, shall be commit-
6 ted to the custody of the division of corrections for not
7 less than two nor more than ten years, or fined not more
8 than ten thousand dollars, or both.

§61-3E-5. Causing death or injury; penalties.
(a) Any person who violates the provisions of this article which violation causes bodily injury to any person shall be guilty of a felony, and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two nor more than ten years, or fined not more than five thousand dollars, or both.

(b) Any person who violates the provisions of this article which violation causes serious bodily injury to any person shall be guilty of a felony, and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than three nor more than fifteen years, or fined not more than ten thousand dollars, or both.

(c) Any person who violates the provisions of this article which violation causes the death of any person shall be guilty of a felony, and, upon conviction thereof, shall be committed to the custody of the division of corrections for a definite term of years of not less than ten years nor more than forty years. No person sentenced to a period of imprisonment pursuant to the provisions of this subsection shall be eligible for parole prior to having served a minimum of ten years.

§61-3E-6. Causing death or injury to an explosives detection animal; penalty.

Any person who violates the provisions of this article which violation causes death, serious or debilitating bodily injury to an explosives detection animal owned or used by a law-enforcement agency, shall be guilty of a felony, and, upon conviction thereof, be committed to the custody of the division of corrections for not less than one year nor more than five years or fined not more than five thousand dollars, or both.

§61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty.

(a) Any person who knowingly manufactures, pur-
chases, sells, advertises for sale, transports or possesses
a hoax bomb with intent to violate any provision of this
code shall be guilty of a misdemeanor. Any person
convicted of a violation of this section shall be incarcerated in a county or regional jail for not less than six
months nor more than one year, or fined five thousand
dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of
this section, any person who possesses or uses a hoax
bomb to commit or attempt to commit any felony shall
be guilty of a felony, and, upon conviction thereof, shall
be committed to the custody of the division of corrections for not less than one nor more than ten years, or
fined not more than ten thousand dollars, or both.

§61-3E-8. Theft of explosive material from storage magazines
or buildings; penalty.

Any person who breaks and enters or shall enter
without breaking any storage magazine, shop, office,
storehouse, warehouse or any other building or out-
house adjoining thereto, any railcar, boat, vessel or
motor vehicle within the jurisdiction of any county
within this state where explosive material is stored, with
the intent to commit larceny shall be guilty of a felony,
and, upon conviction thereof, shall be committed to the
custody of the division of corrections for not less than
one nor more than ten years or fined not more than ten
thousand dollars, or both.

§61-3E-9. Receipt, possession, storage, sale or transportation of
stolen explosive material; penalty.

Any person who receives, conceals, transports, ships,
stores, barters, sells or disposes of any explosive material
knowing or have reason to know that such materials is
stolen is guilty of a felony, and, upon conviction thereof,
shall be committed to the custody of the division of
corrections for not less than one nor more than ten years
or fined not more than ten thousand dollars, or both.

§61-3E-10. Wanton endangerment involving destructive de-
vices, explosive materials or incendiary devices; penalty.

1 Any person who wantonly performs any act with a
destructive device, explosive material or incendiary
device which creates substantial risk of death or serious
bodily injury to another shall be guilty of a felony, and,
upon conviction thereof, shall be committed to the
custody of the division of corrections for not less than
two years nor more than ten years or fined not more than
ten thousand dollars, or both.


1 (a) Unless specifically prohibited by any provision of
this code or the laws of the United States, nothing in this
article shall prohibit the authorized manufacture, sale,
transportation, distribution, use or possession of any
explosive material by any person holding a permit for
such issued by the office of the state fire marshal. Any
person performing a lawful activity pursuant to or
regulated by the terms of a permit issued by the division
of environmental protection, or any office thereof, shall
be exempt from the provisions of this article.

11 (b) Unless specifically prohibited by any other provi-
sion of this code or the laws of the United States, nothing
in this section shall prohibit the authorized manufacture,
transportation, distribution, use or possession of any
explosive, destructive device or incendiary device by a
member of the armed forces or law-enforcement officers
whenever such persons are acting lawfully and in the
line of duty; nor shall it prohibit the manufacture,
transportation, distribution, use or possession of any
explosive material, destructive device or incendiary
device to be used solely for lawful scientific research or
lawful educational purposes. Any person engaged in
otherwise lawful blasting activities failing to obtain a
permit or in possession of an expired permit issued by
the office of the state fire marshal shall not be construed
to be in violation of the article.

Any destructive device, explosive material, incendiary
device or hoax bomb possessed, involved in, used or
intended to be used in a violation of this article or any
violation of any criminal law or regulation of this state
are hereby declared to be contraband and any property
interest therein shall be vested in the state of West
Virginia. Said contraband may be seized by the office of
the state fire marshal or other law-enforcement agency
conducting said investigation and upon application to
the circuit court of the county in which said contraband
is seized be forfeited to the state of West Virginia for
destruction or for training purposes by the office of the
state fire marshal or other law-enforcement agency.

§61-3E-13. Legislative findings.

The Legislature hereby finds and declares that the
seizure and use of items under the provisions of this
article is not contemplated to be a forfeiture as the same
is used in section five, article XII of the Constitution of
West Virginia and to the extent that such seizure and use
may be found to be such a forfeiture, the Legislature
hereby finds and declares that the proceeds from a
seizure and use under this article is not part of net
proceeds as the same is contemplated by section five,
article XII of the Constitution of West Virginia.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st day of April, 1996.

Governor