

**FILED**

2005 MAY -3 P 4: 06

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2005



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2991**

(By Delegates Perry, Leach, Miley, Pino,  
Roberts and Michael)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

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### **H. B. 2991**

(BY DELEGATES PERRY, LEACH, MILEY, PINO,  
ROBERTS AND MICHAEL)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §61-5-8 of the Code of West Virginia, 1931, as amended, relating to adults and juveniles in custody or confinement; providing criminal penalties for aiding escape; specifying items that are unlawful to deliver to or be possessed by individuals in custody or confinement; providing criminal penalties for possession of certain items by adults or juveniles in custody or confinement in a jail, state correctional facility, juvenile facility or juvenile detention center; providing criminal penalties for transporting certain items onto the grounds of a jail, state correctional facility, juvenile facility or juvenile detention center; and providing definitions.

*Be it enacted by the Legislature of West Virginia:*

That §61-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.**

1 (a) Where any adult or juvenile is lawfully detained in  
2 custody or confinement in any jail, state correctional facility,  
3 juvenile facility or juvenile detention center, if any other person  
4 delivers anything into the place of custody or confinement of  
5 the adult or juvenile with the intent to aid or facilitate the  
6 adult's or juvenile's escape or attempted escape therefrom, or  
7 if the other person forcibly rescues or attempts to rescue an  
8 adult or a juvenile therefrom, the other person is guilty of a  
9 felony and, upon conviction thereof, shall be confined in a state  
10 correctional facility not less than one nor more than ten years.

11 (b) Where any adult or juvenile is lawfully detained in  
12 custody or confinement in any jail, a state correctional facility  
13 or a juvenile facility or juvenile detention center, if any other  
14 person delivers any money or other thing of value, any written  
15 or printed matter, any article of merchandise, food or clothing,  
16 any medicine, telecommunication device, utensil or instrument  
17 of any kind to the adult or juvenile without the express author-  
18 ity and permission of the supervising officer and with knowl-  
19 edge that the adult or juvenile is lawfully detained, the other  
20 person is guilty of a misdemeanor and, upon conviction thereof,  
21 shall be fined not less than fifty dollars nor more than five  
22 hundred dollars and confined in jail not less than three nor more  
23 than twelve months: *Provided*, That the provisions of this  
24 section do not prohibit an attorney or his or her employees from  
25 supplying any written or printed material to an adult or juvenile  
26 which pertains to that attorney's representation of the adult or  
27 juvenile.

28 (c) If any person transports any alcoholic liquor, nonintoxi-  
29 cating beer, poison, implement of escape, dangerous material,  
30 weapon or any controlled substance as defined by chapter

31 sixty-a of this code onto the grounds of any jail, state correc-  
32 tional facility, juvenile facility or juvenile detention center  
33 within this state and is unauthorized by law to do so, or is  
34 unauthorized by the persons supervising the facility, the person  
35 is guilty of a felony and, upon conviction thereof, shall be fined  
36 not less than one thousand nor more than five thousand dollars  
37 or confined in a state correctional facility not less than two  
38 years nor more than ten years, or both, or, in the discretion of  
39 the court, be confined in jail not more than one year and fined  
40 not more than five hundred dollars.

41 (d) If any person delivers any alcoholic liquor, nonintoxi-  
42 cating beer, poison, implement of escape, dangerous material,  
43 weapon or any controlled substance as defined by chapter  
44 sixty-a of this code to an adult or juvenile in custody or  
45 confinement in any jail, state correctional facility, juvenile  
46 facility or juvenile detention center within this state and is  
47 unauthorized by law to do so, or is unauthorized by the persons  
48 supervising the facility, the person is guilty of a felony and,  
49 upon conviction thereof, shall be fined not less than one  
50 thousand nor more than five thousand dollars or confined in a  
51 state correctional facility not less than one year nor more than  
52 five years, or both.

53 (e) Whoever purchases, accepts as a gift, or secures by  
54 barter, trade or in any other manner, any article or articles  
55 manufactured at or belonging to any jail, state correctional  
56 facility, juvenile facility or juvenile detention center from any  
57 adult or juvenile detained therein is guilty of a misdemeanor  
58 and, upon conviction thereof, shall be fined not less than fifty  
59 dollars nor more than five hundred dollars and confined in jail  
60 not less than three nor more than twelve months: *Provided,*  
61 That the provisions of this subsection do not apply to articles  
62 specially manufactured in any facility under the authorization  
63 of the persons supervising the facility and which are offered for  
64 sale within or outside of the facility.

65 (f) Whoever persuades, induces or entices or attempts to  
66 persuade, induce or entice any person who is in custody or  
67 confined in any jail, state correctional facility, juvenile facility  
68 or juvenile detention center to escape therefrom or to engage or  
69 aid in any insubordination to the persons supervising the facility  
70 is guilty of a misdemeanor and, upon conviction thereof, shall  
71 be fined not less than fifty dollars nor more than five hundred  
72 dollars and confined in jail not less than three nor more than  
73 twelve months.

74 (g)(1) An inmate of a jail, state correctional facility,  
75 juvenile facility or juvenile detention center having in his or her  
76 possession any poison, implement of escape, dangerous  
77 material, weapon or any controlled substance as defined by  
78 chapter sixty-a of this code is guilty of a felony and, upon  
79 conviction thereof, shall be fined not less than one thousand nor  
80 more than five thousand dollars or confined in a state correc-  
81 tional facility not less than one year nor more than five years,  
82 or both, or, in the discretion of the court, be confined in jail not  
83 more than one year and fined not more than five hundred  
84 dollars.

85 (2) An inmate of a jail, state correctional facility, juvenile  
86 facility or juvenile detention center having in his or her  
87 possession any alcoholic liquor, nonintoxicating beer, money or  
88 other thing of value, any written or printed matter, any article  
89 of merchandise, food or clothing, any medicine, telecommuni-  
90 cation device, utensil or instrument of any kind without the  
91 express authority and permission of the supervising officer is  
92 guilty of a misdemeanor and, upon conviction thereof, shall be  
93 fined not less than fifty dollars nor more than five hundred  
94 dollars and confined in jail not more than twelve months.

95 (h) As used in this section:

96 (1) "Dangerous material" means any incendiary material or  
97 device, highly flammable or caustic liquid, explosive, bullet or

98 other material readily capable of causing death or serious bodily  
99 injury.

100 (2) “Delivers” means to transfer an item to an adult or  
101 juvenile who is detained in custody or confinement in any jail,  
102 correctional facility, juvenile facility or juvenile detention  
103 center, or a building appurtenant to those places. The term  
104 includes bringing the item into a jail, correctional facility,  
105 juvenile facility or juvenile detention center or a building  
106 appurtenant to those places. The term includes putting an item  
107 in a place where it may be obtained by an inmate.

108 (3) “Inmate” means an adult or juvenile who is detained in  
109 custody or confinement in any jail, correctional facility,  
110 juvenile facility or juvenile detention center, regardless of  
111 whether the individual is temporarily absent due to medical  
112 treatment, transportation, court appearance or other reason for  
113 a temporary absence.

114 (4) “Implement of escape” means a tool, implement, device,  
115 equipment or other item which an inmate is not authorized to  
116 possess, capable of facilitating, aiding or concealing an escape  
117 or attempted escape by an inmate.

118 (5) “Telecommunication device” means any type of  
119 instrument, device, machine or equipment which is capable of  
120 transmitting telephonic, electronic, digital, cellular or radio  
121 communications or any part of an instrument, device, machine  
122 or equipment which is capable of facilitating the transmission  
123 of telephonic, electronic, digital, cellular or radio communica-  
124 tions. The term includes, but is not limited to, cellular phones,  
125 digital phones and modem equipment devices.

126 (6) “Weapon” means an implement readily capable of lethal  
127 use and includes any firearm, knife, dagger, razor, other cutting  
128 or stabbing implement or club. The term includes any item

129 which has been modified or adapted so that it can be used as a  
130 firearm, knife, dagger, razor, other cutting or stabbing imple-  
131 ment or club. For purposes of this definition, the term "firearm"  
132 includes an unloaded firearm or the unassembled components  
133 of a firearm.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chandy White*

Chairman Senate Committee

*D. Rubin Brown*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Darrell Eskime*

Clerk of the Senate

*Bryce M. Boy*

Clerk of the House of Delegates

*Carl Ray Tomblin*

President of the Senate

*John*

Speaker of the House of Delegates

The within is approved this the 5th  
day of May, 2005.

*[Signature]*  
Governor



PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 10:00am