

February 1970

## Criminal Law–West Virginia Riot Law

William F. Hogsett  
*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Criminal Law Commons](#)

---

### Recommended Citation

William F. Hogsett, *Criminal Law–West Virginia Riot Law*, 72 W. Va. L. Rev. (1970).  
Available at: <https://researchrepository.wvu.edu/wvlr/vol72/iss1/13>

This Legislative Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

### Criminal Law — West Virginia Riot Law

During 1968 America's cities and college campuses were the scene of many violent demonstrations and riots. State legislatures throughout the country, prompted by these occurrences, began reappraising and modifying existing riot control laws.<sup>1</sup> One such riot control law to come under scrutiny was that of West Virginia, which was amended at the regular session of the 1969 West Virginia Legislature.<sup>2</sup> The West Virginia Riot Act, as amended, changes the responsibility for the determination and control of riots from what had been essentially a judicial function to one which is now a police function. That is, it places the burden on the state police, the sheriffs, and the city mayors, rather than on judges and justices of the peace as had the prior law. In addition, the Legislature attempted to give law enforcement officials the specific authority necessary to control group violence. It gave them the power to enforce curfews, prohibit the sale of liquor, beer, firearms, and dangerous explosives, and to search without a warrant when in "fresh pursuit" of a sniper or when there is reason to believe guns or other dangerous articles are on the premises and will be removed before a search warrant can be obtained. A general power was given whereby officials may take "all actions which are necessary and reasonable under the emergency to restore law and order."<sup>3</sup>

<sup>1</sup>E.g., VA. CODE ANN. §§ 18.1-254.01 to 254.12 (Supp. 1968). 21 OKLA. STAT. ANN. § 1320.1-1320.9 (Supp. 1969).

<sup>2</sup>W.VA. ACTS, 1969, c. 37, 6; W. VA. CODE, ch. 61, art. 6, § 1-5 (Michie Supp. 1969), amending W. Va. Code ch. 61, art. 6, §§ 1-5 (Michie 1966).

<sup>3</sup>W. VA. CODE ch. 61, art. 6; § 1 a (Michie Supp. 1969).

Members of the department of public safety, sheriffs, and mayors, and those acting under their order, may, when engaged in suppressing a riot, rout, or unlawful assemblage, cordon off any area or areas threatened by such riot, rout, or unlawful assemblage and may take all actions which are necessary and reasonable under the emergency to restore law and order, and such actions may be, but are not limited to, the following:

(a) Prohibit the sale, dispensing, furnishing or transportation of firearms or other dangerous weapons, ammunition, dynamite or other dangerous explosives in, to, or from such areas.

(b) Prohibit the sale, offering for sale, dispensing, furnishing or consumption of alcoholic beverages or nonintoxicating beer in a public place in such areas, and prohibit the transportation of alcoholic beverages or nonintoxicating beer in, to, or from such areas.

(c) Impose curfews, as required, to control movement of persons in, to, and from such areas.

(d) Enter a private dwelling or other building or other private place in such areas when in fresh pursuit of a rioter, when in search

The West Virginia Riot Act as amended is a product of three principle sources: the English common law, the English Riot Law Act of 1714,<sup>4</sup> and the Virginia Riot Law of 1848.<sup>5</sup> The West Virginia Act speaks of the offenses of riot, rout and unlawful assemblage. For the definitions of these offenses however, one must turn to the common law.<sup>6</sup> The structure of the statute is that of the English Riot Act of 1714. Virginia, in 1848 enacted a riot law patterned on that act and subsequently the state of West Virginia accepted the Virginia law as its riot law.<sup>7</sup> Thus, West Virginia's law, as amended, is a modification of Virginia's law, which was based on the English Riot Act of 1714, and the offenses established are defined in terms of the English common law. The amendments passed by the West Virginia Legislature in 1969 represent a significant development in the history of the law, but in order to make a determination of their effectiveness in controlling the violence in the cities and on the college campuses at which they were presumably aimed, it is necessary to understand the nature of that violence in both situations.

The violence in the ghetto areas of America's cities is to a great extent the result of the feeling on the part of the inhabitants of these areas that they are racially discriminated against.<sup>8</sup> This feeling builds such hostility and distrust on the part of the black community against the white that some minor event, often a form of police action, may trigger a period of widespread violence.<sup>9</sup> Acts of looting, arson, and in some cases, sniping characterize these riots.<sup>10</sup>

of a sniper who has fired upon a person from such a dwelling or other building or place or when in search of firearms, other dangerous weapons, ammunition, dynamite or other dangerous explosives when there is reason to believe that such items are stored in the said dwelling, building or place and that they will be removed therefrom before a search warrant could be obtained. . . .

<sup>4</sup>Riot Act of 1714, 1 Geo. 1, Stat. 2 c 5.

<sup>5</sup>VA. CODE ch. 195, § § 1-5 (1849).

<sup>6</sup>E.g., *State v. Woodridge*, 129 W. Va. 448, 470, 40 S.E. 2d 899, 911, (1946).  
The West Virginia Court stated:

An unlawful assembly is when three or more do assemble themselves to do an unlawful act. Rout is where three or more meet to do an unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed common or way; and make some advance towards it. Riot is where three or more actually do an unlawful act of violence either with or without a common cause or quarrel.

<sup>7</sup>W. VA. CODE ch. 148, § § 1-5 (1868).

<sup>8</sup>O. KERNER, REPORT OF NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 91 (1968) [hereinafter cited as KERNER REPORT.]

<sup>9</sup>See 88 POLITICAL SCIENCE QUARTERLY 217 (1968).

<sup>10</sup>RIOT DATA REVIEW, February 1969.

The violent protests on college campuses result in different forms of violence than those occurring in the urban ghetto.<sup>11</sup> The tactics are those of mass resistance and "confrontation."<sup>12</sup> The disturbances in April and May of 1968 at Columbia University are an example of these tactics and of this type of riot.<sup>13</sup> Violence in the campus riot occurs mainly on public property and usually lacks the elements of arson and sniper activity, which characterize the urban riot.<sup>14</sup>

It is to be remembered that the 1969 amendment to the West Virginia Riot Act basically does two things. It gives the state police, sheriffs, and mayors the responsibility for determining the existence of and suppressing violence in both campus protests and urban riots, and also grants specific powers to these law enforcement officials to aid them in the performance of these duties. First, the possible effects of placing the responsibility in the hands of the named officials must be examined with regard to both types of disturbances.

It would appear that the powers of mayors are ideally suited to deal with violence in the ghettos. Urban riots have at least a partially political basis,<sup>15</sup> and the mayor is the highest ranking elected official of the city. The positions of the state police and sheriffs, however, are not as tenable as that of the mayors. Neither the state police nor sheriffs have sufficient manpower, training, or operational structure to deal adequately with an urban riot. Additionally, these officials are generally the chief law enforcement agencies in rural areas. Concentration in the city of a force anywhere near the

<sup>11</sup>*Id.* at 42. See also THE COX COMMISSION REPORT, CRISIS AT COLUMBIA 25-29, (1968) [hereinafter cited as COX REPORT].

<sup>12</sup>J. SKOLNICK, THE POLITICS OF PROTEST: A STAFF REPORT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE 80 (1969) [hereinafter cited as SKOLNICK REPORT].

"Resistance" and "confrontation" refer to such forms of direct action as: deliberate disruption of or interference with normal routine operations of person or institutions by large masses of persons; deliberate violation of authoritative orders to disperse; forceful retaliation against police use of clubs, chemicals, or other force; the use of barricades or "mobile" tactics to prevent or delay police efforts to disperse a crowd; the use of ridicule, rudeness, obscenity, and other uncivil forms of speech and behavior to shock, embarrass, or defy authorities; refusal to comply with orders or to accept authoritative commands or requests as legitimate.

<sup>13</sup>COX REPORT at 25-29.

<sup>14</sup>*Id.* at 99-187. See also SKOLNICK REPORT at 74.

<sup>15</sup>KERNER REPORT at 178. The West Virginia Legislature adopted the recommendation of the report in giving mayors this power.

size needed to suppress an urban riot effectively would greatly weaken law enforcement in the rural areas.<sup>16</sup> Thus, the West Virginia Riot Act appears to place the responsibility for determination and control of urban riots upon the proper official — the mayor — but it also gives power to officials who might be better used in an auxiliary role.

The placing of the control of campus protests in the hands of sheriffs, state police, and mayors would seem to foreshadow more difficult problems. Academic institutions have traditionally governed themselves and viewed outside interference with a great deal of apprehension.<sup>17</sup> Although it is certainly true that members of academic communities should not be generally exempt from the duty of obedience to law, college officials generally feel that they themselves are best able to deal with violence on campus.<sup>18</sup> In addition, the introduction of outside forces has tended to solidify and enlarge student support of rioters.<sup>19</sup> In view of these considerations, it is possible that this aspect of the 1969 amendment will have little beneficial effect with regard to the control of campus unrest.

It remains to consider the specific powers which the 1969 amendment grants to the named officials for use in the determination and control of riots with respect to both urban and campus unrest. In so far as they are applicable to the urban problem, these powers would seem to be quite appropriate. A survey conducted for the National Advisory Commission on Civil Disorders<sup>20</sup> in twenty-six cities in which riots had occurred, found that police in twenty-five of these cities felt that a ban on liquor sales was effective in controlling the riot, and police in twenty-three cities favored a

<sup>16</sup>*Id.* at 274.

<sup>17</sup>The remarks of a University of Chicago official illustrate this point: We were prepared to lose that building or any other building by occupation or arson right down to the last stone rather than surrender the university's ability to govern itself without the police, the courts, or the Guard.

NEWSWEEK, February 24, 1969 at 23.

<sup>18</sup>See, e.g., *Abram*, "THE ELEVEN DAYS AT BRANDEIS—AS SEEN FROM THE PRESIDENT'S CHAIR", N. Y. Times, Feb. 16, 1969, (Magazine), at 116.

<sup>19</sup>THE PUBLIC INTEREST 81 (Fall 1968):

In all, about a hundred students were hurt. But it was not the violence itself that was so horrible—despite the many pictures in the papers of bleeding students, not one required hospitalization. It was the capriciousness of that final action. The police simply ran wild . . . The next day, almost the entire campus responded to a call for a student strike. In a few hours, thanks to the New York City Police Department, a large part of the Columbia campus had become radicalized.

<sup>20</sup>KERNER REPORT.

curfew in the stricken area. The Commission recommended that state riot laws be amended to give officials these powers. As stated above, such powers were included in the 1969 amendment to the West Virginia Act. The Commission also surveyed fifteen riots in which sniper activity had been reported. Public officials from these cities testified that the amount of sniper activity was greatly overstated originally. The Commission concluded that most sniping reports were actually the result of gunfire by police and other law enforcement officials.<sup>21</sup> Therefore, the provision in the 1969 amendment giving officials the power to enter without a warrant in search of snipers or guns may have little effect on riot suppression. It might be noted that if this provision is used incautiously, the constitutional rights of private citizens could be seriously invaded.<sup>22</sup> Overall, however, the powers given officials by the Legislature would seem to be arguable necessary and proper when used appropriately in dealing with the violence connected with riots in the cities.

The same powers are apparently not as efficient in dealing with violence on college campuses. The enforcement of bans on liquor and gun sales would accomplish little since the protestors are almost never armed<sup>23</sup> and are not likely to be engaged in heavy drinking. In addition, campus disruptions normally center around public property or public buildings where the provisions of the 1969 amendment concerning search would have little relevance.

#### CONCLUSION

In summary, the West Virginia Riot Act seemingly fails to provide an effective framework for the control of campus unrest because the proper officials are not made responsible for its application, and the express powers given are inappropriate for dealing with campus disorders. A different conclusion is reached with respect to the probable effectiveness of the law in dealing with urban riots. The proper official is made responsible, and the powers expressed appear to be both necessary and proper to the control of urban unrest.

*William F. Hogsett*

---

<sup>21</sup>*Id.* at 180.

<sup>22</sup>U. S. CONST. amend. IV.

<sup>23</sup>The use of guns by rioters at Cornell University during the disturbances there appears to have been the exception rather than the rule in campus disruptions.