

**PROTECTING THE FAITHFUL FROM THEIR FAITH:
A PROPOSAL FOR SNAKE-HANDLING LAW IN WEST VIRGINIA**

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ABSTRACT

In the hills of Appalachia sing the hymns of the faithful, preaching a belief in the handling of snakes to prove loyalty to God. In West Virginia, persons may take up poisonous reptiles and pass them amidst crowds in the name of religion without legal restraints. While other states prohibit snake-handling in the name of safety, West Virginia law remains void on the issue. This Article introduces the practice of snake-handling and examines the risks posed by taking up poisonous animals whose bite may cause serious injury or death. This Article then suggests how the West Virginia law may temper the

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threat of this vehemently dangerous practice, despite its strong religious underpinnings.

I. INTRODUCTION

And these signs shall follow them that believe; In my name they shall cast out devils; they shall speak with new tongues; *They shall take up serpents*; and if they drink any deadly thing, it shall not hurt them; they shall lay hands on the sick, and they shall recover.¹

From this biblical passage spun the ritual of snake-handling, or serpent-handling, whereby followers of the Pentecostal Church of God and others in the Holiness movement display, dance with, or pass around poisonous snakes during church services, and if bitten, refuse medical treatment believing it to be up to God to heal them.² Men and women have, quite literally, lived and died by these words. Yet, despite being outlawed in a majority of the Appalachian states where it is most fervently practiced, snake-handling remains legalized in West Virginia, a hub for the deadly act.³

Most recently, in May of 2012, the practice claimed the life of one of its most ardent preachers, Mark Wolford. “I am looking for a great time this Sunday. . . . It is going to be a homecoming like the old days. Good ‘ole raised in the holler or mountain ridge running, Holy Ghost-filled speaking-in-tongues sign believers.”⁴

Wolford, a serpent-handling revivalist, had written these words on his Facebook page as a means to draw practitioners to his next sermon.⁵ He had been traveling throughout Appalachia spreading the faith of the signs before returning to his home base of West Virginia, whereupon he did, indeed, give everyone a homecoming to remember. However, it was not the sort of homecoming he foresaw.⁶ Thirty minutes into a festive outdoor service at

¹ Mark 16:17–18 (King James) (emphasis added).

² Julia Duin, *Death of Snake Handling Preacher Shines Light on Lethal Appalachian Tradition*, CNN BELIEF BLOG (June 1, 2012, 9:19 PM), <http://religion.blogs.cnn.com/2012/06/01/death-of-snake-handling-preacher-shines-light-on-lethal-appalachian-tradition/>. The belief of practitioners is that if you have enough faith, the Lord is not going to let you get hurt. If you get bit, it is because you lost faith. DAVID L. KIMBROUGH, *TAKING UP SERPENTS: SNAKE HANDLERS OF EASTERN KENTUCKY* 26 (Mercer Univ. Press 2002).

³ VA. CODE ANN. § 18.2-313 (West 1975); TENN. CODE ANN. § 39-17-101 (1989).

⁴ Arlette Saenz, ‘Serpent-Handling’ West Virginia Pastor Dies from Snake Bite, ABC NEWS.COM (May 30, 2012), <http://abcnews.go.com/US/serpent-handling-west-virginia-pastor-dies-snake-bite/story?id=16459455>.

⁵ Julia Duin, *Pastor Dies Practicing Snake-Handling Faith*, WASH. POST, May 30, 2012, at C01, available at http://articles.washingtonpost.com/2012-05-29/lifestyle/35458376_1_serpent-wolford-rattlesnake.

⁶ *Id.*

Panther Wildlife Management Area, a state park roughly 80 miles west of Bluefield, West Virginia, Wolford began handling a yellow timber rattlesnake. He passed it to another church member and then to his mother, who was present at the service.⁷ He then laid it on the ground and sat down next to the snake, where it bit him on the thigh.⁸ Wolford had witnessed his father die by the bite of a snake when he was only 15 years old,⁹ and Wolford now found himself facing the same gruesome fate. After refusing medical treatment he lived for approximately ten more hours before dying, what one freelance photographer described to be, an “agonizing death.”¹⁰

Wolford was a man passionate to the cause. At his sermons throughout Appalachia he slung poisonous snakes around his neck, danced with them, and displayed them to his congregations.¹¹ He displayed spots on his hands where copperheads had sunk their fangs.¹² He housed at least eight venomous snakes at one time at his home in Bluefield, including water moccasins and copperheads.¹³ He aspired to help churches in nearby states like North Carolina and Tennessee start up their own snake-handling services, despite the illegality of the practice in those states, stating once, “I’m trying to get anybody I can get involved.”¹⁴ What was, at one time, a hidden faith practiced only by sparse groups amidst the Appalachian hills, Wolford had begun a campaign to revive and replenish this lethal custom with newer, younger congregations.¹⁵

Yet, in reviving his religion, Wolford has spawned support for an assault-like practice in which dangerous animals are passed among groups of people, with each touch threatening another agonizing death. One curator at the Reptile Discovery Center at the National Zoo described such a death as “excruciating.”¹⁶ “The venom attacks the nervous system. It’s vicious and gruesome when it hits.”¹⁷ It is a life-threatening practice comparable to playing a game of Russian roulette.¹⁸ Should this practice not be tempered by the restraints of the law?

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Duin, *supra* note 2.

¹⁶ Duin, *supra* note 5.

¹⁷ *Id.*

¹⁸ Russian roulette is a “game” in which players place a single bullet in a revolving gun and then take turns pointing the loaded gun at themselves and pulling the trigger, testing their luck to see if the single bullet will be expelled.

State park officials at Wolford's final service were unaware of Wolford's activity, but one claimed, "Had we known he had poisonous animals, we would have never allowed it."¹⁹ But within the state of West Virginia, what could they have done to stop it? The bottom line is that this practice, which poses the threat of *death*, remains legal within West Virginia's border.

This Article presents a solution to this void in West Virginia's law. Molded from the existing West Virginia Uniform Controlled Substance Act, this paper advances a law of varying degrees of offenses that increase as the potential risk to society increases. It is not intended to be a judgment upon the rightfulness or wrongfulness of one's religious beliefs. It passes no proponenty for one religion or another. Rather, it simply purports to answer the question of whether or not snake-handling should be legal in West Virginia from the perspective that it is the practice of a deadly act, and provides suggested guidance as to how to regulate the practice so as to avoid further, terrible deaths.

The first Section of this Article introduces the world of snake-handling, providing a historical overview of the practice in both Appalachia generally, and West Virginia specifically, and a look at the current revival of snake-handling in those areas. The next Section discusses what neighboring Appalachian states have done to answer the practice claiming the lives of its followers, and on-going debates that have occurred within West Virginia regarding snake-handling. Finally, the third Section presents an answer to the question of the legality of snake-handling in West Virginia, and a solution for its regulation within state borders that does not impose upon the constitutional guarantee of freedom of religion.

II. AND THEY SHALL TAKE UP SERPENTS . . .

A. *The Beginnings*

While the fundamentalist base of the snake-handling religion can be traced back to the revivals conducted in Cambuslang, Scotland, in the seventeenth century,²⁰ the first true preacher of the faith was the flamboyant George Went Hensley.²¹ In 1910, Hensley witnessed a man handle a poisonous snake without being bitten. Seeing this event led Hensley to the belief that Mark 16:18 (reading "They shall take up serpents . . .") was a command from God, and in order to receive eternal life after death it was necessary for one to risk his life on earth.²² In turn, he established a church at Dolly Pond,

¹⁹ Duin, *supra* note 5, at 2.

²⁰ KIMBROUGH, *supra* note 2, at 14.

²¹ *Id.* at 39–40.

²² *Id.*

Tennessee, called the Church of God with Signs Following; it was the mother church of Southern snake-handling.²³ Here, he preached snake-handling, citing Mark 16 to the congregation.²⁴ He spoke in tongues. He drank poisons. He threw up his arms and knelt in prayer. In his sermons, he ordered his followers to handle venomous snakes in order to prove their faith, or otherwise be “doomed to eternal hell.”²⁵ And his fame spread rapidly throughout Appalachia, amongst both followers and those non-believers who wanted only to watch his show.²⁶

During the first decade of the twentieth century, Hensley attracted a significant following in the Appalachian region. Congregations of sign followers were found in the mountains of southeastern Tennessee, northern Georgia, and western North Carolina.²⁷ Other leaders began sprouting up in Ohio, Virginia, and Alabama.²⁸ Yet, as his fame spread, so too did opposition to his practices. An editorial published on September 24, 1914, in the *Cleveland Herald*, a Tennessee newspaper, claimed that certain snakes used in Hensley’s services had their fangs removed, “making them no more harmful than a dog or cat.” The same editorial also called snake-handling a “prostitution of religion.”²⁹ Others asserted that Hensley deceived his followers, or that Hensley misinterpreted the Bible and what Jesus meant as the signs.³⁰

Perhaps most troublesome was the fact that Hensley’s crowds were not limited to adult populations. An article from the *Chattanooga Daily Times*, September 24, 1914, cited the following occurrence after a local reporter witnessed one of Hensley’s sermons: A 10-year-old child, the daughter of one of the corps preachers, while in an apparent trance from the influence of Hensley, picked up the evil-looking reptile and played with it for several minutes.³¹

²³ *Id.* at 40.

²⁴ *Id.* Practitioners of serpent-handling cite to multiple other biblical passages to sanction their beliefs including *Luke* 10:19 (“Behold, I give unto you power to tread on serpents and scorpion . . . and nothing by any means shall hurt you”), *Acts* 28:3–6 (saying Paul shook off a viper that was “fastened on his hand” without suffering any ill effects), and *Exodus* 4:2–4 (telling how Moses, at God’s command, transformed his staff into a serpent and picked it up by its tail). See KIMBROUGH, *supra* note 2, at 40.

²⁵ KIMBROUGH, *supra* note 2, at 40.

²⁶ *Id.* at 40–42.

²⁷ *Id.* at 40.

²⁸ Perhaps most notable of other leaders in snake handling is Baptist preacher James Miler who brought snake handling to Sand Mountain, Alabama, in the southern tip of Appalachia. See DENNIS COVINGTON, *SALVATION ON SAND MOUNTAIN: SNAKE HANDLING AND REDEMPTION IN SOUTHERN APPALACHIA* 179–81 (Addison Wesley Publ’g Co. 1994).

²⁹ *Id.*

³⁰ *Id.* (citing *Signs Following Believers*, CHURCH OF GOD EVANGEL, June 29, 1918, at 1).

³¹ *Id.*

On another occasion, while Hensley was preaching at a meeting of four hundred onlookers, a reporter witnessed a frightening encounter:

At the height of the meeting, when believers were preaching in unknown tongues, Robinson [a man in the crowd] released the snake. The first person to see it was a woman with a baby in her arms. She picked the snake up and fondled it. "At times it was within six inches of the face of the baby."³²

And then people started to die.

The first life claimed by snake-handling was a young man in Bartow, Florida. In May, 1906, he was bitten by a snake during one of Hensley's sermons and became ill.³³ Though Hensley predicted the man would miraculously recover, the man died soon after as a result of his carelessness in handling the snake during the sermon.³⁴ Bartow, in turn, passed a law banning snake handling, and Hensley left the area shortly thereafter.³⁵

At one Virginia meeting of snake-handling, in Wise County, "Anna Kirk, the twenty-six-year-old wife of Reverend Harvey O. Kirk, was struck three times on the wrist after 'patting the head' of a snake that her husband was handling and waiving her arms over it."³⁶ Her hand became swollen and turned black, and three days later she gave birth to the baby that had been in her womb when the snake bit. The baby died moments after delivery, and soon after Anna died also. Samples of Anna's blood revealed that she, and likely too her newborn, died from the poison of the snake.³⁷ Anna's husband was arrested for murder for handing her the snake, and ultimately pleaded guilty to manslaughter and accepted a sentence of three months in jail.³⁸

Hensley too met his demise in 1955 by the fang of that which he had built his ministry around. He had been conducting a snake-handling meeting in Altha, Florida, and on Sunday, July 24, he procured a five-foot eastern diamondback rattlesnake.³⁹ Having been stored in a lard can, Hensley removed the snake, wrapped it around his neck, and rubbed it on his face.⁴⁰ He walked among his audience displaying the snake before being bitten on the wrist as he

³² *Id.* at 44–45 (citing *Reptile in the Meetin'*, CHATTANOOGA DAILY TIMES, Sept. 21, 1914).

³³ *Id.* at 104–05.

³⁴ *Id.* at 105.

³⁵ *Id.* at 104–05.

³⁶ *Id.* at 136–37.

³⁷ *See id.* at 137.

³⁸ *Id.*

³⁹ *Id.* at 133.

⁴⁰ *Id.*

attempted to return it to its can.⁴¹ After refusing medical treatment and suffering a severely painful, discolored arm, Hensley died early the next morning.⁴²

B. West Virginia and the Jolo Handlers

West Virginia is home to several snake-handling churches, most of which are secluded and for which there is little documentation. However, it is also home to arguably one of the most famous snake-handling sects, the Church of the Lord Jesus in Jolo, the group which founded the practice within the state.⁴³

As George Hensley spread the practice throughout Appalachia, West Virginia was not lost in receipt of the faith. Barbara Elkins witnessed Hensley handling while he was in West Virginia in 1935, and in turn began handling herself.⁴⁴ In the late 1940s, she, along with her husband, Bob Elkins, hosted house church meetings where snakes were handled.⁴⁵ And by 1956, Reverend Joe Robert (Bob) Elkins founded the formal Church of the Lord Jesus, with the construction of its first church building in the rural McDowell County, resting in the southernmost point of West Virginia.⁴⁶ Here grew a church where members brandished poisonous snakes, drank poison, and played with fire as a testimony to their faith.⁴⁷

Publicity for the church turned sour when it too saw the deadly consequences of including venomous snakes in its ceremonies. In 1961, Barbara Elkins' daughter, Columbia Gaye Chafin, was bitten by a rattlesnake while handling in her parents' church.⁴⁸ As do most handlers in testimony to

⁴¹ *Id.*

⁴² *Id.*

⁴³ The Jolo handlers received national media attention following the death of twenty-six year old Columbia Chafin, discussed *infra* text accompanying notes 53, 82, including an interview in the nationally read *People Magazine* of her parents, Barbara and Bob Elkins, who founded the Jolo church. Ralph W. Hood, Jr., *Contemporary Serpent Handling Sects of Appalachia*, WORLD RELIGIONS AND SPIRITUALITY PROJECT VCU (Oct. 16, 2012), <http://www.has.vcu.edu/wrs/profiles/SerpentHandlers.htm>. Another snake-handling church to receive media attention in West Virginia was the Scrabble Creek Church of All Nations located in Fayette County, which allowed video of its services, including the widely distributed film, *Holy Ghost People*. *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*; Julia Duin, *In WV, Snake Handling is Still Considered a Sign of Faith*, WASH. POST, Nov. 13, 2011, at A19, available at http://articles.washingtonpost.com/2011-11-10/lifestyle/35281689_1_snake-handlers-drink-strychnine-wolford.

⁴⁷ Duin, *supra* note 46.

⁴⁸ Hood, *supra* note 43.

their faith, she refused medical treatment and died at the Elkins' home four days later.⁴⁹

C. *The Revival*

Snake-handling is undoubtedly a practice whose popularity has waxed and waned since its inception.⁵⁰ The Jolo church of West Virginia provides a prime example. The 1950s to 1970s were prosperous times for McDowell County, where the church is located, and in those early years of the church's life it was full of practitioners.⁵¹ Recounted one visitor, "The church would be so full, people would stand outside and look in the windows."⁵² But then, following negative publicity after Columbia Chafin's death and an economic downturn in which four-fifths of the county's population dribbled away, the practice dwindled.⁵³ It relied on passage from family to family, and as families disappeared, so too did the practice.

Then with trumpets blaring, in rode Mark Wolford to revive a flat-lining tradition. Prior to his death, Wolford had been on a campaign to restore the practice. Based out of West Virginia, he traveled to other states to support the practice, stating once "I'm getting the faith started in other states . . . there's [sic] been crowds coming."⁵⁴ He held sermons for hundreds, targeting areas like Tennessee and North Carolina, encouraging others to take up snakes despite the illegality of the act.⁵⁵ And his tactics saw light, growing groups of twenty-year-olds have begun sprouting up in areas like LaFollette, Tennessee, and Middlesboro, Kentucky, boasting the practice of this religion on Facebook and Twitter pages.⁵⁶ They share word about the time and place of services online, and invite outsiders to their churches.⁵⁷ In fact, beginning in September these groups now air their beliefs on national television in a documentary series titled *Snake Salvation*.⁵⁸ One can only assume that as Wolford's death, and this

⁴⁹ *Id.*

⁵⁰ Hood, *supra* note 43.

⁵¹ Duin, *supra* note 46.

⁵² *Id.* at 1 (quoting Linda Mullins, a secretary for Crossview Church of Christ on Panther Ridge, who visited Jolo in the late 1950s).

⁵³ *Id.* In the 1980s, McDowell County was struck by wildcat strikes, competition from nonunionized mines, and a drop in U.S. production of steel, which led to massive job loss. *Id.*

⁵⁴ *Id.* at 4.

⁵⁵ *Id.*

⁵⁶ *Id.*; Bob Smietana, *Young Snake Handlers Say They Grasp the Power of Faith*, USA TODAY (June 3, 2012, 9:43 AM), <http://usatoday30.usatoday.com/news/religion/story/2012-06-03/snake-handlers-pentecostal-tennessee/55354206/1>.

⁵⁷ Smietana, *supra* note 56.

⁵⁸ *Snake Salvation* (Nat'l Geographic television broadcast Sept. 10, 2013).

mysterious and fanatical practice, continue to garner national media attention, others will join in this “calling.”

III. THE LAW RESPONDS

A. *Snake-Handling Laws in the Appalachian States*⁵⁹

In response to countless other maimings and deaths,⁶⁰ states responded with legislation outlawing the practice of snake-handling. Kentucky was first to act, passing strict anti-snake-handling legislation, and became the only state to address handling in a *religious* setting.⁶¹ The law banned not only the use of snakes, but also *any* reptiles in a religious service.⁶²

Tennessee followed, becoming a model for other states.⁶³ It outlawed snake-handling, but made no reference to religion. It simply made it illegal to “exhibit, handle, or use any poisonous or dangerous snake or reptile in a manner as to endanger the life or health of any person.”⁶⁴ However, after the Court of Appeals of Tennessee found the law to be “unconstitutionally broad,” the law was modified to allow consenting adults to handle as long as they did so in a manner not to endanger any other person, citing the offense as a “public nuisance.”⁶⁵

⁵⁹ The Appalachian region is defined by the Appalachian Region Commission to include all of West Virginia and parts of Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. *The Appalachian Region*, APPALACHIAN REGIONAL COMMISSION, http://www.arc.gov/appalachian_region/TheAppalachianRegion.asp (last visited Sept. 30, 2013). Snake-handling as a practice has primarily only been documented and discussed in six of those states: West Virginia, Kentucky, Tennessee, Alabama, Georgia, and North Carolina. Therefore, this paper addresses only those states in which snake-handling has been challenged.

⁶⁰ In 1945, Lewis Ford was bitten at the Dolly Pond Church of God with Signs Following. While handling serpents in his home in Daisy, Tennessee, Clint Jackson was fatally bitten. In Cleveland, Tennessee, eighteen-year-old Harry Skelton was bitten and died. Five days after his death, Walter Henry was handling the same serpent that killed Skelton and he was bitten and died. Henry’s brother-in-law, Hobert Williford, handled a snake at Henry’s funeral where he was bitten and also died. Hood, *supra* note 43. By 1967, at least eleven people had died as a result of a snake-bite during a snake-handling meeting. KIMBROUGH, *supra* note 2, at 149–51. At least ten others died from snake-bites by 1976. *Id.*

⁶¹ See 1940 Ky. Acts § 1267a-1 (“No person shall display, handle, or use any kind of snake or reptile in connection with any religious service or gathering.”); Hood, *supra* note 43.

⁶² KY. REV. STAT. ANN. § 437.060 (West 2013); 1940 Ky. Acts § 1267a-1; Hood, *supra* note 43.

⁶³ Hood, *supra* note 43.

⁶⁴ TENN. CODE ANN. § 39-17-101 (2013).

⁶⁵ Hood, *supra* note 43. According to the Tennessee State Supreme Court, both handlers and non-handlers who are observing the practice create a “public nuisance.” *Id.*

Georgia passed the most severe of the state laws to address snake-handling, making it illegal to not only handle snakes, but also to encourage or induce anyone to handle a serpent.⁶⁶ Further, the law went so far as to make the act a felony, stating in Section Three of the legislation that if handling or preaching causes the death of another, the guilty person “should be sentenced to death, unless the jury trying the case should recommend mercy.”⁶⁷

In 1947, Virginia joined the ranks of those states outlawing the practice. Governor William Tuck instructed all Virginia police to seize and destroy all snakes brought into religious gatherings after the death of Anna Kirk.⁶⁸ North Carolina followed with a ban against snake-handling in 1949.⁶⁹

In 1950, Alabama outlawed snake-handling and, like Georgia, made the act a felony.⁷⁰ As in Tennessee, the law was not limited to religious settings, but applied to any display, handling, or exhibition of poisonous or dangerous snakes or reptiles that endangered the life or health of another.⁷¹ However, by 1953 the law had been revised, and snake-handling was reduced to a misdemeanor offense.⁷²

Unfortunately, these laws did little to stop the handling of snakes, and it remained, and remains today, a practice among those of the Holiness faith. Perhaps most notably, in New Harlan, Kentucky, a group of fifty, including twelve-year-old Faye Nolan, led a snake-handling demonstration in the face of legal attempts to sanction the practice, displaying copperheads and other poisonous reptiles to a crowd of an estimated three thousand.⁷³ And as the practice continues, so too do the deaths that inevitably result.⁷⁴

Handlers continue to dare the law, and ultimately the law is weak. Leaders of handling meetings served simple jail sentences of twenty or thirty-five days or were fined a mere fifty dollars.⁷⁵ But, the law was too fearful of

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ KIMBROUGH, *supra* note 2, at 137.

⁶⁹ Hood, *supra* note 43.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ KIMBROUGH, *supra* note 2, at 138.

⁷⁴ In 1998, snake-handling evangelist John Wayne “Punkin” Brown died after being bitten by a Timber Rattler at the Rock House Holiness Church in northeastern Alabama. Brian Cabill, *Custody of Snake-Bite Orphans’ Split Between Grandparents*, CNN.COM (Feb. 12, 1999, 11:44 AM), <http://www.cnn.com/US/9902/12/snake.bite.family/index.html>. In 2006, Linda Long, age 48, died after being bitten by a snake at her church in London, Kentucky. *Woman Fatally Bitten by Snake in Church*, USA TODAY (Nov. 8, 2006, 10:11 AM), http://usatoday30.usatoday.com/news/nation/2006-11-08-snakebite_x.htm?csp=34.

⁷⁵ A man in Kentucky was sentenced to thirty-five days in jail for snake handling, but permitted while serving his sentence to leave his cell at night to attend Holiness meetings.

stepping on the toes of religion for any more stringent results to ensue. Said one Circuit Court Judge in Cumberland, Kentucky, after dismissing charges of snake-handling against four defendants, “We were afraid of a storm. . . . If they want to kill themselves with those snakes, that’s their business.”⁷⁶ So penalties remained feeble and snake-handling continues.⁷⁷ In fact, in both Georgia and Alabama, where the firmest legal stand had been made against the practice, the snake-handling laws were even repealed as juries refused to convict under such harsh penalties.⁷⁸

This is not to say that other laws not targeted directly at snake-handling cannot reach the practice. Such laws can and have been used in cases against snake handlers. For example, Alabama has laws against reckless endangerment, a Class A Misdemeanor, which bans “conduct which creates a substantial risk of serious physical injury to another person.”⁷⁹ It also has a menace law, a class B misdemeanor, which states, “A person commits a crime of menacing if, by physical action, he intentionally places or attempts to place another person in fear of imminent serious injury.”⁸⁰ Appellate courts have upheld the application of menacing or reckless endangerment laws to snake-handling. However, these laws seem to reach in only severe cases and have not acted as an everyday regulation of snake-handling.⁸¹

B. West Virginia, The Counter State

While attempts at introducing anti-snake-handling law have been made within West Virginia, it remains the only Appalachian state in which the practice is legal. Following the widespread publicity surrounding Columbia Chafin’s death in West Virginia, it seemed as though West Virginia would join the ranks of its fellow Appalachian states and outlaw the practice. In February 1963, the West Virginia House of Delegates passed a law that would make the

KIMBROUGH, *supra* note 2, at 138. Alfred Ball, a handler and former pastor of a church in Carson Springs, Tennessee, was given a twenty day sentence after two handlers died in church. Hood, *supra* note 43.

⁷⁶ KIMBROUGH, *supra* note 2, at 140 (quoting *Defiant Cult Handling Snake in Harlan Fined*, LOUISVILLE COURIER J., Oct. 16, 1947).

⁷⁷ This is further evidenced by the discussion, above, of young snake-handlers in Tennessee posting information about on-goings of current snake-handling meetings on the internet, without penalty, despite laws in the state prohibiting the practice. Smietana, *supra* note 56.

⁷⁸ Hood, *supra* note 43. In 1968, the law was repealed in Georgia because juries refused to convict on such a harsh penalty; the designated penalty under Alabama’s law was one to five years in prison, but local authorities refused to press charges and juries refused to convict when a case was taken to court. In turn, the offense was reduced to a misdemeanor and later completely deleted from the books when Alabama rewrote its state code in 1975. *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See id.*

handling of poisonous snakes a misdemeanor.⁸² The penalty was to be a fine from one hundred to five hundred dollars.⁸³ But in the face of this contingency against snake-handling, and despite her daughter's death, Barbara Elkins and her followers ardently testified that they would continue to handle snakes even if anti-handling laws were passed within the state.⁸⁴ Publicity surrounding the proposed ban and active support for those sympathetic to West Virginia's powerful history of churches that endorsed snake-handling eventually won the day, as the Senate Judiciary Committee refused to act upon the bill.⁸⁵

The recent death of Mark Wolford, discussed above, has brought to life new discussion in West Virginia about potential anti-handling laws; however such a law has not yet come to light. In 2012, Wolford's death prompted then Senate President Jeffrey Kessler to call for legislative actions outlawing the practice of handling venomous serpents in worship services.⁸⁶ Kessler asked the legislature to re-examine an Exotic Animals Bill that would have regulated ownership of dangerous members of the wild animal kingdom and outlaw "the unregulated use of poisonous, dangerous and wild animals in any public venue, including a place of worship."⁸⁷ Yet, Kessler's calling was received by staunch opposition arguing support of religious freedoms and a lack of enforcement mechanisms.⁸⁸ No further movements have been made on the issue to date.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Mannix Porterfield, *Lawmakers May Look at Snake Handlers*, REG. HERALD, June 2, 2012, at A1, available at <http://www.register-herald.com/todayfrontpage/x1561300561/Lawmakers-may-look-at-snake-handlers>.

⁸⁷ *Id.* The Exotic Animals Bill was vetoed by Governor Earl Ray Tomblin in April 2012. Had it been passed, it "would have restricted ownership of poisonous snakes and other animals in the state." Kate Coil, *Local Pastor's Death from Snake Bite Could Spark Discussion of State Laws*, BLUEFIELD DAILY TELEGRAPH, June 1, 2012, available at <http://bdtonline.com/local/x234178159/Local-pastor-s-death-from-snake-bite-could-spark-discussion-of-state-laws/print>. However, the bill was not intended to be a regulation upon snake-handling. Kessler called upon a re-examination of not only this bill, but also the inclusion of *worship services*, which would have expanded the bill to reach snake-handling practices in church. Porterfield, *supra* note 86.

⁸⁸ House Judiciary Chairman Tim Miley opposed saying, "The government can, and should, only go so far in protecting people from themselves. You would think at some point common sense and prudence would prevail." Delegate Rick Snuffer argued that unless done for protecting the snakes, the legislature has no business attempting to regulate a religious practice. Senator Bill Laird prompted the slippery slope argument, supporting the fundamental principle of freedom of religious expression. Delegate Virginia Mahan argued that there would be no enforcement mechanism, and that constitutional issues would supersede state involvement. Porterfield, *supra* note 86.

IV. THE REMEDY

*“See, you are going to eventually get bit, but you don’t have to die. Just keep your faith that God will help you.”*⁸⁹

It is apparent from an examination of snake-handling that most practitioners take up the act out of a sense of religious faith, a protected freedom within the United States. However, it is also undeniable that the practice poses risks to the general welfare of both adults and children, and even the snakes involved, that must be addressed. The snakes are poisonous; when handled if one should bite, death or severe injury will unquestionably result. Just as riding a motorcycle without a helmet or texting while driving lends one to a heightened risk of harm, so too does handling a dangerous wild snake. This is not to say the religion behind snake-handling is wrong or bad; this is not to pass judgment upon the beliefs of those that practice that particular faith. But the poisonous snakes can be likened to a deadly weapon, and all it takes is one strike for deformation or death to ensue. Regardless of the religious underpinnings of snake-handling, it is *not* a safe practice. As demonstrated by the above-stated quote, handlers themselves acknowledge that handling snakes results in snake bites. And if a state has a duty to protect the general welfare of its citizens, then this practice requires regulation.

A. *Considerations in the Legality of Snake-Handling*

1. Restriction of a Religious Act

*“I agree that a man’s religion is a very deep and personal thing . . . but I also believe that there are certain safeguards a state can impose to protect the health and welfare of its citizens.”*⁹⁰

Inherent in a discussion of the legality of snake-handling is the question of whether or not a state has even the authority to regulate a practice which is ultimately faith-based. The First Amendment to the United States Constitution declares “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”⁹¹ The Fourteenth Amendment has rendered the legislatures of the states incapable of doing so

⁸⁹ Said by a fifty-year-old Newport, Tennessee, handler in response to questioning regarding the fact that many snake handlers have been killed by snakebites. KIMBROUGH, *supra* note 2, at 26 (emphasis added).

⁹⁰ Spoken by Police Judge William B. O’Neal, of Covington, Kentucky, during a 1967 trial of three snake handlers. KIMBROUGH, *supra* note 2, at 149–50 (emphasis added).

⁹¹ U.S. CONST. amend. I.

either.⁹² However, a state does have the competing authority to regulate within its borders when called upon to do so for the protection of its citizens. And from the following discussion, it becomes apparent that the legality of West Virginia passing a law prohibiting the handling of snakes has already been determined by the highest Court of our country.

The United States Supreme Court case of *Jones v. City of Opelika*⁹³ provides a duality to one's right to freedom of religion that might assure West Virginia may pass a regulation upon snake-handling. In the said case, petitioners Bowden and Sanders were arrested and convicted of violating a municipal ordinance in the state of Alabama requiring a license to peddle books after going door-to-door distributing religious pamphlets for two five cents per pamphlet.⁹⁴ The Court was called upon to examine the conflict between freedom of religion and the police power of a state to ensure orderly living without which constitutional guarantees would be a mockery.⁹⁵ The Court deduced that the First Amendment embraces two concepts—the freedom to believe and the freedom to act.⁹⁶ The first is absolute, but the second cannot be. Conduct remains subject to regulation for the protection of society.⁹⁷ Therefore, the Court upheld the men's convictions and the law under which they were arrested and tried as a valid exercise of a state's restraint on one's freedom to act, for the protection of its citizens.⁹⁸

This point had been duly noted in other cases as well. Said Chief Justice Waite in *Reynolds v. United States*,⁹⁹

Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?¹⁰⁰

⁹² See generally *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

⁹³ 316 U.S. 584 (1942).

⁹⁴ *Jones v. City of Opelika*, 316 U.S. 584, 588–90 (1942), *rev'd*, 319 U.S. 103 (1943) (judgment vacated on separate grounds that taxation impedes unconstitutionally upon one's First Amendment right to freedom of religion).

⁹⁵ *Id.* at 593.

⁹⁶ *Id.* at 594–95. The Court made the same finding two years prior in *Cantwell v. Connecticut*, upon which *Jones* relied. See *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Lawson v. Commonwealth*, 164 S.W.2d 972, 973 (Ky. 1942).

⁹⁷ See *Jones*, 316 U.S. at 593–94.

⁹⁸ *Id.*

⁹⁹ 98 U.S. 145 (1878).

¹⁰⁰ *Id.* at 166 (upholding Utah state law against bigamy).

Thus, while we do as citizens of the United States have an unlimited right to our religious beliefs, our right to act within those beliefs is tempered by a state's right, and duty, to protect persons from harm. For without such protection of safety ensured by the government, we could not fully enjoy those rights of which we are guaranteed.¹⁰¹

The Kentucky Supreme Court used the aforementioned logic to uphold its own state's law regarding snake-handling. In *Lawson v. Commonwealth*,¹⁰² three men had been arrested and convicted of violating Kentucky's ordinance prohibiting the display, handling or use of a snake or reptile in a religious gathering.¹⁰³ Upon appeal, the men challenged the constitutionality of the Kentucky law, arguing it denied them their First Amendment right to freedom of religion, imposed on the states via the Fourteenth Amendment.¹⁰⁴ Citing *Jones*, the Kentucky Supreme Court reasoned that there are "limitations upon the individual's right to act in exercising [a belief], namely, the power of the state to regulate the times, places, and manner of its exercise when such regulation is necessary for the safeguarding of the health, good order and comfort of the community."¹⁰⁵ It further reiterated the notion that laws enacted for the purpose of restraining acts which have a tendency to disturb the peace are not repugnant to constitutional guarantees of freedom even if such acts are done pursuant to what one believes to be a religious duty.¹⁰⁶ Upon this reasoning, the court upheld the men's convictions, and the law under which they were tried.¹⁰⁷ Thus, an act by West Virginia to restrain snake-handling would likely not violate one's First Amendment rights.

Nor would such a law violate one's rights under West Virginia's own state constitution. Like its federal counterpart, the West Virginia Constitution protects one's freedom of religion, in Article III, Section 15, which reads:

No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages

¹⁰¹ *Cantwell*, 310 U.S. at 303–04.

¹⁰² 164 S.W.2d 972 (1942).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 973.

¹⁰⁵ *Id.* at 974.

¹⁰⁶ *Id.* at 976.

¹⁰⁷ *Id.*

on any sector denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support, such private contract as he shall please.¹⁰⁸

In regards to snake-handling, it seems the legislature has simply not wanted to tempt its fate with the passage of a law imposing any restrictions upon one's religious practice protected by the Article above.¹⁰⁹ However, one can only assume that the same logic applied by the United States Supreme Court in its examination of restraints on the Federal Constitution's guarantees of freedom would apply here as well. A citizen of West Virginia has, by the state's constitution, the freedom to believe in whatever religion he or she chooses; however, the right to act upon those beliefs would again be non-absolute. The state would still maintain the authority, and duty, to protect its citizens, meaning it may restrain not one's beliefs, but one's acts, when doing so prevents harm to its people.

2. Endangerment of Those Who Cannot Protect Themselves

If the state has the authority to pass law restricting religious acts, then does it follow that snake-handling is an act which requires restriction? Quite simply, yes, it does. Snake-handling threatens not only the health and safety of its consenting adult practitioners, but also of children who, as seen in the historical discussion of handling, are within contact of the practice.¹¹⁰ Moreover, it threatens animal welfare which too must be a concern of the state.

It is a simple fact that people die from snake-handling. Even if the number of deaths should not be a high number in comparison with the frequency with which snake-handling is practiced, death undeniably occurs. And it occurs alongside countless injuries, the definite number of which could never be ascertained: injuries which are not slight. "Atrophied fingers and hands, paralyzed limbs, and a variety of other physical disabilities are not uncommon among those who regularly handle snakes."¹¹¹ What's more worrisome is that when bites occur, practitioners generally refuse medical treatment.¹¹² Congregations of believers are encouraged to take up the serpents

¹⁰⁸ W. VA. CONST. art. III, § 15.

¹⁰⁹ Hood, *supra* note 43.

¹¹⁰ See KIMBROUGH, *supra* note 2, at 6, 27, 75.

¹¹¹ *Id.* at 34.

¹¹² *Id.* Take for instance, Kentucky snake handler Tess Walters who had lost two fingers to snake bites and when asked why he did not go to the doctor he responded, "If it is God's will for you to get bit, there's no need to run to the doctor. It is in His hands then. No doctor can help

to show their faith, but in doing so they pick up a weapon that can undeniably kill or maim them.¹¹³ Should the law not step-in to protect these people from themselves?

If one should assert that a person's sense and prudence should prevail, and the government need not condemn acts of consenting adults, then consider the child in a snake-handling family who does not yet have the capabilities or awareness required not to endanger himself or herself. As seen in the history discussion, above, children are and have been present at snake-handling meetings. Snake-handling is a familial tradition; and these families are likely to include children. Children, including infants, have been within documented reach of a snake's bite.¹¹⁴ While law should not be based upon anecdote, the case of Leitha Ann Rowan personifies the risks to children within the culture of snake-handling where they may not only be bit, but where medical treatment is generally refused in interests of "faith." This five-year-old nearly lost her life to a snake bite that occurred at a snake-handling sermon.¹¹⁵ She was bitten as a copperhead was passed around her church.¹¹⁶ Her mother hid her for three days refusing medical care before other family members brought her to the sheriff.¹¹⁷ Should the risk to children then not be a reason to restrain the practice in the interests of societal well-being?

And finally, what about the snake? Death is a consequence of handling for them too. "On July 23, 1945, the *New York Times* featured a story titled, 'Snake Bites Man and Dies,' about a snake handler named Luther Morrow in Grasshopper, Tennessee. On July 22, Morrow was bitten by a large rattlesnake in a church service.¹¹⁸ The following morning, the snake died."¹¹⁹ David L. Kimbrough, researcher of the snake-handling faith, asserts he has seen many rattlesnakes die in the hands of believers.¹²⁰ Some die from over-handling.¹²¹ Many die within a month of being placed in captivity.¹²²

Moreover, the conditions in which they are captured and kept by some handlers is questionable with regards to their welfare. For example, George

you." *Id.* Or, consider Mrs. Alvie Weaver, who was bitten at a church in Knoxville, Tennessee, and stated, "I haven't done a thing but wash the blood off." *Id.*

¹¹³ At one sermon, George Hensley was quoted to order the gathering to handle a snake in order to prove their faith and spiritual superiority to be "doomed to eternal hell." *Id.*

¹¹⁴ See discussions *supra* text accompanying notes 32, 73, in which a baby's face is within inches of snake and Faye Nolan, a twelve-year-old girl gets bit.

¹¹⁵ KIMBROUGH, *supra* note 2, at 27.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 29.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 145.

¹²² *Snake Salvation, supra* note 58.

Hensley himself was documented to have kept a four-foot snake in a lard can.¹²³ And in the aforementioned National Geographic television documentary series, *Snake Salvation*, believers who are catching snakes for services are shown pumping gasoline into snake dens in order to force snakes out due to lack of breathable air.¹²⁴ This is not to say all snakes are mishandled or kept in subpar conditions, but the practice of handling requires captivity of these wild animals for purposes of which they were not intended, in conditions in which they were not intended to live.

Thus, it is arguably clear that there are endangerments for which West Virginia can, and should, invoke its police power to prevent. A restraint on handling would protect the well-being of both adult, child, and animal. It would prevent injury; it would prevent death. It would be exactly that type of law that would promote a general welfare in which people can fully enjoy their constitutional rights.

B. A Proposal for the Regulation of Snake-Handling Under the Model of the Uniform Controlled Substance Act

Having concluded from the above that West Virginia does, and should, have the authority to restrict or regulate the practice of snake-handling, one must then turn to how such regulation should occur. In those states in which prohibitions of the practice remain on the books, the penalties have seemingly not been severe enough to slighen the practice. In those in which the penalty has been comparable to the risk imposed, the increased penalty resulted in a lack of enforcement and conviction, and ultimately a repealing of the law.¹²⁵ Thus, West Virginia must strike a balance and produce a law that provides realistic enforcement mechanisms, enough reach to fully constrain the risks posed by the practice, and a reasonable penalty under which peers would actually convict.

Snake-handling regulation should be one of degrees, based upon the person whom the law is protecting. Protection against oneself (i.e., the prohibition of the man handling the snake alone and for himself) would be the least included offense suffering the least penalty. And with each increase in the magnitude of the infraction, the penalty increases exponentially. The man who handles snakes when no other is bitten should not receive the same penalty as the man who handles and another is bit; but the threat of the harsher penalty should someone be bit shall still act as a deterrent to handling in the first instance.

¹²³ KIMBROUGH, *supra* note 2, at 51.

¹²⁴ *Snake Salvation*, *supra* note 58.

¹²⁵ See *supra* Part III.A.

An excellent model for the regulation of snake-handling is West Virginia's own Uniform Controlled Substance Act.¹²⁶ Controlled substance use, or drug use, is an offense comparable to that of snake-handling. The lone drug user may argue that he should have the right to do as he pleases to himself, even if harmful, yet the law imposes restraints in the interests of the welfare of society. However, the lone possessor using for only himself is the least offender receiving the lesser penalty.¹²⁷ But as the severity of the offense, and in turn the risk upon society, increases, so too does the legal weight of the infraction and resulting penalty.¹²⁸ The user with the intent to distribute to others faces imprisonment and fines of greater magnitude than that of the lone user.¹²⁹ The law creates restraint based upon the class of person protected; and it is around this existing law that a prohibition of snake-handling should be modeled.

The law should prohibit the display or use of any living poisonous snake, reptile, or other dangerous animal in a religious service, followed by a breakdown of degree of the offense.¹³⁰

As discussed, the least offense would be the lone handler who is neither displaying to others nor has the intent to display or pass the snake to others. Any person violating this offense would be guilty of a misdemeanor and may be confined in jail not less than ninety days or more than six months, or fined not more than one thousand dollars.¹³¹

The next degree of offense would be the handler who intends to, or does, lead the display or handling of snakes amongst others and distribute said snakes, similar to the drug offender who has the intent to manufacture or

¹²⁶ W. VA. CODE § 60A-4-401 to 413 (2013).

¹²⁷ *See id.* § 60A-4-401(c).

It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription . . . Any person who violates this subsection is guilty of a misdemeanor, and . . . such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars.

Id.

¹²⁸ *See* W. VA. CODE § 60A-4-401(a)(i)–(iv). Once the infraction increases from one's own use to one in which the drug is distributed, and society is in turn affected rather than only the individual, the penalty increases from a misdemeanor to a felony and, depending on the Schedule of the drug, the penalty increases to imprisonment for three to fifteen years, or fines from ten-thousand to twenty-five thousand dollars. *Id.*

¹²⁹ *Id.*

¹³⁰ The law requires specificity here so as not to infringe upon the handling of these animals for other, legitimate purposes by persons with the training, ability and criteria to handle said animals.

¹³¹ The penalties laid forth are pulled from the Uniform Controlled Substance Act. Because snake-handling could be a comparable offense, in which harm to the person or others is proven to be inevitable, it follows that suggested penalties be comparable.

distribute.¹³² Once in this category, the offender becomes guilty of a felony, and the penalty depends further upon the magnitude of the “distribution,” just as the penalty of a drug felony depends upon the schedule of the drug manufactured and distributed.¹³³ Handling amidst only other adults (proposedly only those persons over the age of 18) would carry a penalty of imprisonment for not less than one year or more than three years, or a fine of not more than ten thousand dollars, or both. Handling amidst any child would increase the penalty to imprisonment of not less than one year or more than five years, or a fine of not more than fifteen thousand dollars.¹³⁴ With second or subsequent offenses, the period of incarceration and fine may be doubled to deter repeat offenses.¹³⁵

Should someone other than the leader of a religious service in which snake-handling is involved be injured or killed by snake bite, the offense should then transfer to assault or involuntary manslaughter (being the accidental causing of death of another person, although unintended, which death is the proximate result of negligence so gross, wanton and culpable as to show a reckless disregard for human life),¹³⁶ and carry the weight of those penalties set forth in the existing West Virginia Code.¹³⁷ These penalties would, however, be in addition to those received above as well, and would not act to decrease any penalty received under the aforementioned categories of offenses.

¹³² Intent to “distribute,” to hand the poisonous snake to another person would be inferred from the act of displaying the snake to a crowd of others.

¹³³ Under the Uniform Code Act, the severity of the penalty increases with the Schedule of the drug, defined by the potential for abuse and potential for medical use. *See* W. VA. CODE § 60A-4-401(a)(i)–(iv).

¹³⁴ The Uniform Controlled Substance Act also categorizes the crime based upon the age of the person to whom a controlled substance is distributed. Distribution to persons under the age of 18 by persons over the age of 21 increases the mandatory period of incarceration prior to parole eligibility. *See* W. VA. CODE § 60A-4-406.

¹³⁵ *See* W. VA. CODE § 60A-4-408.

¹³⁶ Involuntary manslaughter would be an appropriate definition for a death resulting from snake handling because the evidence undeniably proves the risk of death or injury from snake-handling of which handlers are arguably aware and for which they disregard upon the act of handling.

¹³⁷ Because snake handling amidst a group of others would become defined as a felony, an injury to another resulting from the act would then fall within the scope of W. VA. CODE § 61-2-10, *Assault During Commission of or Attempt to Commit a Felony*, which reads:

If any person in the commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person, he shall be guilty of a felony and, upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than two nor more than ten years, or be confined in jail not exceeding one year and be fined not exceeding one thousand dollars.

W. VA. CODE § 61-2-10. A resulting death would bring the offense within W. VA. CODE § 61-2-5, *Involuntary manslaughter*, which reads, “any person convicted thereof shall be confined in jail not to exceed one year, or fined not to exceed one thousand dollars, or both, in the discretion of the court.” *Id.* § 61-2-5.

V. CONCLUSION

Sometimes we require protection from ourselves, and the law must undeniably provide us protection from others. Despite its roots in faith, snake-handling is a practice that unquestionably poses risks upon its practitioners, and these risks are not slight. Even handlers themselves have admitted, if you handle, at some point you will get bit; and you will get bit with poison which will kill or maim you. It follows then that the law must step-in, in the interests of the welfare of society, to restrain the practice so as to limit the injury which may result, particularly that injury which might occur amongst children, a most vulnerable class of society. Thus, West Virginia should enact law prohibiting the practice of snake-handling.

Moreover, West Virginia already has in place a law by which to model this prohibition. By following the Uniform Controlled Substance Act, the legislature could create a restraint of degrees, under which people are not under-penalized so as to make the law moot, nor over-penalized so as to discourage conviction. Use of this model could create a law which does not impede upon one's fundamental right to religious beliefs, but rather regulates a harmful act for the protection of the citizens of this state.