

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 778

BY SENATORS WELD AND DEEDS

[Originating in the Committee on the Judiciary;

reported February 21, 2024]

1 A BILL to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended, relating
2 to qualifying offenses for the purpose of enhancing the sentence of a repeat offender.

Be it enacted by the Legislature of West Virginia:

§61-11-18. Punishment for second or third offense of felony.

1 (a) For purposes of this section, "qualifying offense" means any ~~offenses~~ offense or an
2 attempt or conspiracy to commit any of the offenses in the following provisions of this code:

3 (1) ~~§60A-4-401(i)~~ §60A-4-401(a)(i) and ~~§60A-4-401(ii)~~ §60A-4-401(a)(ii);

4 (2) §60A-4-406;

5 (3) §60A-4-409(b)(1), and ~~§60A-4-409(2)~~, §60A-4-409 (b)(2); and ~~§60A-4-409(3)~~;

6 (4) §60A-4-411;

7 (5) §60A-4-414;

8 (6) §60A-4-415;

9 (7) §60A-4-416(a);

10 (8) §61-2-1;

11 (9) §61-2-4;

12 (10) §61-2-7;

13 (11) §61-2-9(a);

14 (12) §61-2-9a(d) and §61-2-9a(e);

15 (13) §61-2-9b;

16 (14) §61-2-9c;

17 ~~(14)~~ (15) §61-2-9d;

18 ~~(15)~~ (16) §61-2-10;

19 ~~(16)~~ (17) §61-2-10b(b) and §61-2-10b(c);

20 ~~(17)~~ (18) Felony provisions of §61-2-10b(d);

21 ~~(18)~~ (19) §61-2-12;

22 ~~(19)~~ (20) Felony provisions of §61-2-13;

- 23 ~~(20)~~ (21) §61-2-14;
- 24 ~~(21)~~ (22) §61-2-14a(a) and §61-2-14a(d);
- 25 ~~(22)~~ (23) §61-2-14c;
- 26 ~~(23)~~ (24) §61-2-14d(a) and §61-2-14d(b);
- 27 ~~(24)~~ (25) §61-2-14f;
- 28 ~~(25)~~ (26) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- 29 ~~(26)~~ (27) §61-2-16a(a) and §61-2-16a(b);
- 30 ~~(27)~~ (28) Felony provisions of §61-2-16a(c);
- 31 ~~(28)~~ (29) §61-2-28(d);
- 32 ~~(29)~~ (30) §61-2-29(d) and §61-2-29(e);
- 33 ~~(30)~~ (31) §61-2-29a;
- 34 ~~(31)~~ (32) §61-3-1;
- 35 ~~(32)~~ (33) §61-3-2;
- 36 ~~(33)~~ (34) §61-3-3;
- 37 ~~(34)~~ (35) §61-3-4;
- 38 ~~(35)~~ (36) §61-3-5;
- 39 ~~(36)~~ (37) §61-3-6;
- 40 ~~(37)~~ (38) §61-3-7;
- 41 ~~(38)~~ (39) §61-3-11;
- 42 (40) Felony violation of §61-3-12;
- 43 ~~(39)~~ (41) §61-3-13(a);
- 44 (42) Felony violation of §61-3-18;
- 45 (43) Felony violation of §61-3-19;
- 46 (44) Felony violation of §61-3-20;
- 47 (45) Felony violation of §61-3-20a;
- 48 (46) Felony violation of §61-3-21;

- 49 (47) §61-3-22;
- 50 (48) Felony violation of §61-3-24;
- 51 (49) Felony violation of §61-3-24a;
- 52 ~~(40)~~ (50) §61-3-27;
- 53 (51) §61-3-54;
- 54 ~~(41)~~ (52) §61-3C-14b;
- 55 ~~(42)~~ (53) §61-3E-5;
- 56 (54) Felony violation of §61-5-10;
- 57 ~~(43)~~ (55) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);
- 58 ~~(44)~~ (56) §61-5-27;
- 59 ~~(45)~~ (57) §61-6-24;
- 60 ~~(46)~~ (58) Felony provisions of §61-7-7;
- 61 ~~(47)~~ (59) §61-7-12;
- 62 ~~(48)~~ (60) §61-7-15;
- 63 ~~(49)~~ (61) §61-7-15a;
- 64 ~~(50)~~ (62) §61-8-12;
- 65 ~~(51)~~ (63) §61-8-19(b);
- 66 (64) §61-8A-2;
- 67 (65) §61-8A-4;
- 68 (66) §61-8A-5;
- 69 ~~(52)~~ (67) §61-8B-3;
- 70 ~~(53)~~ (68) §61-8B-4;
- 71 ~~(54)~~ (69) §61-8B-5;
- 72 ~~(55)~~ (70) §61-8B-7;
- 73 ~~(56)~~ (71) §61-8B-10;
- 74 (72) §61-8B-11b;

75 ~~(57)~~ (73) §61-8C-2;
76 ~~(58)~~ (74) §61-8C-3;
77 ~~(59)~~ (75) §61-8C-3a;
78 ~~(60)~~ (76) §61-8D-2;
79 ~~(61)~~ (77) §61-8D-2a;
80 ~~(62)~~ (78) §61-8D-3;
81 ~~(63)~~ (79) §61-8D-3a;
82 ~~(64)~~ (80) §61-8D-4;
83 ~~(65)~~ (81) §61-8D-4a;
84 ~~(66)~~ (82) §61-8D-5;
85 ~~(67)~~ (83) §61-8D-6;
86 ~~(68)~~ (84) §61-10-31;
87 ~~(69)~~ (85) §61-11-8;
88 ~~(70)~~ (86) §61-11-8a;
89 ~~(71)~~ (87) §61-14-2; and
90 ~~(72)~~ (88) §17C-5-2(b), driving under the influence causing death.

91 (b) Except as provided by subsection (c) of this section, when any person is convicted of
92 a qualifying offense and is subject to imprisonment in a state correctional facility ~~therefor,~~ for the
93 qualifying offender and it is determined, as provided in §61-11-19 of this code, that ~~such~~ the
94 person had been ~~before~~ previously convicted in the United States of a crime punishable by
95 imprisonment in a state or federal correctional facility, the court shall, if the sentence to be
96 imposed is for a definite term of years, add five years to the time for which the person is or would
97 be otherwise sentenced. Whenever in ~~such~~ that case the court imposes an indeterminate
98 sentence, the minimum term shall be twice the term of years otherwise provided for under ~~such~~
99 the sentence.

100 (c) Notwithstanding any provision of this code to the contrary, when any person is
101 convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code
102 and it is determined, as provided in §61-11-19 of this code, that ~~such~~ the person had been ~~before~~
103 previously convicted in this state of first degree murder, second degree murder, or a violation of
104 §61-8B-3 of this code, or has been so convicted under any law of the United States or any other
105 state for an offense which has the same or substantially similar elements as any offense described
106 in this subsection, ~~such~~ the person shall be punished by imprisonment in a state correctional
107 facility for life and is not eligible for parole.

108 (d) When it is determined, as provided in §61-11-19 of this code, that ~~such~~ the person
109 ~~shall have~~ has been twice ~~before~~ previously convicted in the United States of a crime punishable
110 by imprisonment in a state or federal correctional facility which has the same or substantially
111 similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state
112 correctional facility for life: *Provided*, That prior convictions arising from the same transaction or
113 series of transactions shall be considered a single offense for purposes of this section: *Provided*,
114 *however*, That the most recent previous qualifying offense which would otherwise constitute a
115 qualifying offense for purposes of this subsection may not be considered if more than 20 years
116 have elapsed between: (1) The release of the person from his or her term of imprisonment or
117 period of supervision resulting from the most recent qualifying offense or the expiration of a period
118 of supervised release resulting from ~~such~~ the offense; and (2) the conduct underlying the current
119 charge.