

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 361**

BY SENATORS GAUNCH, BOSO, MULLINS, PALUMBO,

WALTERS, WILLIAMS AND PREZIOSO

[Introduced January 21, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-2-10a of the Code of West Virginia, 1931, as amended, relating  
 2 to prohibiting persons who have committed crimes against the elderly from performing any  
 3 court-ordered public service involving the elderly.

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

1 That §61-2-10a of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.**

1 (a) If any person be convicted and sentenced for an offense defined under the provisions  
 2 of section nine or ten of this article, and if the person shall have committed such offense against  
 3 a person who is sixty-five years of age or older, then the sentence shall be mandatory and shall  
 4 not be subject to suspension or probation: *Provided*, That the court may, in its discretion, suspend  
 5 the sentence and order probation to any person so convicted upon condition that such person  
 6 perform public service for a period of time deemed appropriate by the court: ~~which service shall~~  
 7 *Provided, however, That the public service may not* be rendered in or about facilities or programs  
 8 providing care or services for the elderly: ~~*Provided however*~~ *further*, That the court may apply the  
 9 provisions of article eleven-a, chapter sixty-two of this code to a person committed to a term of  
 10 one year or less.

11 (b) The existence of any fact which would make any person ineligible for probation under  
 12 subsection (a) of this section because of the commission or attempted commission of a felony  
 13 against a victim sixty-five years of age or older shall not be applicable unless such fact is: (i)  
 14 Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter  
 15 is tried before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.

NOTE: The purpose of this bill is to prohibit persons who have committed crimes against

the elderly from performing any court ordered public service involving the elderly.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.