

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2689

FISCAL  
NOTE

BY DELEGATE RODIGHIERO

[Introduced January 28, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to repeal §61-3-11 of the Code of West Virginia, 1931, as amended; to amend said code  
 2 by adding thereto a new section, designated §61-2-31; and to amend and reenact §61-3-  
 3 12 of said code, all relating to replacing the present crime of burglary with the crime of  
 4 home invasion; providing criminal offenses of home invasion in the first, second, third and  
 5 fourth degrees; and prescribing penalties.

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

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

**§61-2-31. Home invasion; degrees; penalties; definitions.**

1 (a) As used in this section the following terms are defined as:

2 (1) "Enters or remains unlawfully" means when a person who enters or remains upon the  
 3 premises when the premises, at the time of the entry or remaining, is not open to the public and  
 4 when the individual is not otherwise licensed or privileged or does not have permission to enter  
 5 or remain on the premises.

6 (2) "Dangerous instrument" means any instrument, article, or substance which, under the  
 7 circumstances in which it is used or attempted to threatened to be used, is capable of causing  
 8 death or serious physical injury, including a vehicle and a dog that has been commanded to attack.

9 (3) "Deadly weapon" has the same meaning as provided in §61-7-2 of this code.

10 (4) "Dwelling" includes, but is not limited to, a mobile home, house trailer, modular home,  
 11 factory-built home or self-propelled motor home, used as a dwelling regularly or only from time to  
 12 time, an occupied outhouse adjoining the dwelling, or any other nonmotive vehicle primarily  
 13 designed for human habitation and occupancy, and used as a dwelling regularly or only from time  
 14 to time.

15 (b) (1) Home invasion in the first degree. - It is unlawful for an individual to enter or remain  
 16 unlawfully in a dwelling, or an outhouse adjoining or occupied, of another, with the intent to commit  
 17 a crime therein and who is either:

18 (A) Armed with explosives, a deadly weapon or a dangerous instrument; or

19 (B) In the course of committing the offense, intentionally, knowingly, or recklessly uses  
20 explosives, a deadly weapon or a dangerous instrument that causes physical injury, serious  
21 physical injury or death to a person lawfully present in the dwelling.

22 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony  
23 and, upon conviction, shall be fined not more than \$20,000 and imprisoned for 25 years to life  
24 without mercy.

25 (3) Despite any other provision of this code to the contrary, an individual sentenced  
26 pursuant to this subsection is not eligible for any reduction in the individual's term of sentence,  
27 nor is the individual eligible for any type of alternative sentencing.

28 (c) (1) Home invasion in the second degree. -- It is unlawful for a person to enter or remain  
29 unlawfully in a dwelling with the intent to commit a crime, and to use, or threaten to use, physical  
30 force against a person lawfully present in the dwelling.

31 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony  
32 and, upon conviction, shall be fined not more than \$15,000 and imprisoned for a term of 20 years.

33 (3) Despite any other provision of this code to the contrary, an individual sentenced  
34 pursuant to this subsection is not eligible for any reduction in the individual's term of sentence  
35 and is not eligible for any type of alternative sentencing.

36 (d) (1) Home invasion in the third degree. -- It is unlawful for a person to enter or remain  
37 unlawfully in a dwelling with the intent to commit a crime when another person is lawfully present  
38 in the building.

39 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony  
40 and, upon conviction, shall be imprisoned for 10 years.

41 (3) Despite any other provision of this code to the contrary, an individual sentenced  
42 pursuant to this subsection is not eligible for any reduction in the individual's term of sentence and  
43 is not eligible for any type of alternative sentencing.

44 (e) (1) Home invasion in the fourth degree. -- It is unlawful for a person to enter or remain

45 unlawfully in a dwelling with the intent to commit a crime in it.

46 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony  
47 and, upon conviction, shall be fined not more than \$5,000, imprisoned for up to five years, or both  
48 fined and imprisoned.

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-11. Burglary; entry of dwelling or outhouse; penalties.**

1 [Repealed.]

**§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.**

1 ~~If any A person shall who, at any time, break and enter, or shall enter~~ breaks and enters  
2 or enters without breaking, any office, shop, underground coal mine, storehouse, warehouse,  
3 banking house or any house or building, other than a dwelling ~~house~~ or outhouse adjoining ~~thereto~~  
4 or occupied ~~therewith~~ or any railroad or traction car, propelled by steam, electricity or otherwise,  
5 or any steamboat or other boat or vessel, within the jurisdiction of any county in this state, with  
6 intent to commit a felony or any larceny, he or she ~~shall be deemed~~ is guilty of a felony and, upon  
7 conviction, shall be ~~confined~~ imprisoned in a state correctional facility not less than one nor more  
8 than 10 years. ~~And if any A person shall who, at any time, break and enter, or shall enter~~ breaks  
9 and enters or enters without breaking, any automobile, motorcar or bus, with like intent, within the  
10 jurisdiction of any county in this state, he ~~shall be~~ or she is guilty of a misdemeanor and, upon  
11 conviction, shall be confined in jail not less than two nor more than 12 months and be fined not  
12 more than \$100.

13 An indictment for ~~burglary~~ home invasion may contain one or more counts for breaking  
14 and entering, or for entering without breaking, the house or building mentioned in the count for  
15 ~~burglary home invasion under the provisions of this and the preceding~~ this section as well as §61-  
16 3-31 through §61-3-34 of this chapter.

NOTE: The purpose of this bill is to replace the present crime of burglary with the crime of home invasion. This bill provides for the criminal offenses of home invasion in the first, second, third and fourth degrees. The bill prescribes penalties.

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