

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Engrossed

Senate Bill 765

BY SENATORS WELD AND WOELFEL

[Introduced February 13, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-11-18 and §61-11-19 of the Code of West Virginia, 1931, as
2 amended, all relating to provisions of the Habitual Offender statute; and modifying
3 provisions addressing eligibility of certain crimes for consideration, expiration of sentence
4 prior to being considered, ineligibility for good time calculation, and eligibility for dual
5 treatment under section allowing enhanced sentencing for second or subsequent
6 offenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

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

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

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

4 (2) §60A-4-406;

5 (3) §60A-4-409(b)(1), §60A-4-409(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) §61-2-9d;

17 (15) §61-2-10;

- 18 (16) §61-2-10b(b) and §61-2-10b(c);
- 19 (17) Felony provisions of §61-2-10b(d);
- 20 (18) §61-2-12;
- 21 (19) Felony provisions of §61-2-13;
- 22 (20) §61-2-14;
- 23 (21) §61-2-14a(a) and §61-2-14a(d);
- 24 (22) §61-2-14c;
- 25 (23) §61-2-14d(a) and §61-2-14d(b);
- 26 (24) §61-2-14f;
- 27 (25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- 28 (26) §61-2-16a(a) and §61-2-16a(b);
- 29 (27) Felony provisions of §61-2-16a(c);
- 30 (28) §61-2-28(d);
- 31 (29) §61-2-29(d) and §61-2-29(e);
- 32 (30) §61-2-29a;
- 33 (31) §61-3-1;
- 34 (32) §61-3-2;
- 35 (33) §61-3-3;
- 36 (34) §61-3-4;
- 37 (35) §61-3-5;
- 38 (36) §61-3-6;
- 39 (37) §61-3-7;
- 40 (38) §61-3-11;
- 41 (39) §61-3-27;
- 42 (40) §61-3C-14b;
- 43 (41) §61-3E-5;

- 44 (42) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);
- 45 (43) §61-5-27;
- 46 (44) §61-6-24;
- 47 (45) Felony provisions of §61-7-7;
- 48 (46) §61-7-12;
- 49 (47) §61-7-15;
- 50 (48) §61-7-15a;
- 51 (49) §61-8-12;
- 52 (50) §61-8-19(b);
- 53 (51) §61-8B-3;
- 54 (52) §61-8B-4;
- 55 (53) §61-8B-5;
- 56 (54) §61-8B-7;
- 57 (55) §61-8B-9;
- 58 (56) §61-8B-10;
- 59 (57) §61-8C-2;
- 60 (58) §61-8C-3;
- 61 (59) §61-8C-3a;
- 62 (60) §61-8D-2;
- 63 (61) §61-8D-2a;
- 64 (62) §61-8D-3;
- 65 (63) §61-8D-3a;
- 66 (64) §61-8D-4;
- 67 (65) §61-8D-4a;
- 68 (66) §61-8D-5;
- 69 (67) §61-8D-6;

70 (68) §61-10-31;

71 (69) §61-11-8;

72 (70) §61-11-8a;

73 (71) §61-14-2; and

74 (72) §17C-5-2(b), driving under the influence causing death.

75 ~~(a)~~ (b) Except as provided by subsection ~~(b)~~ (c) of this section, when any person is
76 convicted of ~~an~~ a qualifying offense and is subject to confinement in a state correctional facility
77 therefor, and it is determined, as provided in §61-11-19 of this code, that such person had been
78 before convicted in the United States of a crime punishable by confinement in a penitentiary, the
79 court shall, if the sentence to be imposed is for a definite term of years, add five years to the time
80 for which the person is or would be otherwise sentenced. Whenever in such case the court
81 imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise
82 provided for under such sentence.

83 ~~(b)~~ (c) Notwithstanding ~~the provisions of subsection (a) or (c) of this section or any other~~
84 provision of this code to the contrary, when any person is convicted of first degree murder or
85 second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in
86 §61-11-19 of this code, that such person had been before convicted in this state of first degree
87 murder, second degree murder, or a violation of §61-8B-3 of this code or has been so convicted
88 under any law of the United States or any other state for an offense which has the same elements
89 as any offense described in this subsection, such person shall be punished by confinement in a
90 state correctional facility for life and is not eligible for parole.

91 ~~(c)~~ (d) When it is determined, as provided in §61-11-19 of this code, that such person shall
92 have been twice before convicted in the United States of a crime punishable by confinement in a
93 penitentiary which has the same elements as a qualifying offense, the person shall be sentenced
94 to ~~be confined~~ imprisonment in a state correctional facility for life: Provided, That prior convictions
95 arising from the same transaction or series of transactions shall be considered a single offense

96 for purposes of this section: *Provided, however,* That an offense which would otherwise constitute
97 a qualifying offense for purposes of this subsection and subsection (b) of this section shall not be
98 considered if more than 20 years have elapsed between that offense and the conduct underlying
99 the current charge.

§61-11-19. Procedure in trial of persons for second or third offense.

1 ~~It shall be the duty of the~~ A prosecuting attorney, when he or she has knowledge of a
2 former sentence or sentences to the penitentiary of any person convicted of an offense punishable
3 by confinement in the penitentiary, ~~to~~ may give information thereof to the court immediately upon
4 conviction and before sentence. Said court shall, before expiration of the term at which such
5 person was convicted, cause such person or prisoner to be brought before it, and upon an
6 information filed by the prosecuting attorney, setting forth the records of conviction and sentence,
7 or convictions and sentences, as the case may be, and alleging the identity of the prisoner with
8 the person named in each, shall require the prisoner to say whether he or she is the same person
9 or not. If he or she says he or she is not, or remains silent, his or her plea, or the fact of his or her
10 silence, shall be entered of record, and a jury shall be impaneled to inquire whether the prisoner
11 is the same person mentioned in the several records. If the jury finds that he or she is not the
12 same person, he or she shall be sentenced upon the charge of which he or she was convicted as
13 provided by law; but if they find that he or she is the same, or after being duly cautioned if he or
14 she acknowledged in open court that he or she is the same person, the court shall sentence him
15 or her to such further confinement as is prescribed by §61-11-18 of this code on a second or third
16 conviction as the case may be: *Provided, That where the person is convicted pursuant to a plea*
17 agreement the agreement shall address whether or not the provisions of this section and §61-11-
18 18 of this code are to be invoked.

19 The clerk of such court shall transmit a copy of said information to the ~~warden of the~~
20 penitentiary Commissioner of the Division of Corrections and Rehabilitation, together with the
21 other papers required by the provisions of §62-8-10 of this code.

22 Nothing contained herein shall be construed as repealing the provisions of §62-8-4 of this
23 code, but no proceeding shall be instituted by the warden, as provided therein, if the trial court
24 has determined the fact of former conviction or convictions as provided herein.