

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

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) Except as provided by subsection (b) of this section~~ For purposes of this section,
 2 “qualifying offense” means any offenses or an attempt or conspiracy to commit any of the offenses
 3 in the following sections of this code:

- 4 (1) §60A-4-401(i)(ii), manufacture, delivery, possession;
- 5 (2) §60A-4-406, distribution to minors;
- 6 (3) §60A-4-409, transportation;
- 7 (4) §60A-4-411, clandestine drug lab;
- 8 (5) §60A-4-414, narcotics conspiracy;
- 9 (6) §60A-4-415, fentanyl;
- 10 (7) §60A-4-416(a), delivery resulting in death;
- 11 (8) §61-2-1, murder 1st and 2nd degree;
- 12 (9) §61-2-4, voluntary manslaughter;
- 13 (10) §61-2-7, attempt to kill or injure by poison;
- 14 (11) §61-2-9(a), malicious and unlawful assault;
- 15 (12) §61-2-9a(d), stalking 2nd;
- 16 (13) §61-2-9b, malicious or unlawful assault or assault of a child near a school;
- 17 (14) §61-2-9d, strangulation;

- 18 (15) §61-2-10, assault during commission of a felony;
- 19 (16) §61-2-10b(b), malicious assault on governmental representatives;
- 20 (17) §61-2-10b(c), unlawful assault on government official;
- 21 (18) §61-2-10b(d), battery on government official - felony only;
- 22 (19) §61-2-12, burglary;
- 23 (20) §61-2-12(a)(1), robbery 1st degree;
- 24 (21) §61-2-12-(b), robbery 2nd degree;
- 25 (22) §61-2-12(c), robbery by force;
- 26 (23) §61-2-13, extortion;
- 27 (24) §61-2-14, abduction;
- 28 (25) §61-2-14d, concealment/removal of minor;
- 29 (26) §61-2-16a(a), malicious assault;
- 30 (27) §61-2-16a(b), unlawful assault;
- 31 (28) §61-2-16a(c), battery – felony only;
- 32 (29) §61-2-28, domestic - felonies only;
- 33 (30) §61-2-29(d), incapacitated adult bodily injury;
- 34 (31) §61-2-29(e), incapacitated adult serious bodily injury;
- 35 (32) §61-2-29a, death of incapacitated adult;
- 36 (33) §61-3-1, burning – residential - 1st degree;
- 37 (34) §61-3-2, burning, other 2nd degree;
- 38 (35) §61-3-3;
- 39 (36) §61-3-4;
- 40 (37) §61-3-5;
- 41 (38) §61-3-6;
- 42 (39) §61-3-7;
- 43 (40) §61-3-11, burglary;

- 44 (41) §61-3-27, malicious killing of animals;
- 45 (42) §61-3C-14(b), soliciting minor;
- 46 (43) §61-3E-5, explosives causing death or injury;
- 47 (44) §61-5-17(b), disarming law-enforcement officer;
- 48 (45) §61-5-17(f), fleeing with reckless indifference;
- 49 (46) §61-5-27, intimidation of public official;
- 50 (47) §61-6-24, terroristic threats;
- 51 (48) §61-7-7, prohibited person with firearm;
- 52 (49) §61-7-12, wanton endangerment;
- 53 (50) §61-7-15a, use of firearm during felony;
- 54 (51) §61-8-12, incest - minors only;
- 55 (52) §61-8-19(b), felony cruelty to animals;
- 56 (53) §61-8B-3, sexual assault 1st degree;
- 57 (54) §61-8B-4, sexual assault 2nd degree;
- 58 (55) §61-8B-5, sexual assault 3rd degree;
- 59 (56) §61-8B-7, sexual abuse 1st degree;
- 60 (57) §61-8C-2(a), filming minors;
- 61 (58) §61-8C-2(b), filming minors;
- 62 (59) §61-8C-2(c), filming minors;
- 63 (60) §61-8C-3, distribution, felony possession;
- 64 (61) §61-8D-2, murdered child by parent;
- 65 (62) §61-8D-2a, death of child by parent;
- 66 (63) §61-8D-3, child abuse with injury, felonies;
- 67 (64) §61-8D-3a, female mutilation;
- 68 (65) §61-8D-4, child neglect, felony;
- 69 (66) §61-8D-4a, child neglect, death;

- 70 (67) §61-8D-5, sexual abuse by parent;
71 (68) §61-8D-6, distributing images;
72 (69) §61-10-31, conspiracy to commit any of the enumerated offenses;
73 (70) §61-11-8, attempt to commit any of the enumerated offenses;
74 (71) §61-11-8a, solicitation to commit any of the enumerated offenses;
75 (72) §61-14-2, human trafficking; and
76 (73) §17C-5-2(b), driving under the influence causing death.

77 (b) When any person is convicted of an offense and is subject to confinement in the state
78 correctional facility therefor, and it is determined, as provided in section nineteen of this article,
79 that such person had been before convicted in the United States of a crime punishable by
80 confinement in a penitentiary, the court shall if the sentence to be imposed is for a definite term
81 of years, add five years to the time for which the person is or would be otherwise sentenced.
82 Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be
83 twice the term of years otherwise provided for under such sentence further impose upon the
84 defendant an indeterminate sentence of not less than three nor more than 15 years.

85 ~~(b) Notwithstanding the provisions of subsection (a) or (c) of this section or any other~~
86 ~~provision of this code to the contrary, when any person is convicted of first degree murder or~~
87 ~~second degree murder or a violation of section three, article eight b of this chapter and it is~~
88 ~~determined, as provided in section nineteen of this article, that such person had been before~~
89 ~~convicted in this state of first degree murder, second degree murder or a violation of section three,~~
90 ~~article eight b of said chapter or has been so convicted under any law of the United States or any~~
91 ~~other state for an offense which has the same elements as any offense described in this~~
92 ~~subsection, such person shall be punished by confinement in the state correctional facility for life~~
93 ~~and is not eligible for parole~~

94 (c) Notwithstanding the provisions of subsection (b) of this section or any other provision
95 of the code to the contrary, when any person is convicted of a qualifying offense listed in

96 subsection (a) of this section, and has been twice been convicted of a qualifying offense in this
 97 state or under a statutory provision of another state, the United States Code, or the Uniform Code
 98 of Military Justice which requires proof of the same essential elements of any of the qualifying
 99 offenses listed in subsection (a) of this section, the person shall be sentenced to be imprisoned
 100 in a state correctional facility for life: *Provided, That any two prior convictions were part of or*
 101 *arising from the same transaction or occurrences or series of transactions or occurrences shall*
 102 *be considered as a single offense for purposes of this subsection.*

103 ~~(e)~~ (d) When it is determined, as provided in §61-11-19 of this code, that ~~such~~ the person
 104 ~~shall have~~ has been twice before convicted in the United States of a crime punishable by
 105 confinement in a ~~penitentiary~~ the person shall be sentenced to be confined in the state correctional
 106 ~~facility for life~~ correctional facility, other than the qualifying offenses enumerated in subsection (a)
 107 of this section, the court shall further impose upon the defendant an determinate sentence of not
 108 less than five nor more than 25 years: *Provided, That the two prior convictions shall be excluded*
 109 *for purposes of this subsection if the most recent conviction occurred more than 20 years prior to*
 110 *the conviction at issue.*

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

1 It ~~shall be~~ is the duty of the prosecuting attorney when he or she has knowledge of former
 2 ~~sentence or sentences to the penitentiary~~ convictions of any person convicted of an offense
 3 punishable by confinement in ~~the penitentiary~~ a correctional facility to give information thereof to
 4 the court immediately upon conviction and before sentence. Said court shall, before expiration of
 5 the term at which such person was convicted, cause such person or prisoner to be brought before
 6 it, and upon an information filed by the prosecuting attorney, setting forth the records of conviction
 7 and sentence, or convictions and sentences, as the case may be, and alleging the identity of the
 8 prisoner with the person named in each, shall require the ~~prisoner~~ defendant to say whether he
 9 or she is the same person or not. If ~~he~~ the defendant says he or she is not, or remains silent, ~~his~~
 10 the defendant's plea, or the fact of ~~his~~ the defendant's silence, shall be entered of record, and a

11 jury shall be impanelled to inquire whether the defendant prisoner is the same person mentioned
 12 in the several records. If the jury finds that ~~he~~ the defendant is not the same person, ~~he~~ the
 13 defendant shall be sentenced upon the charge of which he or she was convicted as provided by
 14 law; but if they find that ~~he~~ the defendant is the same, or after being duly cautioned if ~~he~~ the
 15 defendant acknowledged in open court that he or she is the same person, the court shall sentence
 16 ~~him~~ the defendant to such further ~~confinement~~ imprisonment as is prescribed by §61-11-18 of this
 17 code on a second or third conviction as the case may be.

18 The clerk of such court shall transmit a copy of said information to the ~~warden of the~~
 19 ~~penitentiary~~ Commissioner of the Division of Corrections and Rehabilitation together with the
 20 other papers required by the provisions of ~~section ten, article eight (seven), chapter sixty-two of~~
 21 ~~the Code of West Virginia, 1931~~ §62-7-10 of this code.

22 ~~Nothing contained herein shall be construed as repealing~~ This section does not repeal the
 23 provisions of §62-8-4 of this code, but ~~no~~ a proceeding shall may not be instituted by the warden,
 24 as provided ~~therein~~ in that section, if the trial court has determined the fact of former conviction
 25 or convictions as provided ~~herein~~ in this section.

NOTE: The purpose of this bill is to modify the "Habitual Offender" statute by addressing eligibility of certain crimes for consideration, expiration of sentence prior to being considered, ineligibility for good time calculation, and eligibility for dual treatment under the section allowing enhanced sentencing for second or subsequent offenses.

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