

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2365**

**FISCAL  
NOTE**

BY DELEGATE SMITH

[Introduced February 13, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §61-11-6 of the Code of West Virginia, 1931, as amended, relating  
 2 to certain persons who are accessories to a crime before or after the fact; providing that  
 3 no person who is a domestic partner to a felony offender may be deemed an accessory  
 4 after the fact; removing prohibition that a servant of an offender may not be deemed an  
 5 accessory after the fact; providing that an accessory to a felony who is the brother or sister,  
 6 parent or grandparent, or child or grandchild of the principal offender is guilty of a  
 7 misdemeanor; providing that an accessory to a misdemeanor is a misdemeanor; and  
 8 providing penalties.

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

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

**§61-11-6. Punishment of principals in the second degree and accessories before and after  
 the fact.**

1 (a) In the case of every felony, every principal in the second degree and every accessory  
 2 before the fact shall be punishable as if he or she were the principal in the first degree; and every  
 3 accessory after the fact is guilty of a misdemeanor and, upon conviction thereof, shall be confined  
 4 in jail not more than one year and fined not exceeding \$500: ~~But~~ Provided, That no person in the  
 5 relation of ~~husband and wife, parent or grandparent, child or grandchild, brother or sister, by~~  
 6 ~~consanguinity or affinity, or servant~~ spouse or domestic partner to the offender, who, after the  
 7 commission of a felony, shall aid or assist a principal felon, or accessory before the fact, to avoid  
 8 or escape from prosecution or punishment shall be deemed an accessory after the fact.

9 (b) Notwithstanding the provisions of subsection (a) of this section, any person who  
 10 knowingly harbors, conceals, maintains or assists the principal felon after the commission of the  
 11 underlying offense violating the felony provisions of §61-2-1, §61-2-4, or §61-2-9 of this code, or  
 12 gives such offender aid knowing that he or she has committed such felony, with the intent that the  
 13 offender avoid or escape detention, arrest, trial or punishment, shall be considered an accessory  
 14 after the fact and is guilty of a felony and, upon conviction thereof, shall be ~~guilty of a felony and,~~

15 ~~confined~~ imprisoned in a state correctional facility for a period not to exceed five years, or a period  
16 of not more than one half of the maximum penalty for the underlying felony offense, whichever is  
17 the lesser maximum term of confinement: ~~But~~ Provided, That no person who is a person in the  
18 relation of ~~husband and wife, parent, grandparent, child, grandchild, brother or sister, whether by~~  
19 ~~consanguinity or affinity, or servant~~ spouse or domestic partner to the offender shall be considered  
20 an accessory after the fact.

21 (c) An accessory to a felony who is the brother or sister, parent or grandparent, or child or  
22 grandchild of the principal offender and who is an accessory to a felony pursuant to subsection  
23 (a) or (b) of this section is guilty of a misdemeanor.

24 (d) An accessory to a misdemeanor is guilty of a misdemeanor and may be indicted, tried,  
25 and convicted in the manner provided for an accessory to a felony and, upon conviction thereof,  
26 except where a different punishment is otherwise specially provided by the law, shall be confined  
27 in jail for not more than 30 days, or fined not more than \$500, or both fined and confined.

NOTE: The purpose of this bill is to change certain offenses and penalties therefor for certain persons who are accessories to a crime. The bill provides that a domestic partner to a felony offender may not be deemed an accessory after the fact; removes prohibition that a servant of a felony offender may not be deemed an accessory after the fact; providing that an accessory to a felony who is the brother or sister, parent or grandparent, or child or grandchild of the principal offender is guilty of a misdemeanor; providing that an accessory to a misdemeanor is a misdemeanor.

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