

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 232**

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 24, 2022]



1 A BILL to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended, relating  
2 to punishment for third offense felony; clarifying that release from incarceration includes  
3 federal incarceration; requiring that for what would otherwise be a qualifying offense not  
4 to be such at least 20 years of unincarcerated, unsupervised time must have elapsed  
5 between the most recent felony offense and the previous offense; and relating to  
6 punishment for third offense felony.

*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) §61-3-13(a);
- 42 (40) §61-3-27;
- 43 (41) §61-3C-14b;

- 44 (42) §61-3E-5;
- 45 (43) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);
- 46 (44) §61-5-27;
- 47 (45) §61-6-24;
- 48 (46) Felony provisions of §61-7-7;
- 49 (47) §61-7-12;
- 50 (48) §61-7-15;
- 51 (49) §61-7-15a;
- 52 (50) §61-8-12;
- 53 (51) §61-8-19(b);
- 54 (52) §61-8B-3;
- 55 (53) §61-8B-4;
- 56 (54) §61-8B-5;
- 57 (55) §61-8B-7;
- 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 (b) Except as provided by subsection (c) of this section, when any person is convicted of  
76 a qualifying offense and is subject to imprisonment in a state correctional facility therefor, and it  
77 is determined, as provided in §61-11-19 of this code, that such person had been before convicted  
78 in the United States of a crime punishable by imprisonment in state or federal correctional facility,  
79 the court shall, if the sentence to be imposed is for a definite term of years, add five years to the  
80 time 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 (c) Notwithstanding any provision of this code to the contrary, when any person is  
84 convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code  
85 and it is determined, as provided in §61-11-19 of this code, that such person had been before  
86 convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of  
87 this code, or has been so convicted under any law of the United States or any other state for an  
88 offense which has the same or substantially similar elements as any offense described in this  
89 subsection, such person shall be punished by imprisonment in a state correctional facility for life  
90 and is not eligible for parole.

91 (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 imprisonment in  
93 a state or federal correctional facility which has the same or substantially similar elements as a  
94 qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility  
95 for life: *Provided*, That prior convictions arising from the same transaction or series of transactions

96 shall be considered a single offense for purposes of this section: *Provided, however,* That ~~an~~ the  
97 most recent previous qualifying offense which would otherwise constitute a qualifying offense for  
98 purposes of this subsection ~~subsection (b) of this section shall~~ may not be considered if more  
99 than 20 years have elapsed between: ~~that offense and~~ (1) The release of the person from his or  
100 her term of imprisonment or period of supervision resulting from the most recent qualifying offense  
101 or the expiration of a period of supervised release resulting from such offense; and (2) the conduct  
102 underlying the current charge.