

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 232**

BY SENATOR TRUMP

[Introduced January 12, 2022; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended, relating  
2 to punishment for second or third offense felony; including imprisonment for federal  
3 offenses; and providing that 20 years from the date of release of a person from his or her  
4 term of imprisonment or parole resulting from a second felony offense, or the expiration of  
5 a period of supervised release resulting from the second felony offense, and not the date  
6 of commission of the second felony offense is to be used, when punishment by  
7 imprisonment for life may not be considered for a third felony offense.

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

NOTE: The purpose of this bill is to amend the computation of time between imprisonment for a second felony offense and a third such offense when a sentence of life imprisonment may not be considered for the commission of the third felony.

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