

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **Senate Bill 194**

By Senator Trump

[Introduced January 13, 2023; 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 general provisions concerning crimes; providing for penalty for second or third offense of  
 3 a felony; and correcting an error in the code citation.

*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); §60A-4-401(a)(i) and §60A-4-401(a)(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 a  
76 qualifying offense and is subject to imprisonment in a state correctional facility therefor, and it is  
77 determined, as provided in §61-11-19 of this code, that such person had been before convicted in  
78 the United States of a crime punishable by imprisonment in state or federal correctional facility, 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 (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 a  
93 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 for  
95 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 the most  
97 recent previous qualifying offense which would otherwise constitute a qualifying offense for  
98 purposes of this subsection may not be considered if more than 20 years have elapsed between:

- 99 (1) The release of the person from his or her term of imprisonment or period of supervision  
100 resulting from the most recent qualifying offense or the expiration of a period of supervised release  
101 resulting from such offense; and (2) the conduct underlying the current charge.

NOTE: The purpose of this bill is to correct an error in the code citation concerning crimes and punishment for second or third offense of 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.