

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 3324**

**FISCAL  
NOTE**

By Delegate Street

[Introduced March 12, 2025; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §61-11-16, of the Code of West Virginia, 1931, as amended, relating  
2 to requiring a board of probation and parole to consider the sentencing judge's  
3 recommendation for certain qualifying offenses.

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

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

### **§61-11-16. Term of imprisonment for felony; indeterminate sentence.**

1 (a) Every sentence to the penitentiary of a person convicted of a felony for which the  
2 maximum penalty prescribed by law is less than life imprisonment, except offenses committed by  
3 convicts in the penitentiary punishable under §62-8-1 of the code, shall be a general sentence of  
4 imprisonment in the penitentiary. In imposing this sentence, the judge may, however, designate a  
5 definite term, which designation may be considered by the board of probation and parole as the  
6 opinion of the judge under the facts and circumstances then appearing of the appropriate term  
7 recommended by him or her to be served by the person sentenced. Imprisonment under a general  
8 sentence shall not exceed the maximum term prescribed by law for the crime for which the  
9 prisoner was convicted, less such good time allowance as is provided by §28-5-27 and §28-5-27a  
10 of this code, in the case of persons sentenced for a definite term. Every other sentence of  
11 imprisonment in the penitentiary shall be for a definite term or for life, as the court may determine.  
12 The term of imprisonment in jail, where that punishment is prescribed in the case of conviction for  
13 felony, shall be fixed by the court.

14 (b) Notwithstanding any other provision of this code to the contrary, when any person is  
15 convicted of a "qualifying offense" as listed in subsection (c) of this article, the circuit judge may, in  
16 that judge's discretion, based upon the facts and circumstances then appearing of the appropriate  
17 term recommended by him or her to be served by the person sentenced, and in the interest of  
18 justice, impose a definite term of imprisonment, which term shall not exceed the maximum term  
19 prescribed by law for the crime for which the prisoner was convicted.

20 (c) For purpose of this section, "qualifying offense" means any offense or an attempt or

- 21 conspiracy to commit any of the offenses in the following provisions of this code:
- 22 (1) §17C-5-2(b), DUI with Death of a Person;
- 23 (2) §17C-5-2(c), DUI with Serious Bodily Injury;
- 24 (3) §60A-4-401(a)(i), Possession of a Controlled Substance with Intent to Deliver;
- 25 (4) §60A-4-401(a)(ii), Delivery of a Controlled Substance;
- 26 (5) §60A-4-406, Delivery within 1,000 Feet of a School;
- 27 (6) §60A-4-409, Transportation of Schedule I or II Substance, Except Marijuana, into the
- 28 State;
- 29 (7) §61-2-1, First Degree Murder;
- 30 (8) §61-2-1. Second Degree Murder;
- 31 (9) §61-2-4, Voluntary Manslaughter;
- 32 (10) §61-2-5a, Concealment of a Deceased Human Body;
- 33 (11) §61-2-9(a), Malicious/Unlawful Assault;
- 34 (12) §61-2a(d), (e), (f), Stalking While Protective Order in Place;
- 35 (13) §61-2-9d, Strangulation;
- 36 (14) §61-2-10, Assault During the Commission of a Felony;
- 37 (15) §61-2-10b(b), (c), Assault on Government Employee;
- 38 (16) §61-2-14, Concealment of a Child;
- 39 (17) §61-2-28(d). Third Offense Domestic Battery;
- 40 (18) §61-2-29(d), (e). Elder Abuse;
- 41 (19) §61-2-29a, Death of an Incapacitated Adult;
- 42 (20) §61-2-29b, Financial Exploitation of an Elderly Person;
- 43 (21) §61-3-11, Burglary;
- 44 (22) §61-3-12. Breaking and Entering;
- 45 (23) §61-3C-14b(a), Solicitation of a Minor;
- 46 (24) §61-5-17(f), (h), Fleeing with Reckless Indifference;

- 47        (25) §61-5-17(j), Fleeing from Officer While DUI;
- 48        (26) §61-6-24(b), Threat of Terroristic Act;
- 49        (27) §61-7-15, Committing Violent Crime while Wearing Body Armor;
- 50        (28) §61-8-12, Incest;
- 51        (29) §61-8-19(b), Mutilations/Maliciously Kill an Animal;
- 52        (30) §61-8A-1, *et seq.*, Distribution of Sexually Explicit Conduct of Minors;
- 53        (31) §61-8B-3, First Degree Sexual Assault;
- 54        (32) §61-8B-4, Second Degree Sexual Assault;
- 55        (33) §61-8B-5, Third Degree Sexual Assault;
- 56        (34) §61-8B-7, First Degree Sexual Abuse;
- 57        (35) §61-8C-1, *et seq.*, Filming of Sexually Explicit Conduct of Minors;
- 58        (36) §61-8D-2a, Child Abuse Resulting in Death;
- 59        (37) §61-8D-3, Child Abuse Creating Substantial Risk of Serious Bodily Injury or Death;
- 60        (38) §61-8D-4, Child Neglect Resulting in Injury;
- 61        (39) §61-8D-4a, Child Neglect Resulting in Death;
- 62        (40) §61-8D-5, Sexual Abuse by Parent, Guardian, Custodian;
- 63        (41) §61-8D-6, Sexual Exploitation of a Minor;
- 64        (42) §61-14-2, Human Trafficking;
- 65        (43) Conspiracy to commit any of the offenses identified in subsection (c); and
- 66        (44)        Attempt        to        commit        a        crime        under        §61-2-1.

NOTE: The purpose of this bill is to require a board of probation and parole to consider the sentencing judge's recommendation for certain qualifying 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.