

# **WEST VIRGINIA LEGISLATURE**

**2025 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 138**

BY SENATORS HAMILTON AND BARTLETT

[Reported February 18, 2025, from the Committee on the Judiciary]



1 A BILL to amend and reenact §61-5-17 and §61-11-18 of the Code of West Virginia, 1931, as  
2 amended, relating to creating offenses for second, and third or subsequent offenses of  
3 fleeing from an officer; establishing criminal penalties for the new offenses; extending the  
4 period for which prior convictions may be used; specifying that the new offenses are  
5 qualifying offenses for recidivist sentencing enhancement purposes; and declaring that a  
6 conviction for fleeing in vehicle while under the influence of alcohol or drugs is treated as  
7 a driving under the influence for licensure purposes.

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

## **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

### **§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.**

1 (a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders, or  
2 obstructs, or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole  
3 officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy  
4 or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon  
5 conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more  
6 than one year, or both fined and confined.

7 (b) A person who intentionally disarms or attempts to disarm a law-enforcement officer,  
8 correctional officer, probation officer, parole officer, courthouse security officer, the State Fire  
9 Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty  
10 of a felony and, upon conviction thereof, shall be ~~imprisoned~~ confined in a state correctional facility  
11 not less than one nor more than five years.

12 (c) A person who, with intent to impede or obstruct a law-enforcement officer, the State  
13 Fire Marshal, or a full-time deputy or assistant fire marshal in the conduct of an investigation of a  
14 misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty  
15 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than

\$200, or confined in jail for five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild, or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer" does not include a watchman, a member of the West Virginia State Police, or college security personnel who is not a certified law-enforcement officer. A criminal charge under this subsection relating to the investigation of a misdemeanor offense may not be used to seek or support a secured bond or pre-trial incarceration.

(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined. A person who is convicted of a second offense violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$250 nor more than \$1,000 or shall be confined in a state correctional facility for not less than one year nor more than three years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be confined in a state correctional facility not less than two nor more than five years, or both fined and confined.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and,

upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 or shall be confined in a state correctional facility for not less than one year nor more than three years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,000, nor more than \$5,000 and shall be confined in a state correctional facility not less than two nor more than five years, or both fined and confined.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be ~~imprisoned~~ confined in a state correctional facility not less than one nor more than five years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 or shall be confined in a state correctional facility for not less than two nor more than 10 years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,000 nor more than \$5,000 and shall be confined in a state correctional facility not less than three nor more than 15 years, or both fined and confined.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than

\$3,000 and shall be confined in jail for not less than six months nor more than one year. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$3,000 nor more than \$5,000 or shall be confined in a state correctional facility for not less than one year nor more than three years, or both fined and confined. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$8,000 and shall be confined in a state correctional facility not less than two nor more than five years, or both fined and confined.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be ~~imprisoned~~ confined in a state correctional facility not less than three nor more than 10 years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 10 years. A person who is convicted of a third or subsequent offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than five nor more than 15 years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be ~~imprisoned~~ confined in a state correctional facility for not less than five nor more than 15 years. A person who is convicted of a second offense of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than 10 years nor more than 20 years. A person who is convicted of a third or subsequent offense

94 of violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined  
95 in a state correctional facility not less than 15 nor more than 25 years. A person ~~imprisoned~~  
96 confined pursuant to this subsection is not eligible for parole prior to having served a minimum of  
97 three years of his or her sentence or the minimum period required by §62-12-13 of this code,  
98 whichever is greater.

99 (j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement  
100 officer, probation officer, or parole officer acting in his or her official capacity after the officer has  
101 given a clear visual or audible signal directing the person to stop, and who is under the influence  
102 of alcohol, controlled substances, or drugs, is guilty of a felony and, upon conviction thereof, shall  
103 be ~~imprisoned~~ confined in a state correctional facility not less than three nor more than 10 years.  
104 A person who is convicted of a second offense of violation of this subsection is guilty of a felony  
105 and shall be confined in a state correctional facility for not less than five years nor more than 15  
106 years. A person who is convicted of a third or subsequent offense of violation of this subsection  
107 is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility  
108 not less than 10 nor more than 20 years. A conviction for a violation of this subsection shall be  
109 treated as driving under the influence conviction for licensure purposes by the Division of Motor  
110 Vehicles.

111 (k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle,  
112 motorboat, all-terrain vehicle, or snowmobile, as those terms are defined in §17A-1-1 of this code,  
113 whether or not it is being operated on a public highway at the time and whether or not it is licensed  
114 by the state.

115 (l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a  
116 person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement  
117 officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction  
118 to stop.

(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) ~~No~~ A person, with the intent to purposefully deprive another person of emergency services, may not interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical services personnel.

(2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is not limited to, seizing, concealing, obstructing access to, or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, the term "emergency communication" means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year, or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, or fined not less than \$500 nor more than \$3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than ~~40~~ 15 years prior to the offense in question.



(o) A person is guilty of filing a false complaint against a law-enforcement officer when, knowing the information reported is false or baseless, he or she:

(1) Initiates a false complaint of improper action of a law-enforcement officer relating to an incident or other circumstance; or

(2) Reports, by word or action, to any official or quasi-official agency, or organization having the function of dealing with conduct of law-enforcement officers which did not occur, does not in fact exist; or

(3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur.

Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both fined and confined.

**§61-11-18. Punishment for second or third offense of felony.**

(a) For purposes of this section, "qualifying offense" means any offense or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) §60A-4-401(a)(i) and §60A-4-401(a)(ii);

(2) §60A-4-406;

(3) §60A-4-409(b)(1) and §60A-4-409 (b)(2);

(4) §60A-4-411;

(5) §60A-4-414;

(6) §60A-4-415;

(7) §60A-4-416(a);

(8) §61-2-1;

(9) §61-2-4;

(10) §61-2-7;

(11) §61-2-9(a);

- 14 (12) §61-2-9a(d) and §61-2-9a(e);
- 15 (13) §61-2-9b;
- 16 (14) §61-2-9c;
- 17 (15) §61-2-9d;
- 18 (16) §61-2-10;
- 19 (17) §61-2-10b(b) and §61-2-10b(c);
- 20 (18) Felony provisions of §61-2-10b(d);
- 21 (19) §61-2-12;
- 22 (20) Felony provisions of §61-2-13;
- 23 (21) §61-2-14;
- 24 (22) §61-2-14a(a) and §61-2-14a(d);
- 25 (23) §61-2-14c;
- 26 (24) §61-2-14d(a) and §61-2-14d(b);
- 27 (25) §61-2-14f;
- 28 (26) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- 29 (27) §61-2-16a(a) and §61-2-16a(b);
- 30 (28) Felony provisions of §61-2-16a(c);
- 31 (29) §61-2-28(d);
- 32 (30) §61-2-29(d) and §61-2-29(e);
- 33 (31) §61-2-29a;
- 34 (32) §61-3-1;
- 35 (33) §61-3-2;
- 36 (34) §61-3-3;
- 37 (35) §61-3-4;
- 38 (36) §61-3-5;
- 39 (37) §61-3-6;

- 40 (38) §61-3-7;
- 41 (39) §61-3-11;
- 42 (40) Felony violation of 61-3-12;
- 43 (41) §61-3-13(a);
- 44 (42) Felony violation of §61-3-18;
- 45 (43) Felony violation of §61-3-19;
- 46 (44) Felony violation of §61-3-20;
- 47 (45) Felony violation of §61-3-20a;
- 48 (46) Felony violation of §61-3-21;
- 49 (47) §61-3-22;
- 50 (48) Felony violation of §61-3-24;
- 51 (49) Felony violation of §61-3-24a;
- 52 (50) §61-3-27;
- 53 (51) §61-3-54;
- 54 (52) §61-3C-14b;
- 55 (53) §61-3E-5;
- 56 (54) Felony violation of §61-5-10;
- 57 (55) ~~§61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);~~ Felony provisions of §61-5-17;
- 58 (56) §61-5-27;
- 59 (57) §61-6-24;
- 60 (58) Felony provisions of §61-7-7;
- 61 (59) §61-7-12;
- 62 (60) §61-7-15;
- 63 (61) §61-7-15a;
- 64 (62) §61-8-12;
- 65 (63) §61-8-19(b);

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66 (64) §61-8A-2;  
67 (65) §61-8A-4;  
68 (66) §61-8A-5;  
69 (67) §61-8B-3;  
70 (68) §61-8B-4;  
71 (69) §61-8B-5;  
72 (70) §61-8B-7;  
73 (71) §61-8B-10;  
74 (72) §61-8B-11b;  
75 (73) §61-8C-2;  
76 (74) §61-8C-3;  
77 (75) §61-8C-3a;  
78 (76) §61-8D-2;  
79 (77) §61-8D-2a;  
80 (78) §61-8D-3;  
81 (79) §61-8D-3a;  
82 (80) §61-8D-4;  
83 (81) §61-8D-4a;  
84 (82) §61-8D-5;  
85 (83) §61-8D-6;  
86 (84) §61-10-31;  
87 (85) §61-11-8;  
88 (86) §61-11-8a;  
89 (87) §61-14-2; and  
90 (88) §17C-5-2(b), driving under the influence causing death.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to imprisonment in a state correctional facility for the qualifying offender and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in that case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under the sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of this code, or has been so convicted under any law of the United States or any other state for an offense which has the same or substantially similar elements as any offense described in this subsection, the person shall be punished by imprisonment in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that the person has been twice previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility which has the same or substantially similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: *Provided, however*, That the most recent previous qualifying offense which would otherwise constitute a qualifying offense for purposes of this subsection may not be considered if more than 20 years have elapsed between:

(1) The release of the person from his or her term of imprisonment or period of supervision

- 116 resulting from the most recent qualifying offense or the expiration of a period of supervised release
- 117 resulting from the offense; and (2) the conduct underlying the current charge.