

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 264**

By Senators Stuart, Thorne, Helton, Phillips, and

Woodrum

[Reported March 7, 2025, from the Committee on the

Judiciary]

1 A BILL to amend and reenact §61-2-2 and §62-3-15 of the Code of West Virginia, 1931, as  
2 amended; to amend the code by adding eleven new sections, designated §61-2-2a, §61-2-  
3 2b, §61-2-2c, §61-2-2d, §61-2-2e, §61-2-2f, §61-2-2g, §62-7-4, §62-7-5, §62-7-6, and  
4 §62-7-6a; and to repeal §61-11-2, relating to permitting the imposition of a death penalty  
5 for first degree murder when the victim is a law-enforcement officer or first responder  
6 murdered in the performance of his or her official duties; providing for sentencing  
7 procedures relating to imposition of death penalty, setting forth aggravating and mitigating  
8 circumstances for the imposition of capital punishment; describing contents of sentencing  
9 verdict and requiring it be recorded; providing automatic review of death penalty sentence  
10 by the Supreme Court of Appeals; providing for forensic DNA testing in death penalty  
11 cases; directing the West Virginia Division of Corrections and Rehabilitation to carry out  
12 death sentence; authorizing West Virginia Division of Corrections and Rehabilitation to  
13 promulgate rules and emergency rules; providing exception for death penalty sentence in  
14 murder cases; providing for the execution of death sentence; providing for delivery of  
15 sentence of death; providing for transmission of certain court records to warden of the state  
16 correctional facility; transferring of person sentenced to death to the state correctional  
17 facility; providing for presence of certain persons at execution; providing for record of  
18 execution; and providing for disposition of deceased defendant's body.

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

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 2. CRIMES AGAINST THE PERSON.**

#### **§61-2-2. Penalty for murder in first degree.**

1 Murder of the first degree shall be punished by confinement in the penitentiary for life:  
2 Provided, That a person convicted of murder in the first degree may be sentenced to death if any of  
3 the aggravating circumstances enumerated in §61-2-2b of this code have been charged and

4 proven beyond a reasonable doubt without a finding of the presence of any one or more of the  
5 mitigating circumstances enumerated in §61-2-2c of this code.

**§61-2-2a. Sentencing procedures when seeking imposition of death penalty.**

1 (a) Procedure in jury trials. --

2 Upon a unanimous jury finding that the state has proven beyond a reasonable doubt the  
3 existence of an aggravating circumstance specified in §61-2-2b of this code, the court shall  
4 conduct a separate sentencing hearing in which the jury shall make a determination as to whether  
5 the defendant shall be sentenced to death or life imprisonment with or without mercy. In the  
6 sentencing hearing, evidence shall be presented by either party as to any matter that the court  
7 determines relevant and admissible on the question of the sentence to be imposed. Such  
8 evidence shall include evidence relating to mitigating circumstances specified in §61-2-2c of this  
9 code. Following the presentation of evidence, the court shall permit counsel for the state and  
10 defendant to present an argument for and against the sentence of death. The court shall then  
11 instruct the jury in accordance with subsection (b) of this section.

12 (b) Instructions to jury. --

13 Before retiring to determine the imposition of sentence, the court shall specifically instruct  
14 the jury as to the following:

15 (1) That the jury shall fully consider any mitigating circumstances, including those specified  
16 in §61-2-2c of this code, for which any evidence has been presented;

17 (2) That only upon the unanimous finding of the jury, shall the sentence of death be  
18 imposed; and

19 (3) That the jury shall consider any other matter that the judge determines to be just and  
20 proper under the circumstances.

**§61-2-2b. Aggravating circumstances for imposition of capital punishment.**

1 (a) When a defendant is convicted of murder in the first degree, it is an aggravating  
2 circumstance when the defendant intentionally killed a victim who was a law-enforcement officer

3 or emergency responder in the performance of his or her official duties and that the defendant  
4 knew or had reason to know that the victim was a law-enforcement officer or emergency  
5 responder performing his or her official duties.

6 (b) A finding of aggravated circumstances may not be based on circumstantial evidence,  
7 but requires evidence including, but not limited to, forensic DNA evidence, witness testimony, or  
8 an uncoerced confession.

9 (c) For purposes of this section, “law-enforcement officer” has the same meaning as  
10 ascribed in §30-29-1 of this code and shall include law-enforcement officials and pre-certified law-  
11 enforcement officers as those terms are defined in §30-29-1 of this code.

12 (d) For purposes of this section, “emergency responder” means a paid or volunteer  
13 firefighter, emergency services personnel, or any other similar individuals authorized to respond to  
14 call for public safety services or emergency medical assistance.

**§61-2-2c. Mitigating circumstances for imposition of capital punishment.**

1 (a) When a defendant is convicted of murder in the first degree with a further finding that  
2 the state has proven beyond a reasonable doubt the existence of an aggravating circumstance  
3 specified in §61-2-2b of this code, mitigating circumstances shall be considered in the matter of  
4 sentencing.

5 (b) The mitigating circumstances to be considered in the matter of sentencing include the  
6 following:

7 (1) The defendant was under the influence of extreme mental or emotional disturbance at  
8 the time of the commission of the murder;

9 (2) The capacity of the defendant to appreciate the criminality of his or her conduct or to  
10 conform his or her conduct to the requirements of the law was substantially impaired at the time of  
11 the commission of the murder;

12 (3) The defendant, at the time of the murder at issue, was under the age of 18 years;

13 (4) The defendant acted under duress, or acted under the substantial influence of another  
14 person at the time of the commission of the offense; and

15 (5) Any other evidence of mitigation concerning the character and record of the defendant,  
16 and the circumstances of the murder that would mitigate the appropriateness or necessity of  
17 imposing a sentence of death.

18 (c) The defendant shall bear the burden of proving the existence of a mitigating  
19 circumstance by clear and convincing evidence.

**§61-2-2d. Sentencing verdict by the jury.**

1 After hearing all the evidence and arguments by counsel and after receiving the  
2 instructions from the court, the jury shall deliberate and render a sentencing verdict. The jury shall  
3 set forth, in writing, whether the sentence imposed is death, life imprisonment without mercy, or life  
4 imprisonment with mercy.

**§61-2-2e. Recording sentencing verdict; imposing sentence.**

1 (a) Whenever the jury unanimously agrees to the sentencing verdict, it shall be received  
2 and recorded by the court. The court shall thereafter impose upon the defendant the sentence  
3 fixed by the jury. If the sentencing verdict is death, the court shall direct the West Virginia Division  
4 of Corrections and Rehabilitation to carry out the sentence according the rules and procedures of  
5 the Commissioner.

6 (b) The West Virginia Division of Corrections and Rehabilitation shall propose rules for  
7 legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, and may  
8 promulgate emergency rules pursuant to §29A-3-15 of this code when necessary, to adopt the  
9 procedures and methods that the West Virginia Division of Corrections and Rehabilitation will use  
10 to carry out a sentence of death. The rules authorized by this section shall at a minimum provide  
11 for the carrying out of a death sentence within the walls of a West Virginia correctional facility  
12 under the direction of West Virginia corrections officials. The method of execution shall comply  
13 with both the United states and West Virginia Constitution and shall be carried out according to  
14 current evidence-based scientific research, including but not limited to, lethal injection or firing  
15 squad.

**§61-2-2f. Review of death sentence.**

1 (a) Whenever the death penalty is imposed and upon the judgment becoming final in the  
2 circuit court, the sentence shall be reviewed automatically on the record by the Supreme Court of  
3 Appeals of West Virginia. The clerk of the circuit court, within 10 days after receiving the transcript  
4 of all recorded proceedings, shall transmit the entire record and transcript to the Supreme Court of  
5 Appeals of West Virginia together with a notice prepared by the clerk and a report prepared by the  
6 circuit judge. The notice shall set forth the title and docket number of the case, the name of the  
7 defendant and the name and address of his or her attorney, and a narrative statement of the  
8 judgment, the offense and the punishment prescribed. The report shall be in a standard form  
9 prepared and supplied by the Supreme Court of Appeals of West Virginia.

10 (b) The Supreme Court of Appeals of West Virginia shall consider the punishment as well  
11 as any errors enumerated by way of appeal filed by the defendant, and the sentencing review set  
12 forth in subsection (a) of this section may be consolidated with the appeal.

13 (c) With regard to the sentence, the Supreme Court of Appeals of West Virginia shall  
14 specifically determine:

15 (1) Whether the sentence of death was imposed under the influence of passion, prejudice,  
16 or any other arbitrary factor;

17 (2) Whether the evidence supports the jury's finding of a statutory aggravating  
18 circumstance; and

19 (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed  
20 in similar cases, considering both the circumstances of the murder and the defendant.

21 (d) Both the defendant and the state shall have the right to submit briefs within the time  
22 limitations set forth in the rules by the Supreme Court of Appeals of West Virginia, and to present  
23 oral argument to that court.

24 (e) The Supreme Court of Appeals of West Virginia shall render a written decision which  
25 shall include a reference to those similar cases, including similar cases from jurisdictions outside  
26 of West Virginia, which it took into consideration. The Supreme Court of Appeals, with regard to

27 review of death sentences, shall:

28 (1) Affirm the sentence of death; or

29 (2) Set the sentence aside and remand the case for resentencing by the circuit judge  
30 based on the record and argument of counsel. The records of those similar cases referred to by  
31 the Supreme Court of Appeals of West Virginia in its written decision shall be provided to the  
32 resentencing judge for his or her consideration.

33 (f) The Supreme Court of Appeals of West Virginia may employ appropriate staff and  
34 establish methods to compile any cases or information considered by the court to be appropriate  
35 and relevant to the statutory questions concerning the validity of the sentence. The Supreme Court  
36 of Appeals of West Virginia is requested to promulgate rules prior to January 1, 2026, to the extent  
37 necessary to comply with the provisions of this section.

38 (g) The sentence review is in addition to a direct appeal, if taken, and the review and  
39 appeal may be consolidated for consideration. The Supreme Court of Appeals of West Virginia  
40 shall render its decision on legal errors enumerated, the factual substantiation of the verdict and  
41 the validity of the sentence.

42 (h) Appeals involving a sentence of death shall be given expedited consideration by the  
43 Supreme Court of Appeals of West Virginia.

**§61-2-2g. DNA testing in death penalty cases.**

1 (a) Notwithstanding any other provision of law to the contrary, a person in custody pursuant  
2 to the judgment of a court of this state in which the death penalty has been imposed may, at any  
3 time after conviction, apply to the court that entered the judgment for the testing of any forensic  
4 deoxyribonucleic acid ("DNA") biological material that:

5 (1) Is related to the investigation or prosecution that resulted in the judgment;

6 (2) Is in the actual or constructive possession of the state; and

7 (3) Was not previously subjected to DNA testing or can be subjected to retesting with DNA  
8 techniques that were previously not available that provide a reasonable likelihood of more

9 accurate and probative results.

10 (b) The court shall notify the prosecutor of the county in which the sentence of death was  
11 entered and the Attorney General of an application made under subsection (a) of this section and  
12 shall afford the state an opportunity to respond.

13 (c) Upon receiving notice of an application made under subsection (a) of this section, the  
14 prosecutor of the county in which the sentence of death was entered or the Attorney General shall  
15 take necessary steps to ensure that any remaining biological material that was secured in  
16 connection with the case is preserved pending the completion of proceedings under this section.

17 (d) The court shall order DNA testing pursuant to an application made under subsection (a)  
18 of this section upon a determination that testing may produce noncumulative, exculpatory  
19 evidence relevant to the claim of the applicant that the applicant was wrongfully convicted or  
20 sentenced.

21 (e) The cost of DNA testing ordered under subsection (d) of this section shall be borne by  
22 the state or the applicant, as the court may order in the interests of justice, if it is shown that the  
23 applicant is not indigent and possesses the means to pay.

24 (f) The court may at any time appoint counsel for an indigent applicant under this section.

25 (g) If the results of DNA testing conducted under this section are unfavorable to the  
26 applicant, the court:

27 (1) Shall dismiss the application; and

28 (2) In the case of an applicant who is not indigent, may assess the applicant for the cost of  
29 such testing.

30 (h) If the results of DNA testing conducted under this section are favorable to the applicant,  
31 the court shall:

32 (1) Notwithstanding any other provision of law to the contrary that would bar a hearing,  
33 order a hearing, and

34 (2) Enter any order that serves the interests of justice, including an order:



35 (A) Vacating and setting aside the judgment;

36 (B) Discharging the applicant, if the applicant is in custody;

37 (C) Resentencing the applicant; or

38 (D) Granting a new trial.

39 (i) Nothing in this section may be construed to limit the circumstances under which a  
40 person may obtain DNA testing or other post-conviction relief under any other provision of law.

41 (j) Notwithstanding any other provision of law, the state shall preserve any biological  
42 material secured in connection with a death penalty case for such period of time as a person  
43 remains incarcerated awaiting execution under a death penalty sentence.

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**  
**§61-11-2. Capital punishment abolished.**

1 [Repealed.]

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 3. TRIAL OF CRIMINAL CASES.**  
**§62-3-15. Verdict and sentence in murder cases.**

1 If a person indicted for murder is found by the jury guilty thereof, they shall in their verdict  
2 find whether he or she is guilty of murder of the first degree or second degree. If the person  
3 indicted for murder is found by the jury guilty thereof, and if the jury find in their verdict that he or  
4 she is guilty of murder of the first degree, or if a person indicted for murder pleads guilty of murder  
5 of the first degree, he or she shall be punished by imprisonment in the penitentiary for life, and he  
6 or she, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be  
7 eligible for parole: Provided, That the jury may, in their discretion, recommend mercy, and if such  
8 recommendation is added to their verdict, such person shall be eligible for parole in accordance  
9 with the provisions of said article twelve, except that, notwithstanding any other provision of this  
10 code to the contrary, such person shall not be eligible for parole until he or she has served fifteen

11 years: Provided, however, That if the accused pleads guilty of murder of the first degree, the court  
12 may, in its discretion, provide that such person shall be eligible for parole in accordance with the  
13 provisions of said article twelve, and, if the court so provides, such person shall be eligible for  
14 parole in accordance with the provisions of said article twelve in the same manner and with like  
15 effect as if such person had been found guilty by the verdict of a jury and the jury had  
16 recommended mercy, except that, notwithstanding any provision of said article twelve or any other  
17 provision of this code to the contrary, such person shall not be eligible for parole until he or she has  
18 served fifteen years: Provided further, That nothing in this section shall preclude a sentence of  
19 death where the individual is guilty of the offense of murder in the first degree and there is a further  
20 finding that the state has proven beyond a reasonable doubt the existence of an aggravating  
21 circumstance specified in §61-2-2b of this code.

**ARTICLE 7. EXECUTION OF SENTENCES; STAYS.**  
**§62-7-4. Execution of death sentence.**

1 The sentence of death shall shall be executed at a state correctional facility in accordance  
2 with §61-2-2e of this code. The execution shall be performed under the direction of the warden of  
3 the state correctional facility and the authorities in control of the facility. The warden of the state  
4 correctional facility or, in the case of his or her death, absence or inability to act, the Commissioner  
5 of West Virginia Division of Corrections and Rehabilitation shall be the executioner. In carrying out  
6 the execution of the sentence, the warden or the Commissioner of West Virginia Division of  
7 Corrections and Rehabilitation may secure the services and advice of any person or persons  
8 either considers appropriate.

**§62-7-5. Certificate of death sentence and indictment to be sent to warden; transfer of**  
**convict to a state correctional facility; persons present at execution.**

1 The clerk of the court which pronounces the sentence of death shall, as soon as possible  
2 after sentence, deliver a certified copy of the sentence to the sheriff, who shall retain the custody of  
3 the convict sentenced to death until he or she is delivered to a properly authorized guard sent by

4 the warden for the removal of the convict to the state correctional facility. The clerk of the court  
5 shall also immediately transmit to the warden of the state correctional facility a copy of the  
6 indictment, order of conviction and the sentence and judgment entered thereon. As soon as  
7 possible after receipt of the copies, the warden shall send a guard or guards to remove the convict  
8 to the state correctional facility. Unless a suspension of execution is ordered, the execution shall  
9 take place at the time and in the manner prescribed in the sentencing order. At the execution there  
10 may be present those officers, guards, and assistants as the warden or Commissioner of West  
11 Virginia Division of Corrections and Rehabilitation considers appropriate. The warden or the  
12 commissioner, as the case may be, shall request the presence of the prosecuting attorney of the  
13 county in which the conviction occurred, the clerk of the circuit court of the county, 12 respectable  
14 citizens, including a physician and representatives of the press as may be considered appropriate.  
15 The counsel of the convict, or any clergymen the convict may desire and any of the convict's  
16 relations may be permitted to attend.

**§62-7-6. Record of execution.**

1 The warden or Commissioner of West Virginia Division of Corrections and Rehabilitation  
2 who executes the sentence of death shall certify to the clerk of the circuit court, by which the  
3 sentence was imposed, that the sentence has been executed. The clerk of the circuit court shall  
4 file the certificate with the papers of the case and enter the certificate and papers upon the records  
5 of the court.

**§62-7-6a. Disposition of body of executed convict.**

1 If the friends or relatives of the convict make a request in writing to the warden at any time  
2 within two days after the sentence of death has been executed, the body of the convict shall be  
3 returned to the friends or relatives, in any county of the state, for burial. The warden may draw his  
4 or her order on the Auditor of the state for whatever sum is necessary to pay for transportation of  
5 the body, to be paid out of funds appropriated to the West Virginia Division of Corrections and  
6 Rehabilitation. If no request is made by friends or relatives, the body shall be disposed of as

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7 provided for other convicts who die within a state correctional facility.