

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 1037

**FISCAL
NOTE**

By Senator Bartlett

[Introduced February 20, 2026; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §61-2-2, §62-3-3, §62-3-5, and §62-3-15 of the Code of West
 2 Virginia, 1931, as amended; to amend the code by adding four new sections, designated
 3 §62-7-4, §62-7-5, §62-7-6, and §62-7-6a; and to repeal §61-11-2, relating to permitting the
 4 imposition of the death penalty for first degree murder when the defendant is convicted of
 5 sexual abuse in first degree, the defendant is over 18, and the victim is under 12; requiring
 6 the prosecutor provide notice that the death penalty is being sought and the aggravating
 7 factors the prosecutor seeks to prove; providing for the jury selection process for capital
 8 felonies; providing for sentencing procedures relating to imposition of death penalty;
 9 setting forth aggravating and mitigating circumstances for the imposition of capital
 10 punishment; describing contents of sentencing verdict and requiring it be recorded;
 11 allowing a victim impact statement; providing automatic review of death penalty sentence
 12 by the Supreme Court of Appeals; authorizing the Supreme Court of Appeals to
 13 promulgate rules to review the sentence; providing for forensic DNA testing in death
 14 penalty cases; directing the West Virginia Division of Corrections and Rehabilitation to
 15 carry out death sentence; authorizing West Virginia Division of Corrections and
 16 Rehabilitation to promulgate rules and emergency rules; providing exception for death
 17 penalty sentence in murder cases; providing for the execution of death sentence; providing
 18 for delivery of sentence of death; providing for transmission of certain court records to
 19 warden of the state correctional facility; transferring of person sentenced to death to the
 20 state correctional facility; providing for presence of certain persons at execution; providing
 21 for record of execution; providing for disposition of deceased defendant's body; and
 22 repealing the prohibition of the death penalty in West Virginia.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

§61-2-2. Penalty for murder of first degree.

1 Murder of the first degree shall be punished by confinement in the penitentiary for life
2 pursuant to §62-3-15 or death under §62-3-5 of this code.

3 If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the
4 defendant and file the notice with the court within 45 days after arraignment. The notice must
5 indicate that charges under this section and §61-8B-3(c) of this code are being sought and must
6 contain a list of the aggravating factors the state intends to prove and has reason to believe it can
7 prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a
8 showing of good cause.

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

1 [Repealed.]

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 3. TRIAL OF CRIMINAL CASES.
§62-3-3. Selection of jury in felony cases; striking jurors; alternate jurors.

1 (a) In a case of felony, twenty jurors shall be drawn from those in attendance for the trial of
2 the accused. If a sufficient number of jurors for such panel cannot be procured in this way, the
3 court shall order others to be forthwith summoned and selected, until a panel of twenty jurors, free
4 from exception, be completed, from which panel the accused may strike off six jurors and the
5 prosecuting attorney may strike off two jurors. The prosecuting attorney shall first strike off two
6 jurors, and then the accused six. If the accused failed to strike from such panel the number of
7 jurors this section allows him to strike, the number not stricken off by him shall be stricken off by
8 the prosecuting attorney, so as to reduce the panel to twelve, who shall compose the jury for the
9 trial of the case.

10 (b) Whenever, in the opinion of the court the trial is likely to be a protracted one, the court
11 may direct that not more than four jurors, in addition to the regular jury, be called and impanelled to

12 sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who,
 13 prior to the time the jury retires to consider its verdict, become unable or disqualified to perform
 14 their duties. Alternate jurors shall be drawn in the same manner, shall have the same
 15 qualifications, shall be subject to the same examination and challenges, shall take the same oath
 16 and shall have the same functions, powers, facilities and privileges as the regular jurors. An
 17 alternate juror who does not replace a regular juror shall be discharged after the jury retires to
 18 consider its verdict. Each side is entitled to one peremptory challenge in addition to those
 19 otherwise allowed by law if one or two alternate jurors are to be impanelled, and two peremptory
 20 challenges if three or four alternate jurors are to be impanelled. The additional peremptory
 21 challenges may be used against an alternate juror only, and the other peremptory challenges
 22 allowed by this section may not be used against an alternate juror.

23 (c) A person who has beliefs which preclude her or him from finding a defendant guilty of
 24 an offense punishable by death shall not be qualified as a juror in a capital case.

§62-3-5. Capital punishment and proceedings.

1 (a) SENTENCE PROCEEDINGS. — Upon conviction or adjudication of guilt of a
 2 defendant under both §61-2-2 and §61-8B-3(c) of this code, the court shall conduct a separate
 3 sentencing proceeding to determine whether the defendant should be sentenced to death or life
 4 imprisonment of this code. The proceeding shall be conducted by the trial judge before the trial jury
 5 as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a
 6 hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may
 7 summon a special juror or jurors as provided in chapter 62 of this code to determine the issue of
 8 the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the
 9 sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless
 10 waived by the defendant. In the proceeding, evidence may be presented as to any matter that the
 11 court deems relevant to the nature of the crime and the character of the defendant and shall
 12 include matters relating to any of the aggravating factors enumerated in subsection (e) and for

13 which notice has been provided pursuant to §61-2-2 of this code or mitigating circumstances
14 enumerated in subsection (f). Any such evidence that the court deems to have probative value
15 may be received, regardless of its admissibility under the exclusionary rules of evidence, provided
16 the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this
17 subsection shall not be construed to authorize the introduction of any evidence secured in violation
18 of the United States Constitution or the State Constitution. The state and the defendant or the
19 defendant's counsel shall be permitted to present argument for or against a sentence of death.

20 (b) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection
21 applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

22 (1) After hearing all of the evidence presented regarding aggravating factors and mitigating
23 circumstances, the jury shall deliberate and determine if the state has proven, beyond a
24 reasonable doubt, the existence of at least two aggravating factors set forth in subsection (e).

25 (2) The jury shall return findings identifying each aggravating factor found to exist. A finding
26 that at least two aggravating factors exist must be unanimous. If the jury:

27 (A) Does not unanimously find at least two aggravating factors, the defendant is ineligible
28 for a sentence of death.

29 (B) Unanimously finds at least two aggravating factors, the defendant is eligible for a
30 sentence of death and the jury shall make a recommendation to the court as to whether the
31 defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The
32 recommendation shall be based on a weighing of all of the following:

33 (i) Whether sufficient aggravating factors exist.

34 (ii) Whether aggravating factors exist which outweigh the mitigating circumstances found
35 to exist.

36 (iii) Based on the considerations in sub-subparagraphs (i) and (ii), whether the defendant
37 should be sentenced to life imprisonment without the possibility of parole or to death.

38 (3) If at least eight jurors determine that the defendant should be sentenced to death, the

39 jury's recommendation to the court shall be a sentence of death. If fewer than eight jurors
40 determine that the defendant should be sentenced to death, the jury's recommendation to the
41 court shall be a sentence of life imprisonment without the possibility of parole.

42 (c) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

43 (1) If the jury has recommended a sentence of:

44 (A) Life imprisonment without the possibility of parole, the court shall impose the
45 recommended sentence of life imprisonment without the possibility of parole.

46 (B) Death, the court, after considering each aggravating factor found by the jury and all
47 mitigating circumstances, may impose a sentence of life imprisonment without the possibility of
48 parole or a sentence of death. The court may consider only an aggravating factor that was
49 unanimously found to exist by the jury. The court may impose a sentence of death only if the jury
50 unanimously found at least two aggravating factors beyond a reasonable doubt.

51 (2) If the defendant waived his or her right to a sentencing proceeding by a jury, the court,
52 after considering all aggravating factors and mitigating circumstances, may impose a sentence of
53 life imprisonment without the possibility of parole or a sentence of death. The court may impose a
54 sentence of death only if the court finds that at least two aggravating factors have been proven to
55 exist beyond a reasonable doubt.

56 (d) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE IMPRISONMENT
57 OR DEATH.—In each case in which the court imposes a sentence of life imprisonment without the
58 possibility of parole or death, the court shall, considering the records of the trial and the sentencing
59 proceedings, enter a written order addressing the aggravating factors set forth in subsection (e)
60 found to exist, the mitigating circumstances in subsection (f) reasonably established by the
61 evidence, whether there are sufficient aggravating factors to warrant the death penalty, and
62 whether the aggravating factors outweigh the mitigating circumstances reasonably established by
63 the evidence. The court shall include in its written order the reasons for not accepting the jury's
64 recommended sentence, if applicable. If the court does not issue its order requiring the death

65 sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a
66 sentence of life imprisonment without the possibility of parole in accordance with §62-3-15 of this
67 code.

68 (e) AGGRAVATING FACTORS.—Aggravating factors shall be limited to the following:

69 (1) The capital felony was committed by a person previously convicted of a felony violation
70 of §61-8B-1 et seq. of this code, and under sentence of imprisonment or placed on community
71 control or on felony probation.

72 (2) The defendant was previously convicted of another felony involving the use or threat of
73 violence to the person.

74 (3) The capital felony was committed by a sexual offender who is required to register under
75 §15-12-1 et seq. of this code.

76 (4) The defendant used a firearm or knowingly directed, advised, authorized, or assisted
77 another to use a firearm to threaten, intimidate, assault, or injure a person in committing the
78 offense or in furtherance of the offense.

79 (5) The capital felony was committed for pecuniary gain.

80 (6) The capital felony was especially heinous, atrocious, or cruel.

81 (7) The victim of the capital felony was particularly vulnerable due to age or disability, or
82 because the defendant stood in a position of familial or custodial authority over the victim.

83 (8) The capital felony was committed by a person subject to an injunction issued pursuant
84 to §48-27-501 or §48-27-403 of this code, or a foreign protection order accorded full faith and
85 credit pursuant to §48-27-310 of this code, and was committed against the petitioner who obtained
86 the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

87 (f) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

88 (1) The defendant has no significant history of prior criminal activity.

89 (2) The capital felony was committed while the defendant was under the influence of
90 extreme mental or emotional disturbance.

91 (3) The defendant was an accomplice in the capital felony committed by another person
92 and his or her participation was relatively minor.

93 (4) The defendant acted under extreme duress or under the substantial domination of
94 another person.

95 (5) The capacity of the defendant to appreciate the criminality of his or her conduct or to
96 conform his or her conduct to the requirements of law was substantially impaired at the time of the
97 commission of the murder.

98 (6) The age of the defendant at the time of the crime.

99 (7) The defendant was under the influence of extreme mental or emotional disturbance at
100 the time of the commission of the murder.

101 (8) The existence of any other factors in the defendant's background that would mitigate
102 against imposition of the death penalty.

103 (g) VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the
104 existence of two or more aggravating factors as described in subsection (e), the prosecution may
105 introduce, and subsequently argue, victim impact evidence to the jury by family. Such evidence
106 shall be designed to demonstrate the victim's uniqueness as an individual human being and the
107 physical and psychological harm to the victim. Characterizations and opinions about the crime, the
108 defendant, and the appropriate sentence shall not be permitted as a part of victim impact
109 evidence.

110 (h) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and
111 sentence of death shall be subject to automatic review by the Supreme Court of Appeals West
112 Virginia and disposition rendered within two years after the filing of a notice of appeal. The review
113 by the Supreme Court of Appeals of West Virginia shall have priority over all other cases and shall
114 be heard in accordance with rules adopted by the Supreme Court of Appeals of West Virginia,
115 which shall require both the defendant and the state the opportunity to submit briefs and present
116 oral arguments. The review shall consider at a minimum:

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

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

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

123 (i) DNA TESTING.

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

128 (A) Is related to the investigation or prosecution that resulted in the judgment;

129 (B) Is in the actual or constructive possession of the state; and

130 (C) Was not previously subjected to DNA testing or can be subjected to retesting with DNA
131 techniques that were previously not available that provide a reasonable likelihood of more
132 accurate and probative results.

133 (2) The court shall notify the prosecutor of the county in which the sentence of death was
134 entered and the Attorney General of an application made under paragraph (1) of this subsection
135 and shall afford the state an opportunity to respond.

136 (3) Upon receiving notice of an application made under paragraph (1) of this subsection,
137 the prosecutor of the county in which the sentence of death was entered or the Attorney General
138 shall take necessary steps to ensure that any remaining biological material that was secured in
139 connection with the case is preserved pending the completion of proceedings under this section.

140 (4) The court shall order DNA testing pursuant to an application made under paragraph (1)
141 of this subsection upon a determination that testing may produce noncumulative, exculpatory
142 evidence relevant to the claim of the applicant that the applicant was wrongfully convicted or

143 sentenced.

144 (5) The cost of DNA testing ordered under paragraph (4) of this subsection shall be borne
145 by the state or the applicant, as the court may order in the interests of justice, if it is shown that the
146 applicant is not indigent and possesses the means to pay.

147 (6) The court may at any time appoint counsel for an indigent applicant under this
148 subsection.

149 (7) If the results of DNA testing conducted under this subsection are unfavorable to the
150 applicant, the court:

151 (A) Shall dismiss the application; and

152 (B) In the case of an applicant who is not indigent, may assess the applicant for the cost of
153 such testing.

154 (8) If the results of DNA testing conducted under this subsection are favorable to the
155 applicant, the court shall:

156 (A) Notwithstanding any other provision of law to the contrary that would bar a hearing,
157 order a hearing, and

158 (B) Enter any order that serves the interests of justice, including an order:

159 (i) Vacating and setting aside the judgment;

160 (ii) Discharging the applicant, if the applicant is in custody;

161 (iii) Resentencing the applicant; or

162 (iv) Granting a new trial.

163 (9) Nothing in this subsection may be construed to limit the circumstances under which a
164 person may obtain DNA testing or other post-conviction relief under any other provision of law.

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

§62-3-15. Verdict and sentence in murder cases.

1 If a person indicted for murder ~~be~~ is found guilty by the jury ~~guilty thereof, they~~ the jury shall
 2 in their verdict find whether he or she is guilty of murder of the first degree or second degree. If ~~the~~
 3 ~~person indicted for murder is found by the jury guilty thereof, and~~ if the jury find in their verdict that
 4 he or she is guilty of murder of the first degree, or if a person indicted for murder pleads guilty of
 5 murder of the first degree, he or she shall be punished by imprisonment in the penitentiary for life,
 6 and he or she, notwithstanding ~~the provisions of article twelve, chapter sixty-two~~ §62-12-1 et seq.
 7 of this code, shall not be eligible for parole: *Provided*, That the jury may, in their discretion,
 8 recommend mercy, and if such recommendation is added to their verdict, such person shall be
 9 eligible for parole in accordance with the provisions of ~~said article twelve~~ §62-12-1 et seq. of this
 10 code, except that, notwithstanding any other provision of this code to the contrary, such person
 11 shall not be eligible for parole until he or she has served fifteen years: *Provided, however*, That if
 12 the accused pleads guilty of murder of the first degree, the court may, in its discretion, provide that
 13 such person shall be eligible for parole in accordance with the provisions of ~~said article twelve~~ §62-
 14 12-1 et seq. of this code, and, if the court so provides, such person shall be eligible for parole in
 15 accordance with the provisions of ~~said article twelve~~ §62-12-1 et seq. of this code in the same
 16 manner and with like effect as if such person had been found guilty by the verdict of a jury and the
 17 jury had recommended mercy, except that, notwithstanding any provision ~~said article twelve of~~
 18 §62-12-1 et seq. of this code or any other provision of this code to the contrary, such person shall
 19 not be eligible for parole until he or she has served 15 years.

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

1 (a) The West Virginia Division of Corrections and Rehabilitation shall propose rules for
 2 legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, and may
 3 promulgate emergency rules pursuant to §29A-3-15 of this code when necessary, to adopt the
 4 procedures and methods that the West Virginia Division of Corrections and Rehabilitation will use
 5 to carry out a sentence of death. The rules authorized by this section shall at a minimum provide

6 for the carrying out of a death sentence within the walls of a West Virginia correctional facility
7 under the direction of West Virginia corrections officials. The method of execution shall comply
8 with both the United states and West Virginia Constitution and shall be carried out according to
9 current evidence-based scientific research, including but not limited to, lethal injection or firing
10 squad.

11 (b) The execution shall be performed under the direction of the warden of the state
12 correctional facility and the authorities in control of the facility. The warden of the state correctional
13 facility or, in the case of his or her death, absence or inability to act, the Commissioner of West
14 Virginia Division of Corrections and Rehabilitation shall be the executioner. In carrying out the
15 execution of the sentence, the warden or the Commissioner of West Virginia Division of
16 Corrections and Rehabilitation may secure the services and advice of any person or persons
17 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
 7 provided for other convicts who die within a state correctional facility.

NOTE: The purpose of this bill is to impose the death penalty on defendants convicted of first degree murder and first degree sexual abuse of a child in the same proceeding.

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