

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 1068**

By Senator Azinger

[Introduced February 23, 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 and §61-8B-3 of the Code of West Virginia, 1931, as  
 2 amended; to amend the code by adding three new sections, designated §61-2-2a, §61-2-  
 3 2b, and §61-8B-3a; and to repeal §61-11-2, relating to permitting the death penalty for first  
 4 degree murder of a minor 16 years or younger, or for the first degree sexual assault of a  
 5 minor 16 years or younger; and providing for procedures, standards, and findings  
 6 applicable to imposition thereof in certain instances, including aggravating circumstances.

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

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

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

1 ~~Any person convicted of murder of in the first degree shall be punished by confinement in~~  
 2 ~~the penitentiary for life sentenced to death if any one or more of the aggravating circumstances~~  
 3 ~~enumerated in §61-2-2b have been charged and found to be true. Any person otherwise~~  
 4 ~~convicted of murder in the first degree is sentenced to confinement in a state correctional facility~~  
 5 ~~for life without probation or parole.~~

**§61-2-2a. Sentencing procedures for murder in the first degree.**

1 (a) Procedure in jury trials. --  
 2 After a verdict of murder in the first degree is recorded and before the jury is discharged,  
 3 the court shall conduct a separate sentencing hearing in which the jury shall determine whether  
 4 the defendant shall be sentenced to death or life imprisonment. In the sentencing hearing,  
 5 evidence may be presented as to any matter that the court determines relevant and admissible on  
 6 the question of the sentence to be imposed, including evidence relating to any of the aggravating  
 7 circumstances specified in §61-2-2b of this code. Evidence of aggravating circumstances shall be  
 8 limited to those circumstances specified in §61-2-2b. After the presentation of evidence, the court  
 9 shall permit counsel to present argument for and against the sentence of death. The court shall  
 10 then instruct the jury in accordance with subsection (c) of this section. Failure of the jury to  
 11 unanimously agree upon a sentence does not impeach or in any way affect the guilty verdict

12 previously recorded.

13 (b) Procedure in nonjury trials and guilty pleas. --

14 If the defendant waives a jury trial or pleads guilty, the sentencing proceeding shall be  
15 conducted before a jury impaneled for that purpose unless waived by the defendant with the  
16 consent of the state, in which latter case the trial judge shall hear the evidence and determine the  
17 penalty in the same manner as would a jury.

18 (c) Instructions to jury. --

19 Before retiring to determine the imposition of sentence, the jury shall be instructed by the  
20 court as to the following:

21 (1) The aggravating circumstances specified in §61-2-2b for which any evidence has been  
22 presented;

23 (2) Aggravating circumstances must be proved by the state beyond a reasonable doubt;

24 (3) The sentence shall be a sentence of death if the jury unanimously finds the aggravating  
25 circumstance specified in §61-2-2b or if the jury unanimously finds one or more aggravating  
26 circumstances. The sentence shall be life imprisonment without probation or parole in all other  
27 cases;

28 (4) The court may discharge the jury if it is of the opinion that further deliberation will not  
29 result in a unanimous agreement as to the sentence, in which case the court shall sentence the  
30 defendant to life imprisonment; and

31 (5) The court shall instruct the jury on any other matter that may be just and proper under  
32 the circumstances.

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

1 (a) When a defendant is convicted of murder in the first degree, aggravating circumstances  
2 shall be when the victim was a minor 16 years of age or younger;

3 (b) When a defendant is convicted of sexual assault, aggravating circumstances shall be

4 when the victim was a minor 16 years of age or younger;

5 (c) A finding of aggravated circumstances may not be based on circumstantial evidence  
6 but requires some physical evidence, such as forensic DNA evidence, or an uncoerced  
7 confession.

8 (d) A judge may consider the aggravating circumstances set forth in this section for  
9 purpose of imposing a penalty by capital punishment.

10 (e) The West Virginia Division of Corrections and Rehabilitation (DCR) under the  
11 Department of Homeland Security, in coordination with the West Virginia Supreme Court of  
12 Appeals, shall establish a mechanism to impose capital punishment provided for in this section  
13 and \_\_\_\_\_ in \_\_\_\_\_ this \_\_\_\_\_ code.

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-3. Sexual assault in the first degree.**

1 (a) A person is guilty of sexual assault in the first degree when:

2 (1) The person engages in sexual intercourse or sexual intrusion with another person and,  
3 in so doing:

4 (A) Inflicts serious bodily injury upon anyone;

5 (ii) (B) Employs a deadly weapon in the commission of the act.

6 (2) The person, being 14 years old or more, engages in sexual intercourse or sexual  
7 intrusion with another person who is younger than 12 years old.

8 (b) Any person violating the provisions of this section is guilty of a felony and, upon  
9 conviction thereof, shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned in a  
10 state correctional facility not less than 15 nor more than 35 years.

11 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any  
12 person violating the provisions of subsection (a) of this section who is 18 years of age or older and  
13 whose victim is younger than 12 years of age, shall be imprisonment in a state correctional facility  
14 for not less than 25 nor more than 100 years and a fine of not less than \$5,000 nor more than

15 \$25,000: *Provided*, That if a person 18 years or older is found guilty of sexual assault in the first  
16 degree of a minor 16 years of age or younger, then that individual may be considered for the death  
17 penalty, according to the provisions otherwise set forth in §61-2-2b of this code.

**§61-8B-3a. Sentencing procedures for sexual assault in the first degree.**

1 *(a) Procedure in jury trials. --*

2 After a verdict of sexual assault in the first degree is recorded and before the jury is  
3 discharged, the court shall conduct a separate sentencing hearing in which the jury shall  
4 determine whether the defendant shall be sentenced to death or to a sentence otherwise provided  
5 in §61-8B-3 of this code. In the sentencing hearing, evidence may be presented as to any matter  
6 that the court determines relevant and admissible on the question of the sentence to be imposed,  
7 including evidence relating to any of the aggravating circumstances specified in §61-2-2b.  
8 Evidence of aggravating circumstances shall be limited to those circumstances specified in §61-2-  
9 2b. After the presentation of evidence, the court shall permit counsel to present argument for and  
10 against the sentence of death. The court shall then instruct the jury in accordance with subsection  
11 (c) of this section. Failure of the jury to unanimously agree upon a sentence does not impeach or in  
12 any way affect the guilty verdict previously recorded.

13 *(b) Procedure in nonjury trials and guilty pleas. --*

14 If the defendant waives a jury trial or pleads guilty, the sentencing proceeding shall be  
15 conducted before a jury impaneled for that purpose unless waived by the defendant with the  
16 consent of the state, in which latter case the trial judge shall hear the evidence and determine the  
17 penalty in the same manner as would a jury.

18 *(c) Instructions to jury. --*

19 Before retiring to determine the imposition of sentence, the jury shall be instructed by the  
20 court as to the following:

21 (1) The aggravating circumstances specified in §61-2-2b for which any evidence has been  
22 presented;

23 (2) Aggravating circumstances must be proved by the state beyond a reasonable doubt;

24           (3) The sentence shall be a sentence of death if the jury unanimously finds the aggravating  
25 circumstance specified in §61-2-2b of this code;

26           (4) The court may discharge the jury if it is of the opinion that further deliberation will not  
27 result in a unanimous agreement as to the sentence; and

28           (5) The court shall instruct the jury on any other matter that may be just and proper under  
29 the circumstances.

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

**§61-11-2. Capital punishment abolished.**

1           [Repealed.]

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NOTE: The purpose of this bill is to provide for the death penalty in limited circumstances. The bill provides for procedures and standards applicable thereto. Finally, procedures for carrying out the death sentence are established.

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