

H. B. 2252

(By Delegate Rodighiero)

[Introduced January 23, 2015; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to repeal §61-3-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §61-2-31; and to amend and reenact §61-3-12 of said code, all relating to replacing the present crime of burglary with the crime of home invasion; providing criminal offenses of home invasion in the first, second, third and fourth degrees; and prescribing penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §61-2-31; and that §61-3-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-31. Home invasion; degrees; penalties; definitions.

(a) As used in this section the following terms are defined as:

(1) “Enters or remains unlawfully” means when a person who enters or remains upon the

1 premises when the premises, at the time of the entry or remaining, is not open to the public and when
2 the individual is not otherwise licensed, privileged or has permission to enter or remain on the
3 premises.

4 (2) “Dangerous instrument” means any instrument, article, or substance which, under the
5 circumstances in which it is used or attempted to threatened to be used, is capable of causing death
6 or serious physical injury, including a vehicle and a dog that has been commanded to attack.

7 (3) “Deadly weapon” has the same meaning as provided in section two, article seven, chapter
8 sixty-one of this code.

9 (4) “Dwelling” includes, but is not limited to, a mobile home, house trailer, modular home,
10 factory-built home or self-propelled motor home, used as a dwelling regularly or only from time to
11 time, an occupied outhouse adjoining the dwelling, or any other nonmotive vehicle primarily
12 designed for human habitation and occupancy and used as a dwelling regularly or only from time to
13 time.

14 (b)(1) Home invasion in the first degree. -- It is unlawful for an individual to enter or remain
15 unlawfully in a dwelling, or an outhouse adjoining or occupied, or another, with the intent to commit
16 a crime therein and who is either:

17 (A) Armed with explosives, a deadly weapon or a dangerous instrument; or

18 (B) In the course of committing the offense, intentionally, knowingly, or recklessly uses
19 explosives, a deadly weapon or a dangerous instrument that causes physical injury, serious physical
20 injury or death to a person lawfully present in the dwelling.

21 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony and,
22 upon conviction, shall be fined not more than \$20,000 and imprisoned for twenty-five years to life

1 without mercy.

2 (3) Notwithstanding any other provision of this code to the contrary, an individual sentenced
3 pursuant to this subsection is not eligible for any reduction in the individual's term of sentence, nor
4 is the individual eligible for any type of alternative sentencing.

5 (c)(1) Home invasion in the second degree. -- It is unlawful for a person to enter or remain
6 unlawfully in a dwelling with the intent to commit a crime, and to use, or threaten to use, physical
7 force against a person lawfully present in the dwelling.

8 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony and,
9 upon conviction, shall be fined not more than \$15,000 and imprisoned for a term of twenty years.

10 (3) Notwithstanding any other provision of this code to the contrary, an individual sentenced
11 pursuant to this subsection is not eligible for any reduction in the individual's term of sentence, and
12 is not eligible for any type of alternative sentencing.

13 (d)(1) Home invasion in the third degree. -- It is unlawful for a person to enter or remain
14 unlawfully in a dwelling with the intent to commit a crime when another person is lawfully present
15 in the building.

16 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony and,
17 upon conviction, shall be imprisoned for ten years.

18 (3) Notwithstanding any other provision of this code, an individual sentenced pursuant to this
19 subsection is not eligible for any reduction in the individual's term of sentence, and is not eligible
20 for any type of alternative sentencing.

21 (e)(1) Home invasion in the fourth degree. -- It is unlawful for a person to enter or remain
22 unlawfully in a dwelling with the intent to commit a crime in it.

1 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony and,
 2 upon conviction, shall be fined not more than \$5,000, imprisoned for up to five years, or both fined
 3 and imprisoned.

4 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

5 **§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar,**
 6 **steamboat or other vessel; penalties; counts in indictment.**

7 If any A person shall who, at any time, ~~break and enter, or shall enter~~ breaks and enters or
 8 enters without breaking, any office, shop, underground coal mine, storehouse, warehouse, banking
 9 house or any house or building, other than a dwelling ~~house~~ or outhouse adjoining ~~thereto~~ or
 10 occupied ~~therewith,~~ or any railroad or traction car, propelled by steam, electricity or otherwise, or
 11 any steamboat or other boat or vessel, within the jurisdiction of any county in this state, with intent
 12 to commit a felony or any larceny, he or she ~~shall be deemed~~ is guilty of a felony and, upon
 13 conviction, shall be ~~confined~~ imprisoned in a state correctional facility not less than one nor more
 14 than ten years. ~~And if any~~ A person shall who, at any time, ~~break and enter, or shall enter~~ breaks and
 15 enters or enters without breaking, any automobile, motorcar or bus, with like intent, within the
 16 jurisdiction of any county in this state, he ~~shall be~~ or she is guilty of a misdemeanor and, upon
 17 conviction, shall be confined in jail not less than two nor more than twelve months and be fined not
 18 exceeding \$100.

19 An indictment for ~~burglary~~ home invasion may contain one or more counts for breaking and
 20 entering, or for entering without breaking, the house or building mentioned in the count for ~~burglary~~
 21 home invasion under ~~the provisions of this and the preceding~~ this section as well as sections thirty-
 22 one through thirty-four, article two of this chapter.

NOTE: The bill replaces the present crime of burglary with the crime of home invasion. This bill provides for the criminal offenses of home invasion in the first, second, third and fourth degrees. The bill prescribes penalties.

§61-2-31 is new; therefore, it has been completely underscored.

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