

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2252**

**FISCAL  
NOTE**

**2015 Carryover**

(BY DELEGATE RODIGHIERO)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

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

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

1 That §61-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that said  
2 code be amended by adding thereto a new section, designated §61-2-31; and that §61-3-12 of  
3 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.**

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

2 (1) "Enters or remains unlawfully" means when a person who enters or remains upon the  
3 premises when the premises, at the time of the entry or remaining, is not open to the public and  
4 when the individual is not otherwise licensed, privileged or has permission to enter or remain on  
5 the premises.

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

9 (3) "Deadly weapon" has the same meaning as provided in section two, article seven,  
10 chapter sixty-one of this code.

11 (4) "Dwelling" includes, but is not limited to, a mobile home, house trailer, modular home,  
12 factory-built home or self-propelled motor home, used as a dwelling regularly or only from time to  
13 time, an occupied outhouse adjoining the dwelling, or any other nonmotive vehicle primarily

14 designed for human habitation and occupancy and used as a dwelling regularly or only from time  
15 to time.

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

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

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

23 (2) Anyone found to have violated subdivision (1) of this subsection is guilty of a felony  
24 and, upon conviction, shall be fined not more than \$20,000 and imprisoned for twenty-five years  
25 to life without mercy.

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

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

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

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

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

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

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

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

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

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

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

1 ~~If any~~ A person shall who, at any time, ~~break and enter, or shall enter~~ breaks and enters  
2 or enters without breaking, any office, shop, underground coal mine, storehouse, warehouse,  
3 banking house or any house or building, other than a dwelling ~~house~~ or outhouse adjoining ~~thereto~~  
4 or occupied ~~therewith,~~ or any railroad or traction car, propelled by steam, electricity or otherwise,  
5 or any steamboat or other boat or vessel, within the jurisdiction of any county in this state, with  
6 intent to commit a felony or any larceny, he or she ~~shall be deemed~~ is guilty of a felony and, upon  
7 conviction, shall be ~~confined~~ imprisoned in a state correctional facility not less than one nor more  
8 than ten years. ~~And if any~~ A person shall who, at any time, ~~break and enter, or shall enter~~ breaks

9 and enters or enters without breaking, any automobile, motorcar or bus, with like intent, within the  
10 jurisdiction of any county in this state, he ~~shall be~~ or she is guilty of a misdemeanor and, upon  
11 conviction, shall be confined in jail not less than two nor more than twelve months and be fined  
12 not exceeding \$100.

13 An indictment for ~~burglary~~ home invasion may contain one or more counts for breaking  
14 and entering, or for entering without breaking, the house or building mentioned in the count for  
15 ~~burglary~~ home invasion under ~~the provisions of this and the preceding~~ this section as well as  
16 sections thirty-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.