

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2013

**FISCAL
NOTE**

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[Introduced February 8, 2017 ; 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1 That §61-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that said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 purpose of this bill is to replace 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.

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