

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Senate Bill 765

BY SENATORS WELD AND WOELFEL

[Passed March 7, 2020; in effect 90 days from passage]

1 AN ACT to amend and reenact §61-11-18 and §61-11-19 of the Code of West Virginia, 1931, as
2 amended, all relating to provisions of the Habitual Offender statute; modifying provisions
3 addressing eligibility of certain crimes for consideration; listing offenses which qualify to
4 enhance a sentence; maintaining penalty for persons having two or more prior qualifying
5 offenses; treating crimes arising from the same transaction or series of transactions as
6 one offense; requiring the most recent prior conviction to be less than 20 years old to be
7 counted; and requiring plea agreements to address applicability of habitual offender
8 provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

1 (a) For purposes of this section, “qualifying offense” means any offenses or an attempt or
2 conspiracy to commit any of the offenses in the following provisions of this code:

3 (1) §60A-4-401(i) and §60A-4-401(ii);

4 (2) §60A-4-406;

5 (3) §60A-4-409(b)(1), §60A-4-409(2), and §60A-4-409(3);

6 (4) §60A-4-411;

7 (5) §60A-4-414;

8 (6) §60A-4-415;

9 (7) §60A-4-416(a);

10 (8) §61-2-1;

11 (9) §61-2-4;

12 (10) §61-2-7;

13 (11) §61-2-9(a);

14 (12) §61-2-9a(d) and §61-2-9a(e);

- 15 (13) §61-2-9b;
- 16 (14) §61-2-9d;
- 17 (15) §61-2-10;
- 18 (16) §61-2-10b(b) and §61-2-10b(c);
- 19 (17) Felony provisions of §61-2-10b(d);
- 20 (18) §61-2-12;
- 21 (19) Felony provisions of §61-2-13;
- 22 (20) §61-2-14;
- 23 (21) §61-2-14a(a) and §61-2-14a(d);
- 24 (22) §61-2-14c;
- 25 (23) §61-2-14d(a) and §61-2-14d(b);
- 26 (24) §61-2-14f;
- 27 (25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- 28 (26) §61-2-16a(a) and §61-2-16a(b);
- 29 (27) Felony provisions of §61-2-16a(c);
- 30 (28) §61-2-28(d);
- 31 (29) §61-2-29(d) and §61-2-29(e);
- 32 (30) §61-2-29a;
- 33 (31) §61-3-1;
- 34 (32) §61-3-2;
- 35 (33) §61-3-3;
- 36 (34) §61-3-4;
- 37 (35) §61-3-5;
- 38 (36) §61-3-6;
- 39 (37) §61-3-7;
- 40 (38) §61-3-11;

- 41 (39) §61-3-13(a);
- 42 (40) §61-3-27;
- 43 (41) §61-3C-14b;
- 44 (42) §61-3E-5;
- 45 (43) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);
- 46 (44) §61-5-27;
- 47 (45) §61-6-24;
- 48 (46) Felony provisions of §61-7-7;
- 49 (47) §61-7-12;
- 50 (48) §61-7-15;
- 51 (49) §61-7-15a;
- 52 (50) §61-8-12;
- 53 (51) §61-8-19(b);
- 54 (52) §61-8B-3;
- 55 (53) §61-8B-4;
- 56 (54) §61-8B-5;
- 57 (55) §61-8B-7;
- 58 (56) §61-8B-10;
- 59 (57) §61-8C-2;
- 60 (58) §61-8C-3;
- 61 (59) §61-8C-3a;
- 62 (60) §61-8D-2;
- 63 (61) §61-8D-2a;
- 64 (62) §61-8D-3;
- 65 (63) §61-8D-3a;
- 66 (64) §61-8D-4;

67 (65) §61-8D-4a;

68 (66) §61-8D-5;

69 (67) §61-8D-6;

70 (68) §61-10-31;

71 (69) §61-11-8;

72 (70) §61-11-8a;

73 (71) §61-14-2; and

74 (72) §17C-5-2(b), driving under the influence causing death.

75 (b) Except as provided by subsection (c) of this section, when any person is convicted of
76 a qualifying offense and is subject to confinement in a state correctional facility therefor, and it is
77 determined, as provided in §61-11-19 of this code, that such person had been before convicted
78 in the United States of a crime punishable by confinement in a penitentiary, the court shall, if the
79 sentence to be imposed is for a definite term of years, add five years to the time for which the
80 person is or would be otherwise sentenced. Whenever in such case the court imposes an
81 indeterminate sentence, the minimum term shall be twice the term of years otherwise provided
82 for under such sentence.

83 (c) Notwithstanding any provision of this code to the contrary, when any person is
84 convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code
85 and it is determined, as provided in §61-11-19 of this code, that such person had been before
86 convicted in this state of first degree murder, second degree murder, or a violation of section
87 three, §61-8B-3 of this code or has been so convicted under any law of the United States or any
88 other state for an offense which has the same elements as any offense described in this
89 subsection, such person shall be punished by confinement in a state correctional facility for life
90 and is not eligible for parole.

91 (d) When it is determined, as provided in §61-11-19 of this code, that such person shall
92 have been twice before convicted in the United States of a crime punishable by confinement in a

93 penitentiary which has the same elements as a qualifying offense, the person shall be sentenced
94 to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from
95 the same transaction or series of transactions shall be considered a single offense for purposes
96 of this section: *Provided, however*, That an offense which would otherwise constitute a qualifying
97 offense for purposes of this subsection and subsection (b) of this section shall not be considered
98 if more than 20 years have elapsed between that offense and the conduct underlying the current
99 charge.

§61-11-19. Procedure in trial of persons for second or third offense.

1 A prosecuting attorney, when he or she has knowledge of a former sentence or sentences
2 to the penitentiary of any person convicted of an offense punishable by confinement in the
3 penitentiary, may give information thereof to the court immediately upon conviction and before
4 sentence. Said court shall, before expiration of the next term at which such person was convicted,
5 cause such person or prisoner to be brought before it, and upon an information filed by the
6 prosecuting attorney, setting forth the records of conviction and sentence, or convictions and
7 sentences, as the case may be, and alleging the identity of the prisoner with the person named
8 in each, shall require the prisoner to say whether he or she is the same person or not. If he or she
9 says he or she is not, or remains silent, his or her plea, or the fact of his or her silence, shall be
10 entered of record, and a jury shall be impaneled to inquire whether the prisoner is the same person
11 mentioned in the several records. If the jury finds that he or she is not the same person, he or she
12 shall be sentenced upon the charge of which he or she was convicted as provided by law; but if
13 they find that he or she is the same, or after being duly cautioned if he or she acknowledged in
14 open court that he or she is the same person, the court shall sentence him or her to such further
15 confinement as is prescribed by §61-11-18 of this code on a second or third conviction as the
16 case may be: *Provided*, That where the person is convicted pursuant to a plea agreement, the
17 agreement shall address whether or not the provisions of this section and §61-11-18 of this code
18 are to be invoked.

19 The clerk of such court shall transmit a copy of said information to the Commissioner of
20 the Division of Corrections and Rehabilitation, together with the other papers required by the
21 provisions of §62-8-10 of this code.

22 Nothing contained herein shall be construed as repealing the provisions of §62-8-4 of this
23 code, but no proceeding shall be instituted by the warden, as provided therein, if the trial court
24 has determined the fact of former conviction or convictions as provided herein.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2020.

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Governor