

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 496

BY SENATOR WELD

[Passed April 7, 2021; in effect 90 days from passage

(July 6, 2021)]

1 AN ACT to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended,
2 relating to punishment for second or third offense felony; and authorizing the use of a
3 conviction under any law of the United States or any other state for an offense that has
4 substantially similar elements of a qualifying offense.

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 imprisonment in a state correctional facility therefor, and it
77 is 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 imprisonment in state correctional facility, the court
79 shall, if the sentence to be imposed is for a definite term of years, add five years to the time for
80 which the person is or would be otherwise sentenced. Whenever in such case the court imposes
81 an 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 §61-8B-3 of
87 this code or has been so convicted under any law of the United States or any other state for an
88 offense which has the same or substantially similar elements as any offense described in this
89 subsection, such person shall be punished by imprisonment 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 imprisonment in
93 a state correctional facility which has the same or substantially similar elements as a qualifying
94 offense, the person shall be sentenced to imprisonment in a state correctional facility for
95 life: *Provided*, That prior convictions arising from the same transaction or series of transactions
96 shall be considered a single offense for purposes of this section: *Provided, however*, That an
97 offense which would otherwise constitute a qualifying offense for purposes of this subsection and
98 subsection (b) of this section shall not be considered if more than 20 years have elapsed between
99 that offense and the conduct underlying the current charge.

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, 2021.

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Governor