

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 496

BY SENATOR WELD

[Introduced March 1, 2021; referred
to the Committee on the Judiciary]

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

Intr SB 496

- 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~~ imprisonment in a state correctional facility
77 therefor, and it is determined, as provided in §61-11-19 of this code, that such person had been
78 before convicted in the United States of a crime punishable by ~~confinement~~ imprisonment in a
79 ~~penitentiary state correctional facility~~, the court shall, if the sentence to be imposed is for a definite
80 term of years, add five years to the time for which the person is or would be otherwise sentenced.
81 Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be
82 twice the term of years otherwise provided 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 ~~confinement~~ imprisonment in a state correctional
90 facility for life 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~~
93 imprisonment in a ~~penitentiary state correctional facility~~ which has the same or substantially
94 similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state
95 correctional facility for life: *Provided*, That prior convictions arising from the same transaction or
96 series of transactions shall be considered a single offense for purposes of this section: *Provided*,
97 *however*, That an offense which would otherwise constitute a qualifying offense for purposes of

- 98 this subsection and subsection (b) of this section shall not be considered if more than 20 years
99 have elapsed between that offense and the conduct underlying the current charge.