

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 736**

By Senators Woodrum, Caputo, and Woelfel

[Introduced February 9, 2024; referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §62-11A-1b, relating to establishing the Second Look Sentencing Act;  
 3 providing a procedure for modification of a prison sentence when a person has served at  
 4 least 10 years of a sentence.

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

**ARTICLE 11A. RELEASE FOR WORK OR OTHER PURPOSES.**

**§62-11A-1b. Second Look Sentencing Act – Modification of sentencing alternatives.**

1 Notwithstanding any other provision of this code to the contrary:

2 (a) Modification – Judges may reduce a prison sentence that is more than 10 years for an  
 3 offense committed before the defendant's 25th birthday if a person has served at least 10 years of  
 4 their sentence and the court finds that:

5 (1) The defendant is not a danger to any person or community; or

6 (2) The defendant presents no credible risk of criminal conduct; or

7 (3) The defendant demonstrates a readiness for reentry; and

8 (4) The interests of justice warrant a sentence modification.

9 Individuals granted a sentence modification may remain under supervised release for no  
 10 more than five years following their release from prison. The court shall state on the record the  
 11 reasons for granting or denying a sentence modification.

12 (b) Hearing – Upon the filing of a motion pursuant to this section, the circuit court shall  
 13 appoint counsel for the defendant, and the court shall schedule the matter for an evidentiary  
 14 hearing. At the evidentiary hearing, the defendant shall be entitled to present documentary  
 15 evidence and testimony in support of the motion. The defendant shall be present at any hearing  
 16 conducted under this subsection, unless the defendant affirmatively waives the right to be present.

17 (c) Ruling – The Court shall issue a written opinion stating the reasons for granting or  
 18 denying the application under this section, but the court may proceed to sentencing immediately  
 19 after granting the application.

20 (d) Mandatory factors – The court, in determining whether to reduce a term of  
21 imprisonment pursuant to subsection (a) of this section, shall consider:

22 (1) The defendant's age at the time of the offense;

23 (2) The history and characteristics of the defendant;

24 (3) Whether the defendant has substantially complied with the rules of the institution to  
25 which the defendant has been confined, and whether the defendant has completed any  
26 educational, vocational, or other program, where available;

27 (4) Any report or recommendation received from the prosecuting attorney for the county in  
28 which the defendant was sentenced;

29 (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to  
30 reenter society sufficient to justify a sentence reduction;

31 (6) Any statement, provided orally or in writing, provided pursuant to §61-11A-2, or §61-  
32 11A-3 of this code, or both, by a victim of the offense for which the defendant is imprisoned, or by a  
33 family member of the victim if the victim is deceased;

34 (7) Any reports of physical, mental, or psychiatric examinations of the defendant  
35 conducted by licensed health care professionals;

36 (8) The defendant's family and community circumstances at the time of the offense,  
37 including any history of abuse, trauma, or involvement in the child welfare system;

38 (9) The extent of the defendant's role in the offense and whether and to what extent  
39 another person was involved in the offense;

40 (10) The diminished culpability of juveniles and persons under age 25, as compared to that  
41 of older adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to  
42 appreciate risks and consequences, which counsel against sentencing them to lengthy terms in  
43 prison, despite the brutality or cold-blooded nature of any particular crime, and the defendant's  
44 personal circumstances that support an aging out of crime; and

45 (11) Any other information the court deems relevant to its decision.

46 (f) Notification of Victims by Prosecuting Attorney – Upon being served a motion pursuant  
47 to this subsection, the prosecuting attorney for the county in which the sentence reduction is  
48 sought shall make reasonable efforts to contact any victims or surviving family members so that  
49 they have an opportunity to be heard on the motion.

50 (g) Successive Motions – If the court denies or grants only in part the defendant's first  
51 motion under this section, a court shall entertain a second application no sooner than three years  
52 after the date that the order on the initial motion becomes final. The court shall entertain any  
53 successive petition no sooner than three years after the date the order on the most recent motion  
54 becomes final.

55 (h) Relief – The court shall not be permitted to increase any sentence of incarceration  
56 based on the filing of a motion under this subsection. The court may grant, or grant in part, a  
57 motion pursuant to this subsection by reducing the defendant's sentence to time served, running  
58 previously imposed consecutive sentences concurrent to each other, reducing a sentence by a  
59 definite number of years, granting a defendant parole eligibility, or any other relief the court deems  
60 appropriate to achieve the purpose of this section.

61 (i) Appeal – Both the defendant and the prosecuting attorney for the county in which the  
62 defendant was sentenced may appeal an adverse ruling under this section to the Supreme Court  
63 of Appeals of West Virginia pursuant to the Rules of Appellate Procedure.

64 (j) Records of the Department of Corrections and Rehabilitation – Upon filing of a motion  
65 under this section, the West Virginia Department of Corrections and Rehabilitation shall forward  
66 any and all records regarding the defendant to the circuit court of the county where the motion was  
67 filed. Such records shall include, but are not limited to:

68 (1) The defendant's disciplinary record;

69 (2) Records relating to courses or programming in which the defendant participated during  
70 their incarceration; and

71 (3) Records relating to any psychological evaluation, or medical evaluation, or both,

72 conducted upon the defendant during their incarceration.

73 (k) Evaluations – In considering applications filed by defendants for offenses committed  
74 after the defendant's 18th birthday, the court shall endeavor to prioritize consideration of the  
75 applications of defendants who have been incarcerated for the longest, except, that the inability to  
76 identify those defendants shall not delay the court acting on other applications under this section.

NOTE: The purpose of this bill is to establish the Second Look Sentencing Act.

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