WEST VIRGINIA CODE: §61-2-10A

§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

(a) If any person be convicted and sentenced for an offense defined under the provisions of section nine or ten of this article, and if the person shall have committed such offense against a person who is sixty-five years of age or older, then the sentence shall be mandatory and shall not be subject to suspension or probation: Provided, That the court may, in its discretion, suspend the sentence and order probation to any person so convicted upon condition that such person perform public service for a period of time deemed appropriate by the court: Provided, however, That the public service may not be rendered in or about facilities or programs providing care or services for the elderly: Provided further, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person committed to a term of one year or less.

(b) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the commission or attempted commission of a felony against a victim sixty-five years of age or older shall not be applicable unless such fact is: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter is tried before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.

WV Legislature