

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943



ENROLLED

HOUSE BILL No. 287

(By Mr. Farr)



PASSED March 13, 1943

In Effect ninety days from Passage

788

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House Bill No. 287
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AN ACT to amend and reenact sections eighteen and nineteen, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to the trial and punishment of second and third offenders.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and nineteen, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, be amended and reenacted to read as follows:

Section 18. *Punishment for Second or Third Offense*
2 of *Felony*.—When any person is convicted of an offense

3 and is subject to confinement in the penitentiary there-
4 for, and it is determined, as provided in section nineteen
5 of this article, that such person had been before con-
6 victed in the United States of a crime punishable by im-
7 prisonment in a penitentiary, the court shall, if the
8 sentence to be imposed is for a definite term of years,
9 add five years to the time for which the person is or
10 would be otherwise sentenced. Whenever in such case
11 the court imposes an indeterminate sentence, five years
12 shall be added to the maximum term of imprisonment
13 otherwise provided for under such sentence.

14 When it is determined, as provided in section nineteen
15 hereof, that such person shall have been twice before con-
16 victed in the United States of a crime punishable by
17 confinement in a penitentiary, the person shall be sent-
18 enced to be confined in the penitentiary for life.

Sec. 19. *Procedure in Trial of Persons for Second or*
2 *Third Offense.*—It shall be the duty of the prosecuting
3 attorney when he has knowledge of former sentence or
4 sentences to the penitentiary of any person convicted of
5 an offense punishable by confinement in the penitentiary

6 to give information thereof to the court immediately
7 upon conviction and before sentence. Said court shall,
8 before expiration of the term at which such person was
9 convicted, cause such person or prisoner to be brought
10 before it, and upon an information filed by the prose-
11 cuting attorney, setting forth the records of conviction
12 and sentence, or convictions and sentences, as the case
13 may be, and alleging the identity of the prisoner with
14 the person named in each, shall require the prisoner to
15 say whether he is the same person or not. If he says he
16 is not, or remains silent, his plea, or the fact of his
17 silence, shall be entered of record, and a jury shall be
18 impanelled to inquire whether the prisoner is the same
19 person mentioned in the several records. If the jury
20 finds that he is not the same person, he shall be sentenced
21 upon the charge of which he was convicted as provided
22 by law; but if they find that he is the same, or after
23 being duly cautioned if he acknowledged in open court
24 that he is the same person, the court shall sentence him
25 to such further confinement as is prescribed by section

26 eighteen of this article on a second or third conviction
27 as the case may be.

28 The clerk of such court shall transmit a copy of said
29 information to the warden of the penitentiary, together
30 with the other papers required by the provisions of sec-
31 tion ten, article eight, chapter sixty-two of the code of
32 West Virginia, one thousand nine hundred thirty-one.

33 Nothing contained herein shall be construed as repeal-
34 ing the provisions of section four, article eight, chapter
35 sixty-two of the code of West Virginia, one thousand
36 nine hundred thirty-one, but no proceeding shall be in-
37 stituted by the warden, as provided therein, if the trial
38 court has determined the fact of former conviction or
39 convictions as provided herein.

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

Ray F. Johnson
Chairman Senate Committee

Leed S. Petroff
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Fred B. Watkins
Clerk of the Senate

J. A. Huff
Clerk of the House of Delegates

James Paull
President of the Senate

John J. Cannon
Speaker House of Delegates

The within approved this the 19th
day of March, 1943.

Matthew M. Neely
Governor.



Filed in the office of the Secretary of State
of West Virginia

MAR 19 1943

Wm. S. O'BRIEN,
Secretary of State