

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

*Committee Substitute For*  
HOUSE BILL No. 517

(By Mr. *Barker and Mr. Holliday*)



PASSED March 12, 1965

In Effect ninety days from Passage



FILED IN THE OFFICE OF  
JOE F. BURDETT  
SECRETARY OF STATE  
THIS DATE 3-18-65

# 5-17

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 517**

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AN ACT to repeal section five, article three, and sections three, four, five and six, article seven, all of chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, sections two, fourteen-a and fifteen, article two and sections one and two, article eleven, all of chapter sixty-one of said code; and to amend and reenact sections six and fifteen, article three and section two, article eight, all of chapter sixty-two of said code, relating to the abolition of capital punishment; eliminating various references in said code to the death penalty in capital cases;

altering the penalty provisions concerning kidnapping so as to refer to bodily harm instead of serious bodily harm; relating to the role of the court in sentencing persons who plead guilty to treason against the state, kidnapping, rape and murder; specifying the penalties for such offenses; providing that persons committed to life imprisonment for murder in the first degree, kidnapping and rape shall not be eligible for parole unless the jury in their discretion recommends mercy and unless the judge, in the event the accused pleads guilty, provides that such person shall be eligible for parole; and increasing the penalty for rape where mercy is recommended; and providing for life imprisonment and prohibiting parole of any person guilty of a killing or of an act from which death ensues in a penitentiary.

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

That section five, article three and sections three, four, five and six, article seven, all of chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article one, sections two, fourteen-a and fifteen, article two and sections one and

two, article eleven, all of chapter sixty-one of said code be amended and reenacted; and that sections six and fifteen, article three and section two, article eight, all of chapter sixty-two of said code be amended and reenacted, all to read as follows:

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT**

**Article 1. Crimes Against the Government.**

**Section 2. Punishment.**—Whoever is guilty of treason  
2 against the state shall be punished by confinement in the  
3 penitentiary for life, or, at the discretion of the jury, or  
4 the discretion of the court when there is a plea of guilty,  
5 by confinement in the penitentiary for not less than three  
6 nor more than ten years.

**Article 2. Crimes Against the Person.**

**Section 2. Penalty for Murder of First Degree.**—Mur-  
2 der of the first degree shall be punished by confinement  
3 in the penitentiary for life.

**Sec. 14-a. Penalty for Enticing Away, or Otherwise**  
2 **Kidnapping Any Person; When Kidnapped Person Re-**  
3 **turned Alive and Uninjured after Ransom Paid and**  
4 **Without Ransom Paid; Discretion of Jury or Court as to**

5 **Parole When Life Imprisonment Imposed.**—If any per-  
6 son, by force, threat, duress, fraud or enticement take,  
7 confine, conceal, or decoy, inveigle or entice away, or  
8 transport into or out of this state or within this state, or  
9 otherwise kidnap any other person, for the purpose or  
10 with the intent of taking, receiving, demanding or ex-  
11 torting from such person, or from any other person or  
12 persons, any ransom, money or other thing, or any con-  
13 cession or advantage of any sort, or for the purpose or  
14 with the intent of shielding or protecting himself or  
15 others from bodily harm or of evading capture or arrest  
16 after he or they have committed a crime, he shall be  
17 guilty of a felony, and, upon conviction, shall be punished  
18 by confinement in the penitentiary for life, and he, not-  
19 withstanding the provisions of article twelve, chapter  
20 sixty-two of this code, shall not be eligible for parole:  
21 *Provided*, That the jury may, in their discretion, recom-  
22 mend mercy, and if such recommendation is added to  
23 their verdict, such person shall be eligible for parole in  
24 accordance with the provisions of said article twelve:  
25 *Provided, however*, That if the accused pleads guilty, the

26 court may, in its discretion, provide that such person shall  
27 be eligible for parole in accordance with the provisions  
28 of said article twelve, and, if the court so provides, such  
29 person shall be eligible for parole in accordance with the  
30 provisions of said article twelve in the same manner and  
31 with like effect as if such person had been found guilty  
32 by the verdict of a jury and the jury had recommended  
33 mercy: *Provided further*, That in all cases where the  
34 person against whom the offense is committed is returned,  
35 or is permitted to return, alive, without bodily harm hav-  
36 ing been inflicted upon him, but after ransom, money or  
37 other thing, or any concession or advantage of any sort  
38 has been paid or yielded, the punishment shall be con-  
39 finement in the penitentiary for any term of years not  
40 less than twenty: *And provided further*, That in all cases  
41 where the person against whom the offense is committed  
42 is returned, or is permitted to return, alive, without  
43 bodily harm having been inflicted upon him, but without  
44 ransom, money or other thing, or any concession or ad-  
45 vantage of any sort having been paid or yielded, the  
46 punishment shall be confinement in the penitentiary for  
47 any term of years not less than ten.

**Sec. 15. Rape; Age of Consent; Carnal Knowledge of**

2 **Male Person; Penalties.**—If any male person carnally  
3 knows a female person, not his wife, against her will by  
4 force, or if any male person over the age of sixteen years  
5 carnally knows a female person of previous chaste char-  
6 acter, not his wife, under that age, or if any male person  
7 over the age of sixteen years carnally knows a female  
8 person, not his wife, under the age of ten years, he shall  
9 be guilty of a felony, and, upon conviction, shall be pun-  
10 ished with confinement in the penitentiary for life, and  
11 he, notwithstanding the provisions of article twelve,  
12 chapter sixty-two of this code, shall not be eligible for  
13 parole: *Provided*, That the jury may, in their discretion,  
14 recommend mercy, and if such recommendation is added  
15 to their verdict, such person shall be punished with con-  
16 finement in the penitentiary for not less than ten nor  
17 more than twenty years: *Provided, however*, That if the  
18 accused pleads guilty, the court may, in its discretion,  
19 provide that such person shall be punished with con-  
20 finement in the penitentiary for not less than ten nor  
21 more than twenty years.

22 This section shall not apply to any male person under  
23 sixteen years of age who carnally knows a female over  
24 twelve years of age with her free consent. Any female  
25 person over the age of sixteen years who shall carnally  
26 know any male person, not her husband, under that age  
27 shall be guilty of a misdemeanor, and, upon conviction,  
28 shall be confined in the county jail not less than two nor  
29 more than six months.

**Article 11. General Provisions Concerning Crimes.**

**Section 1. Classification of Offenses.**—Offenses are  
2 either felonies or misdemeanors. Such offenses as are  
3 punishable by confinement in the penitentiary are fel-  
4 onies; all other offenses are misdemeanors.

5 The word “penitentiary” as used in this section shall  
6 mean and include any and all institutions provided by  
7 the state for the confinement of persons sentenced to con-  
8 finement in the penitentiary, notwithstanding that trans-  
9 fers of such persons from any one of such institutions to  
10 another may be authorized.

**Sec. 2. Capital Punishment Abolished.**—Capital pun-  
2 ishment is hereby abolished for all offenses against the

3 laws of the state of West Virginia, and no person here-  
4 tofore or hereafter convicted of any offense in violation  
5 of said laws shall be executed, irrespective of whether  
6 the crime was committed, the conviction had, or the sen-  
7 tence imposed, before or after the enactment of this sec-  
8 tion.

## CHAPTER 62. CRIMINAL PROCEDURE

### Article 3. Trial of Criminal Cases.

Section 6. Custody of Jury; Expenses; No Conversa-  
2 tion with Jurors.—After a jury in a case of felony is  
3 impaneled and sworn, the court, in its discretion, may  
4 order the jury to be placed in the custody of the sheriff  
5 or other officer or officers designated by the court until  
6 the jury agree upon a verdict or are discharged by the  
7 court. While a jury is in the custody of the sheriff or  
8 other officer or officers as herein provided, they shall be  
9 furnished with suitable board and lodgings by the sheriff  
10 or other officer. After a jury has been impaneled no  
11 sheriff or other officer shall converse with, or permit any-  
12 one else to converse with, a juror unless by leave of the  
13 court. When the court orders a jury to be placed in the

14 custody of the sheriff or other officer or officers, the court  
15 shall, in its discretion, determine the manner in which  
16 such jury shall be kept in custody by the sheriff or other  
17 officer or officers until the jury agree upon a verdict or are  
18 discharged by the court.

**Sec. 15. Verdict and Sentence in Murder Cases.—**If a  
2 person indicted for murder be found by the jury guilty  
3 thereof, they shall in their verdict find whether he is  
4 guilty of murder of the first degree or second degree. If  
5 the person indicted for murder is found by the jury guilty  
6 thereof, and if the jury find in their verdict that he is  
7 guilty of murder of the first degree, or if a person in-  
8 dicted for murder pleads guilty of murder of the first  
9 degree, he shall be punished by confinement in the pen-  
10 itentiary for life, and he, notwithstanding the provisions  
11 of article twelve, chapter sixty-two of this code, shall not  
12 be eligible for parole: *Provided*, That the jury may, in  
13 their discretion, recommend mercy, and if such recom-  
14 mendation is added to their verdict, such person shall  
15 be eligible for parole in accordance with the provisions  
16 of said article twelve: *Provided, however*, That if the

17 accused pleads guilty of murder of the first degree, the  
18 court may, in its discretion, provide that such person shall  
19 be eligible for parole in accordance with the provisions  
20 of said article twelve, and, if the court so provides, such  
21 person shall be eligible for parole in accordance with the  
22 provisions of said article twelve in the same manner and  
23 with like effect as if such person had been found guilty  
24 by the verdict of a jury and the jury had recommended  
25 mercy.

**Article 8. Crimes by and Proceedings against Convicts.**

**Section 2. Punishment of Convicts; No Discharge from  
2 Penitentiary While Prosecution is Pending.**—A convict  
3 guilty of such killing as is mentioned in the first section  
4 of this article, or any act mentioned therein, from which  
5 death ensues to such officer or guard, shall be punished  
6 by confinement in the penitentiary for life, and such per-  
7 son shall not be released from such confinement on parole,  
8 notwithstanding the provisions of article twelve, chapter  
9 sixty-two of this code. If such person is already under  
10 a sentence of confinement for life, such person shall not  
11 be released from such confinement on parole, notwith-

12 standing the provisions of article twelve, chapter sixty-  
13 two of this code. For any other offense mentioned in said  
14 section, a convict, unless he be under a sentence of con-  
15 finement for life, shall be confined in the penitentiary  
16 not less than one nor more than five years after the end  
17 of the term for which he shall then be subject to confine-  
18 ment. A person prosecuted for an offense under this ar-  
19 ticle shall not be discharged from the penitentiary while  
20 such prosecution is pending. And a person convicted of  
21 such offense shall not, by reason thereof, be sentenced  
22 under sections eighteen or nineteen, article eleven, chap-  
23 ter sixty-one of this code, except that, if a convict in the  
24 penitentiary shall commit any felony, other than is pro-  
25 vided for in the first section of this article which is  
26 punishable by confinement therein, he shall suffer the  
27 same punishment as if he had been discharged before  
28 committing it.

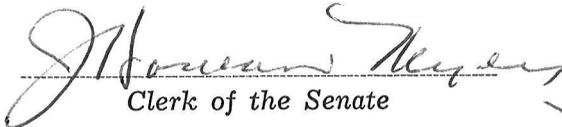
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within approved this the 18th  
day of March, 1965.

  
Governor