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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 4654

(By Delegates Staton, Whitman, Trump,
Kessel, Huntwork, L. White and
Carrcloth)

Passed March 12, 1994

In Effect 90 Days from Passage

ENROLLED
H. B. 4654

(By DELEGATES STATON, WHITMAN, TRUMP, KESSEL,
HUNTWORK, L. WHITE AND FAIRCLOTH)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and four, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eight and eighteen, article eleven of said chapter; and to amend and reenact section fifteen, article three, chapter sixty-two of said code, all relating to increasing criminal penalties for second degree murder, voluntary manslaughter and attempt to commit a felony; increasing criminal penalties upon the second conviction of certain criminal violations; and increasing the minimum number of years which must be served prior to becoming eligible for parole after certain first degree murder convictions.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections eight and eighteen, article eleven of said chapter be amended and reenacted; and that section fifteen, article three, chapter sixty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 61.
CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-3. Penalty for murder of second degree.

1 Murder of the second degree shall be punished by a
2 definite term of imprisonment in the penitentiary which
3 is not less than ten nor more than forty years. A person
4 imprisoned pursuant to the provisions of this section is
5 not eligible for parole prior to having served a minimum
6 of ten years of his or her sentence or the minimum
7 period required by the provisions of section thirteen,
8 article twelve, chapter sixty-two, whichever is greater.

§61-2-4. Voluntary manslaughter; penalty.

1 Voluntary manslaughter shall be punished by a
2 definite term of imprisonment in the penitentiary which
3 is not less than three nor more than fifteen years. A
4 person imprisoned pursuant to the provisions of this
5 section is not eligible for parole prior to having served
6 a minimum of three years of his or her sentence or the
7 minimum period required by the provisions of section
8 thirteen, article twelve, chapter sixty-two, whichever is
9 greater.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-8. Attempts; classification and penalties therefor.

1 Every person who attempts to commit an offense, but
2 fails to commit or is prevented from committing it,
3 shall, where it is not otherwise provided, be punished
4 as follows:

5 (1) If the offense attempted be punishable with life
6 imprisonment, the person making such attempt shall be
7 guilty of a felony, and, upon conviction, shall be
8 imprisoned in the penitentiary not less than one nor
9 more than five years.

10 (2) If the offense attempted be punishable by impri-
11 sonment in the penitentiary for a term less than life,
12 such person shall be guilty of a felony, and, upon
13 conviction, shall, in the discretion of the court, either be
14 imprisoned in the penitentiary not less than one nor
15 more than three years, or be confined in jail not less
16 than six nor more than twelve months, and fined not
17 exceeding five hundred dollars.

18 (3) If the offense attempted be punishable by confine-
19 ment in jail, such person shall be guilty of a misdemea-
20 nor, and, upon conviction, shall be confined in jail not
21 more than six months, or fined not exceeding one
22 hundred dollars.

**§61-11-18. Punishment for second or third offense of
felony.**

1 (a) Except as provided by subsection (b) of this section,
2 when any person is convicted of an offense and is subject
3 to confinement in the penitentiary therefor, and it is
4 determined, as provided in section nineteen of this
5 article, that such person had been before convicted in
6 the United States of a crime punishable by imprison-
7 ment in a penitentiary, the court shall, if the sentence
8 to be imposed is for a definite term of years, add five
9 years to the time for which the person is or would be
10 otherwise sentenced. Whenever in such case the court
11 imposes an indeterminate sentence, five years shall be
12 added to the maximum term of imprisonment otherwise
13 provided for under such sentence.

14 (b) Notwithstanding the provisions of subsection (a) or
15 (c) of this section or any other provision of this code to
16 the contrary, when any person is convicted of first
17 degree murder or second degree murder or a violation
18 of section three, article eight-b, chapter sixty-one of this
19 code, and it is determined, as provided in section
20 nineteen of this article, that such person had been before
21 convicted in this state of first degree murder, second
22 degree murder or a violation of section three, article
23 eight-b of said chapter, or has been so convicted under
24 any law of the United States or any other state for an
25 offense which has the same elements as any offense
26 described in this subsection, such person shall be
27 punished by imprisonment in the penitentiary for life
28 and is not eligible for parole.

29 (c) When it is determined, as provided in section
30 nineteen hereof, that such person shall have been twice
31 before convicted in the United States of a crime
32 punishable by confinement in a penitentiary, the person
33 shall be sentenced to be confined in the penitentiary for
34 life.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 3. TRIAL OF CRIMINAL CASES.****§62-3-15. Verdict and sentence in murder cases.**

1 If a person indicted for murder be found by the jury
2 guilty thereof, they shall in their verdict find whether
3 he or she is guilty of murder of the first degree or second
4 degree. If the person indicted for murder is found by
5 the jury guilty thereof, and if the jury find in their
6 verdict that he or she is guilty of murder of the first
7 degree, or if a person indicted for murder pleads guilty
8 of murder of the first degree, he or she shall be punished
9 by imprisonment in the penitentiary for life, and he or
10 she, notwithstanding the provisions of article twelve,
11 chapter sixty-two of this code, shall not be eligible for
12 parole: *Provided*, That the jury may, in their discretion,
13 recommend mercy, and if such recommendation is
14 added to their verdict, such person shall be eligible for
15 parole in accordance with the provisions of said article
16 twelve, except that, notwithstanding any other provi-
17 sion of this code to the contrary, such person shall not
18 be eligible for parole until he or she has served fifteen
19 years: *Provided, however*, That if the accused pleads
20 guilty of murder of the first degree, the court may, in
21 its discretion, provide that such person shall be eligible
22 for parole in accordance with the provisions of said
23 article twelve, and, if the court so provides, such person
24 shall be eligible for parole in accordance with the
25 provisions of said article twelve in the same manner and
26 with like effect as if such person had been found guilty
27 by the verdict of a jury and the jury had recommended
28 mercy, except that, notwithstanding any provision of
29 said article twelve or any other provision of this code
30 to the contrary, such person shall not be eligible for
31 parole until he or she has served fifteen years.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Paul Burdette
.....
President of the Senate

Paul Luther
.....
Speaker of the House of Delegates

The within *is approved* this the *28th*
day of *March*, 1994

Winston Coppe
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/94

Time 9:35 am