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PROSPERITY®**
WEST VIRGINIA

Recommended Changes: West Virginia Criminal Code Rewrite Legislation

Americans for Prosperity-WV has long supported criminal justice reforms that make the Mountain State smarter on crime and softer on taxpayers. We commend the legislature for continuing to share this goal. While this legislation does take some steps in the right direction and we believe its intentions were meant to be positive, it contains provisions that would be *significantly* detrimental towards progress we've made together in reforming our justice system. **We will actively oppose this draft of the legislation unless the following revisions are made.** We look forward to working with lawmakers to refine this bill.

Positive Improvements the Bill(s) Provides:

1. Implementing a class system for offenses in the West Virginia Code instead of scattering the penalties throughout the code will provide more clarity for defendants, attorneys, and judges alike.¹
2. Increasing the “felony theft threshold” – or the value of property upon which theft becomes a felon – to \$2,500.² Other theft crimes – like fraud with an access device – will also use these new thresholds instead of imposing different standards.³ This will put West Virginia in line with other states like Texas and Wisconsin who have sought to update their laws, so they reflect the increased value of common goods.⁴
3. Allows judges to impose a just punishment in the case of Class 6 felony by providing them with the flexibility to enter a judgment for a class 1 misdemeanor instead or refrain from classifying the conviction until the individual has successfully completed a term of community supervision.⁵ Judges are best equipped to determine the proportional punishment in each individual case and this will give them a mechanism to avoid unjust sentences in at least some cases.
4. Removes some of the unnecessary, duplicative, or antiquated crimes that exist under current West Virginia law.⁶

¹ Proposed § 61-17-1 to 61-17-5.

² Proposed 31-3-9.

³ Proposed § 61-17-5.

⁴ Tex. Penal Code Ann. § 31.03 (2020); Wis. Stat. § 943.20 (2020).

⁵ Proposed § 71-17-5.

⁶ See e.g. Proposed repeal of § 61-1-4, 61-1-5, 61-1-7, 61-2-9c, 61-2-27, 61-2-27a, 61-3-24e, 61-3-24f, 61-3-24g, 61-3-24h, 61-3-45a 61-3-45, 61-3-46, 61-6-2, 61-6-3, 61-7-9, 61-8-10, 61-8-20, 61-8-25, 61-8-26, 61-8E-3, 61-10-8, 61-10-19.

How this bill fails to improve the status quo:

The purported goals of this bill are noble and necessary given the complicated nature of West Virginia's current criminal code. However, while the bill does take steps towards these goals, it also contains specific and substantial problems that prevent us from being able to support the bill unless these concerns are addressed in a future draft of the legislation. We hope to work with leaders in the legislature to ensure this bill achieves its stated goals of reducing overcriminalization and ensure proportional punishment for the harm caused by violations of the law.

1. Ties the hands of judges and prevents them from imposing accountability and punishment proportional to the harm caused by the offense by arbitrarily increasing minimum penalty ranges Doing so is both unnecessary and wildly out of line with the ambitions of state lawmakers to reduce West Virginia's jail/prison population by making our justice system smarter on crime and softer on taxpayers.

- a. For example, the bill will tie the hands of judges for crimes such as:
 - i. Robbery – Increases penalty range from 5-18 years to 15-60 years.⁷
 - ii. First Degree Arson – Increases penalty range from 2-20 years to 5-30 years.⁸
 - iii. Breaking and Entering Vehicle – Increases penalty range from 2-12 months in local jail to 1-5 years in state prison.⁹
 - iv. Killing Animal with Poison (valued less than \$100) – Increases penalty range from 0-3 months in local jail to 1-5 years in state prison.¹⁰
 - v. Trespassing While Armed – Increases penalty from 0-6 months in local jail to 1-5 years in state prison.¹¹
 - vi. Disclosing a Computer Password - Increases penalty from 0-6 months in local jail to 1-5 years in state prison.¹²

2. Retains some of the unnecessary and duplicative crimes that currently exist in West Virginia's criminal code.

- a. For example, this bill will still criminalize the failure to remove the doors from an abandoned refrigerator or freezer and the unauthorized use of a dumpster.¹³

3. Retains or creates crimes that lack clarity of the conduct prohibited by West Virginia law.

- a. For example, some of the provisions defining domestic violence and robbery are unreadable to the point that the average West Virginian will be unable to comprehend the conduct being punished by those sections.¹⁴

⁷ Proposed § 62-2-13(a)(3).

⁸ Proposed § 61-3-1(b)(1).

⁹ Proposed § 61-3-6.

¹⁰ Proposed § 61-3-22.

¹¹ Proposed § 61-3B-3.

¹² Proposed § 61-3C-9.

¹³ Proposed § 61-2-20; 61-3-33.

¹⁴ Proposed § 61-2-21(c)-(d); 61-2-13.