

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



SECOND
ENROLLMENT

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2498

(By Delegates Azinger and Craig)



Passed March 18, 2007

In Effect Ninety Days from Passage

S E C O N D
E N R O L L M E N T

COMMITTEE SUBSTITUTE

FOR

H. B. 2498

(BY DELEGATES AZINGER AND CRAIG)

[Amended and again passed March 18, 2007, as a result of the objections of the Governor; in effect ninety days from passage.]

AN ACT to amend and reenact §61-8-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8B-1 of said code, all relating to sexual offenses generally; increasing penalties for second and subsequent convictions for indecent exposure; clarifying that breast feeding an infant in public is not indecent exposure; and expanding the definition of sexual contact to include the touching of the buttocks or breasts.

Be it enacted by the Legislature of West Virginia:

That §61-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8B-1 of said code be amended and reenacted, all to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY
AND DECENCY.**

§61-8-9. Indecent exposure.

1 (a) A person is guilty of indecent exposure when such
2 person intentionally exposes his or her sex organs or anus or
3 the sex organs or anus of another person, or intentionally
4 causes such exposure by another or engages in any overt act
5 of sexual gratification, and does so under circumstances in
6 which the person knows that the conduct is likely to cause
7 affront or alarm: *Provided*, That it is not considered indecent
8 exposure for a mother to breast feed a child in any location,
9 public or private.

10 (b) Except as provided in subsection (c), any person who
11 violates the provisions of this section shall be guilty of a
12 misdemeanor and, upon conviction thereof, shall be confined
13 in jail not more than ninety days, or fined not more than two
14 hundred fifty dollars, or both fined and confined.

15 (c) Any person who violates the provisions of subsection
16 (a) of this section by intentionally exposing himself or herself
17 to another person and the exposure was done for the purpose
18 of sexual gratification, is guilty of a misdemeanor and, upon
19 conviction thereof, shall be fined not more than five hundred
20 dollars or confined in jail not more than twelve months, or
21 both. For a second offense, the person is guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined not
23 more than one thousand dollars and confined in jail for not
24 less than thirty days nor more than twelve months. For a
25 third or subsequent offense, the person is guilty of a felony
26 and, upon conviction thereof, shall be fined not more than
27 three thousand dollars and imprisoned in a state correctional
28 facility for not less than one year nor more than five years.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is
2 required:

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resistance
5 as might reasonably be expected under the circumstances; or

6 (b) Threat or intimidation, expressed or implied, placing
7 a person in fear of immediate death or bodily injury to
8 himself or herself or another person or in fear that he or she
9 or another person will be kidnapped; or

10 (c) Fear by a person under sixteen years of age caused by
11 intimidation, expressed or implied, by another person who is
12 at least four years older than the victim.

13 For the purposes of this definition "resistance" includes
14 physical resistance or any clear communication of the
15 victim's lack of consent.

16 (2) "Married", for the purposes of this article in addition
17 to its legal meaning, includes persons living together as
18 husband and wife regardless of the legal status of their
19 relationship.

20 (3) "Mentally defective" means that a person suffers from
21 a mental disease or defect which renders that person
22 incapable of appraising the nature of his or her conduct.

23 (4) "Mentally incapacitated" means that a person is
24 rendered temporarily incapable of appraising or controlling
25 his or her conduct as a result of the influence of a controlled
26 or intoxicating substance administered to that person without
27 his or her consent or as a result of any other act committed
28 upon that person without his or her consent.

29 (5) "Physically helpless" means that a person is
30 unconscious or for any reason is physically unable to
31 communicate unwillingness to an act.

32 (6) "Sexual contact" means any intentional touching,
33 either directly or through clothing, of the breasts, buttocks,
34 anus or any part of the sex organs of another person, or

35 intentional touching of any part of another person's body by
36 the actor's sex organs, where the victim is not married to the
37 actor and the touching is done for the purpose of gratifying
38 the sexual desire of either party.

39 (7) "Sexual intercourse" means any act between persons
40 involving penetration, however slight, of the female sex
41 organ by the male sex organ or involving contact between the
42 sex organs of one person and the mouth or anus of another
43 person.

44 (8) "Sexual intrusion" means any act between persons
45 involving penetration, however slight, of the female sex
46 organ or of the anus of any person by an object for the
47 purpose of degrading or humiliating the person so penetrated
48 or for gratifying the sexual desire of either party.

49 (9) "Bodily injury" means substantial physical pain,
50 illness or any impairment of physical condition.

51 (10) "Serious bodily injury" means bodily injury which
52 creates a substantial risk of death, which causes serious or
53 prolonged disfigurement, prolonged impairment of health or
54 prolonged loss or impairment of the function of any bodily
55 organ.

56 (11) "Deadly weapon" means any instrument, device or
57 thing capable of inflicting death or serious bodily injury, and
58 designed or specially adapted for use as a weapon, or
59 possessed, carried or used as a weapon.

60 (12) "Forensic medical examination" means an
61 examination provided to a possible victim of a violation of
62 the provisions of this article by medical personnel qualified
63 to gather evidence of the violation in a manner suitable for
64 use in a court of law, to include: An examination for
65 physical trauma; a determination of penetration or force; a
66 patient interview; and the collection and evaluation of other
67 evidence that is potentially relevant to the determination that
68 a violation of the provisions of this article occurred and to the
69 determination of the identity of the assailant.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _____ this the _____
day of _____, 2007.

Governor