

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 165

(By Senators Laird, Tucker, Yost,
Barnes, Plymale, Unger and Wills)

[Originating in the Committee on the Judiciary ;
reported January 25, 2012.]

A BILL to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, relating to criminalizing imposition of sexual intercourse, sexual intrusion, sexual abuse or sexual contact on incarcerated persons by employees of the Division of Corrections, Division of Juvenile Services and the Regional Jail and Correctional Facility Authority; clarifying that lack of consent is not an element of the offense; clarifying that consent is not a defense; exempting certain behaviors from criminalization; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.

1 (a) Notwithstanding any other section of this article, any
2 person employed by the Division of Corrections, any person
3 working at a correctional facility managed by the Commis-
4 sioner of Corrections pursuant to contract or as an employee
5 of a state agency, any person working at a correctional
6 facility managed by the Division of Juvenile Services
7 pursuant to contract or as an employee of a state agency, any
8 person employed by a jail or by the Regional Jail and
9 Correctional Facility Authority, any person working at a
10 facility managed by the Regional Jail and Correctional
11 Facility Authority or a jail or any person employed by, or
12 acting pursuant to, the authority of any sheriff, county
13 commission or court to ensure compliance with the provi-
14 sions of article eleven-b, chapter sixty-two of this code who
15 engages in sexual intercourse, ~~or~~ sexual intrusion or sexual
16 contact with a person who is incarcerated in this state is

17 guilty of a felony and, upon conviction thereof, shall be
18 confined in a state correctional facility under the control of
19 the Commissioner of Corrections for not less than one nor
20 more than five years or fined not more than \$5,000.

21 (b) Notwithstanding any other section of this article, any
22 person employed by the Division of Corrections as a parole
23 officer or by the West Virginia Supreme Court of Appeals as
24 an adult or juvenile probation officer who engages in sexual
25 intercourse, ~~or~~ sexual intrusion or sexual contact with a
26 person said parole officer or probation officer is charged as
27 part of his or her employment with supervising, is guilty of
28 a felony and, upon conviction thereof, shall be confined in a
29 state correctional facility under the control of the Commis-
30 sioner of Corrections for not less than one nor more than five
31 years or fined not more than \$5,000, or both.

32 (c) The term “incarcerated in this state” for purposes of
33 this section includes in addition to its usual meaning offend-
34 ers serving a sentence under the provisions of article eleven-
35 b, chapter sixty-two of this code.

36 (d) “Lack of consent” as defined in section two of this
37 article is not an element to an offense charged under this

38 section and consent is not a defense to a charged offense
39 under this section.

40 (e) For purposes of this section, “sexual contact” has the
41 same meaning as is given within this article, provided that a
42 properly administered pat down, strip search or other
43 security related task that may involve touching, either
44 directly or through clothing, of the breasts, buttocks, anus or
45 any part of the sex organs of another person as part of such
46 search or security measure is not an offense under this
47 section.