

**Senate Bill No. 450**

(By Senators Stollings, Facemire and Snyder)

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[Introduced February 10, 2015; referred to the Committee on the Judiciary.]  
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9 A BILL to amend and reenact §61-8B-5 of the Code of West Virginia, 1931, as amended; and to  
10 amend said code by adding thereto a new section, designated §61-8B-6, all relating to  
11 modifying essential elements of offense of sexual assault in third degree; creating offense of  
12 sexual assault in fourth degree; and establishing criminal penalties.

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

14 That §61-8B-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
15 and that said code be amended by adding thereto a new section, designated §61-8B-6, all to read as  
16 follows:

17 **ARTICLE 8B. SEXUAL OFFENSES.**

18 **§61-8B-5. Sexual assault in the third degree.**

19 (a) A person is guilty of sexual assault in the third degree when:

20 (1) The person engages in sexual intercourse or sexual intrusion with another person who is  
21 mentally defective or mentally incapacitated; or

22 (2) Except as provided in section six of this article, the person, being sixteen years old or

1 more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen  
2 years old and who is at least four years younger than the defendant and is not married to the  
3 defendant.

4 (b) Any person violating the provisions of this section is guilty of a felony and, upon  
5 conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more  
6 than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility not less  
7 than one year nor more than five years.

8 **§61-8B-6. Sexual assault in the fourth degree.**

9 (a) A person is guilty of sexual assault in the fourth degree when the person, being nineteen  
10 years old or less, engages in sexual intercourse or sexual intrusion with another person who is at least  
11 fourteen years old but less than sixteen years old and who is neither mentally defective nor mentally  
12 incapacitated under circumstances which would constitute a consensual act if the younger person was  
13 capable of giving consent.

14 (b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon  
15 conviction thereof shall be confined in jail for not more than one year, fined not more than \$5,000,  
16 or both fined and confined.

17 (c) Notwithstanding the provisions of section two, article twelve, chapter two of this code  
18 to the contrary, a person convicted of a violation of this section is subject to the reporting  
19 requirements of that article for not more than three years and, upon completion of the period of  
20 reporting, the person may have his or her name removed from the sex offender registry and all  
21 records relating to his or her having been on the sex offender registry expunged: *Provided*, That the  
22 person does not, during the period he or she is listed on the sex offender registry, commit an act or

1 acts which would otherwise require registration.

2 (d) Any person, who was convicted of a violation of section five of this article, prior to the  
3 enactment of this section, the facts of which case meet the elements set forth in subsection (a) of this  
4 section, may petition the circuit court of the county of conviction for an order granting the relief set  
5 forth in subsection (c) of this section. That relief shall be granted upon a finding by clear and  
6 convincing evidence that the facts of the case meet the elements of subsection (a) of this section.

NOTE: The purpose of this bill is to modify the essential elements of the offense of sexual assault in the third degree and creating the offense of a sexual assault in the fourth degree and establishing penalties.

§61-8B-5 has been amended. Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§61-8B-6 is new; therefore, underscoring and strike-throughs have been omitted.