

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 41

BY SENATOR STOLLINGS

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-8B-5 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §61-8B-6, all relating to
3 modifying essential elements of offense of sexual assault in third degree; creating offense
4 of sexual assault in fourth degree; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That §61-8B-5 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that said code be amended by adding thereto a new section, designated §61-8B-
3 6, all to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

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

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

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

4 (2) Except as provided in section six of this article, the person, being sixteen years old or
5 more, engages in sexual intercourse or sexual intrusion with another person who is less than
6 sixteen years old and who is at least four years younger than the defendant and is not married to
7 the defendant.

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

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

1 (a) A person is guilty of sexual assault in the fourth degree when the person, being
2 nineteen years old or less, engages in sexual intercourse or sexual intrusion with another person
3 who is at least fourteen years old but less than sixteen years old and who is neither mentally
4 defective nor mentally incapacitated under circumstances which would constitute a consensual

5 act if the younger person was capable of giving consent.

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

9 (c) Notwithstanding the provisions of section two, article twelve, chapter fifteen of this code
10 to the contrary, a person convicted of a violation of this section is subject to the reporting
11 requirements of that article for not more than three years and, upon completion of the period of
12 reporting, the person may have his or her name removed from the sex offender registry and all
13 records relating to his or her having been on the sex offender registry expunged: *Provided, That*
14 the person does not, during the period he or she is listed on the sex offender registry, commit an
15 act or acts which would otherwise require registration.

16 (d) Any person, who was convicted of a violation of section five of this article, prior to the
17 enactment of this section, the facts of which case meet the elements set forth in subsection (a) of
18 this section, may petition the circuit court of the county of conviction for an order granting the relief
19 set forth in subsection (c) of this section. That relief shall be granted upon a finding by clear and
20 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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.