

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2975

BY DELEGATES MILLER AND D. KELLY

[Passed March 7, 2019; in effect ninety days from

passage.]

1 AN ACT to amend and reenact §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as
2 amended, all relating generally to protecting persons incarcerated or under corrections or
3 court supervision from sexual exploitation by persons supervising them; clarifying that
4 persons participating in community corrections programs lack consent to engage in sexual
5 conduct with persons supervising them in such programs; clarifying that volunteers
6 supervising incarcerated persons or persons under corrections or court supervision are
7 prohibited from engaging in sexual acts with incarcerated persons, supervisees, or
8 participants; updating agency and code references; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-2. Lack of consent.

1 (a) Whether or not specifically stated, it is an element of every offense defined in this article
2 that the sexual act was committed without the consent of the victim.

3 (b) Lack of consent results from:

4 (1) Forcible compulsion;

5 (2) Incapacity to consent; or

6 (3) If the offense charged is sexual abuse, any circumstances in addition to the forcible
7 compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce
8 in the actor's conduct.

9 (c) A person is deemed incapable of consent when such person is:

10 (1) Less than sixteen years old;

11 (2) Mentally defective;

12 (3) Mentally incapacitated;

13 (4) Physically helpless; or

14 (5) Subject to incarceration, confinement or supervision by a state, county, or local
15 government entity, when the actor is a person prohibited from having sexual intercourse or
16 causing sexual intrusion or sexual contact pursuant to §61-8B-10 of this code.

**§61-8B-10. Imposition of sexual acts on persons incarcerated or under supervision;
penalties.**

1 (a) Any person employed by the Division of Corrections and Rehabilitation, any person
2 working at a correctional facility managed by the Commissioner of Corrections and Rehabilitation
3 pursuant to contract or as an employee of a state agency or as a volunteer or any person
4 employed by, or acting pursuant to, the authority of any sheriff, county commission, or court to
5 ensure compliance with the provisions of §62-11B-1 *et seq.* of this code who engages in sexual
6 intercourse, sexual intrusion, or sexual contact with a person who is incarcerated in this state is
7 guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned
8 in a state correctional facility for not less than one nor more than five years or both fined and
9 imprisoned.

10 (b) Any person employed by the Division of Corrections and Rehabilitation as a parole
11 officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer,
12 who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole
13 officer or probation officer is charged as part of his or her employment with supervising, is guilty
14 of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a
15 state correctional facility for not less than one nor more than five years, or both fined and
16 imprisoned.

17 (c) Any person working or volunteering in an alternative sentence program authorized by
18 the provisions of §62-11C-1, *et seq.* of this code who, as part of his or her employment or
19 volunteer duties, supervises program participants, engages in sexual intercourse, sexual
20 intrusion, or sexual contact with a program participant is guilty of a felony and upon conviction,

21 shall be fined not more than \$5,000, imprisoned in a state correctional facility for not less than
22 one nor more than five years, or both fined and imprisoned.

23 (d) The term "incarcerated in this state" for purposes of this section includes in addition to
24 its usual meaning, offenders serving a sentence under the provisions of article §62-11B-1 *et seq.*
25 of this code.

26 (e) Authorized pat-down, strip search or other security related tasks do not constitute
27 sexual contact pursuant to this section.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor