

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 290

BY SENATOR AZINGER

[Introduced January 14, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8B-7, §61-8B-9a, and §61-8B-9b of the Code of West Virginia,
 2 1931, as amended, all relating to raising the age of children who are victims of certain sex
 3 offenses to 16.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-7. Sexual abuse in the first degree.

1 (a) A person is guilty of sexual abuse in the first degree when:

2 (1) Such person subjects another person to sexual contact without their consent, and the
 3 lack of consent results from forcible compulsion; or

4 (2) Such person subjects another person to sexual contact who is physically helpless; or

5 (3) Such person, being ~~fourteen~~ 19 years old or more, subjects another person to sexual
 6 contact who is younger than ~~twelve~~ 16 years old.

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

11 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any
 12 person violating the provisions of subsection (a) of this section who is 18 years of age or older
 13 and whose victim is younger than ~~twelve~~ 16 years of age, shall be imprisonment for not less than
 14 five nor more than 25 years and fined not less than \$1,000 nor more than \$5,000.

§61-8B-9a. Mandatory sentence for person committing certain sex offenses against children.

1 (a) ~~Notwithstanding~~ Despite the provisions of ~~section one-a, article eleven-a, section four,~~
 2 ~~article eleven-b and section two, article twelve of chapter sixty-two~~ §62-11A-1a, §62-11B-4, and
 3 §62-12-2 of this code, a person shall not be eligible for probation, home incarceration or an
 4 alternative sentence ~~provided under this code~~ if they are convicted of an offense under ~~section~~

5 ~~three, four, five, seven, eight or nine, article eight b, chapter sixty one~~ §61-8B-3, §61-8B-4, §61-
6 8B-5, §61-8B-7, §61-8B-8, or §61-8B-9 of this code, are 18 years of age or older, the victim is
7 younger than ~~twelve~~ 16 years of age and the finder of fact determines that one of the following
8 aggravating circumstances exists:

9 (1) The person employed forcible compulsion in commission of the offense;

10 (2) The offense constituted, resulted from or involved a predatory act as defined in
11 ~~subsection (m), section two, article twelve, chapter fifteen~~ §15-12-2(m) of this code;

12 (3) The person was armed with a weapon or any article used or fashioned in a manner to
13 lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use
14 the weapon or article to cause the victim to submit; or

15 (4) The person removed the victim from one place to another and did not release the victim
16 in a safe place. For the purposes of this section, "release the victim in a safe place" means release
17 of a victim in a place and manner which realistically conveys to the victim that he or she is free
18 from captivity in circumstances and surroundings wherein aid is readily available.

19 (b)(1) The existence of any fact which would make any person ineligible for probation
20 under subsection (a) of this section because of the existence of an aggravating circumstance shall
21 not be applicable unless such fact is clearly stated and included in the indictment or presentment
22 by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo
23 contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such
24 jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by
25 the court, without a jury.

26 (2) Insofar as the provisions of this section relate to mandatory sentences without
27 probation, home incarceration or alternative sentences, all such matters requiring such sentence
28 shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

**§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously
convicted of sexually violent offenses against children.**

1 (a) Notwithstanding any provision of this article to the contrary, any person who has been
2 convicted of a sexually violent offense, as defined in §15-12-2 of this code, against a victim under
3 the age of ~~twelve~~ 16 years old and thereafter commits and thereafter is convicted of one of the
4 following offenses shall be subject to the following penalties unless another provision of this code
5 authorizes a longer sentence:

6 (1) For a violation of §61-8B-3 of this code, the penalty shall be imprisonment in a state
7 correctional facility for not less than 50 nor more than 150 years;

8 (2) For a violation of §61-8B-4 of this code, the penalty shall be imprisonment in a state
9 correctional facility for not less than 30 nor more than 100 years;

10 (3) For a violation of §61-8B-5 of this code, the penalty shall be imprisonment in a state
11 correctional facility for not less than five nor more than 25 years;

12 (4) For a violation of §61-8B-7 of this code, the penalty shall be imprisonment in a state
13 correctional facility for not less than 10 nor more than 35 years; and

14 (5) ~~Notwithstanding~~ Despite the penalty provisions of §61-8B-8 of this code, a violation of
15 its provisions by a person previously convicted of a sexually violent offense, as defined in §15-
16 12-2 of this code, shall be a felony and, the penalty therefor shall be imprisonment in a state
17 correctional facility for not less than three nor more than 15 years.

18 (b) ~~Notwithstanding~~ Despite the provisions of §62-12-2 of this code, any person sentenced
19 pursuant to this section shall not be eligible for probation.

20 (c) ~~Notwithstanding~~ Despite the provisions of §62-11A-1a and §62-11B-4 of this code, a
21 person sentenced under this section shall not be eligible for home incarceration or an alternative
22 sentence.

NOTE: The purpose of this bill is to raise the age to 16 of children who are victims of certain sex offenses.

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