

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4694

FISCAL  
NOTE

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WARD, CONLEY, BURKHAMMER, MAZZOCCHI, KESSINGER,  
PHILLIPS, AND KEATON

[Introduced February 15, 2022; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §61-8B-9a of the Code of West Virginia, 1931, as amended; to  
 2 amend and reenact §61-8C-2 of said code; and to amend and reenact §61-14-2 of said  
 3 code, all relating to dangerous crimes against children; and ensuring that stronger criminal  
 4 penalties are associated with crimes against children.

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

**ARTICLE 8B. SEXUAL OFFENSES.**

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

1 (a) Notwithstanding the provisions of §62-11A-1a, §62-11B-4 and §62-12-2 of this code,  
 2 a person shall not be eligible for probation, home incarceration or an alternative sentence  
 3 provided under this code if they are convicted of an offense under §61-8B-3, §61-8B-4, §61-8B-  
 4 5, §61-8B-7, §61-8B-8 or §61-8B-9, and ~~§61-8B-8b~~ of this code, are 18 years of age or older, the  
 5 victim is younger than 12 years of age and the finder of fact determines that one of the following  
 6 aggravating circumstances exists:

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

8 (2) The offense constituted, resulted from or involved a predatory act as defined in §15-  
 9 12-2(m) of this code;

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

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

17 (b)(1) The existence of any fact which would make any person ineligible for probation  
 18 under subsection (a) of this section because of the existence of an aggravating circumstance shall

19 not be applicable unless such fact is clearly stated and included in the indictment or presentment  
20 by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo  
21 contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such  
22 jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by  
23 the court, without a jury.

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

27 (c) A person who is at least 18 years of age and who is convicted of a violation of §61-8B-  
28 3, §61-8B-4, §61-8B-5, §61-8B-7, §61-8B-8 or §61-8B-9 of this code, and the person has  
29 previously been convicted of such crimes against children, shall be sentenced to imprisonment in  
30 the custody of the state correctional facility for life. A person who is sentenced to life is not eligible  
31 for commutation, parole, work furlough, work release or release from confinement on any basis  
32 for the remainder of the person's life. A person who is at least 18 years of age and who is convicted  
33 of a violation of §61-8B-3, §61-8B-4, §61-8B-5, §61-8B-7, §61-8B-8 or §61-8B-9 of this code shall  
34 be guilty of a felony and imprisoned in a state correctional facility not less than 20 years, nor more  
35 than 40 years.

## **ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

### **§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.**

1 (a) Any person who causes or knowingly permits, uses, persuades, induces, entices or  
2 coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct  
3 shall be guilty of a felony when such person has knowledge that any such act is being  
4 photographed or filmed. Upon conviction thereof, such person shall be fined not more than  
5 \$10,000, or imprisoned in the ~~penitentiary~~ state correctional facility not more than ten years, or  
6 both fined and imprisoned.

7 (b) Any person who photographs or films such minor engaging in any sexually explicit

8 conduct shall be guilty of a felony and, upon conviction thereof, shall be fined not more than  
9 \$10,000, or imprisoned in the ~~penitentiary~~ state correctional facility not more than ten years, or  
10 both fined and imprisoned.

11 (c) Any parent, legal guardian or person having custody and control of a minor, who  
12 photographs or films such minor in any sexually explicit conduct or causes or knowingly permits,  
13 uses, persuades, induces, entices or coerces such minor child to engage in or assist in any  
14 sexually explicit act shall be guilty of a felony when such person has knowledge that any such act  
15 may be photographed or filmed. Upon conviction thereof, such person shall be fined not more  
16 than \$10,000, or imprisoned in the ~~penitentiary~~ state correctional facility not more than ten years,  
17 or both fined and imprisoned.

1 (d) Any person convicted under this section is not eligible for suspension of sentence,  
2 probation, pardon or release from confinement on any basis until the sentence imposed by the  
3 court has been served or commuted.

## **ARTICLE 14. HUMAN TRAFFICKING.**

### **§61-14-2. Human trafficking of an individual; aiding and abetting human trafficking; penalties.**

1 (a) Any person who knowingly and willfully traffics an adult, or who knowingly and willfully  
2 aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon  
3 conviction, shall be confined in a state correctional facility for not less than three nor more than  
4 15 years, fined not more than \$200,000, or both confined and fined.

5 (b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully  
6 aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon  
7 conviction, shall be confined in a state correctional facility for not less than five nor more than 20  
8 years, fined not more than \$300,000, or both confined and fined.

9 (c) Any person convicted under this section is not eligible for suspension of sentence,  
10 probation, pardon or release from confinement on any basis until the sentence imposed by the

11 court has been served or commuted.

NOTE: The purpose of this bill is to enforce stricter criminal penalties associated with dangerous felony crimes against children.

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