

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2251

FISCAL
NOTE

By Delegates Steele, Kirby, Foster and Kump

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to repeal §61-8B-18 of the Code of West Virginia, 1931, as amended; to amend and
 2 reenact §61-8B-3, §61-8B-4, §61-8B-5, §61-8B-7, §61-8B-8, §61-8B-9, §61-8B-9b, §61-
 3 8B-10, §61-8B-12; and to amend said code by adding thereto a new section, designated
 4 §61-8B-4a, all relating to sexual offenses; establishing criminal penalties for sexual
 5 offenses; and creating criminal penalties for certain sexual offenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-3. Sexual assault in the first degree.

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

2 (1) The person engages in sexual intercourse or sexual intrusion with another person and,
 3 in so doing:

4 (i) Inflicts serious bodily injury upon anyone; or

5 (ii) Employs a deadly weapon in the commission of the act; or

6 (2) The person, being 14 years old or more, engages in sexual intercourse or sexual
 7 intrusion with another person who is younger than 12 years old and is not married to that person.

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 15 years
 10 determinate nor more than ~~thirty-five~~ 60 years determinate, or ~~fined not less than \$1,000 nor more~~
 11 ~~than \$10,000 and imprisoned in a state correctional facility not less than fifteen nor more than~~
 12 ~~thirty-five years~~

13 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any
 14 person violating the provisions of subsection (a) of this section who is 18 years of age or older and
 15 whose victim is younger than 12 years of age, shall be imprisonment in a state correctional facility
 16 for 35 years determinate ~~twenty-five~~ nor more than 100 years determinate, and a fine of not less
 17 than ~~_____~~ \$5,000 ~~_____~~ nor ~~_____~~ more ~~_____~~ than ~~_____~~ \$25,000

§61-8B-4. Sexual assault in the second degree.

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

2 (1) Such person engages in sexual intercourse or sexual intrusion with another person
3 without the person's consent, and the lack of consent results from forcible compulsion; or

4 (2) Such person engages in sexual intercourse or sexual intrusion with another person
5 who is physically helpless.

6 (b) Any person who violates the provisions of this section shall be guilty of a felony, and,
7 upon conviction thereof, shall be imprisoned in the penitentiary for not less than 10 years
8 determinate nor more than 30 years determinate. ~~not less than ten nor more than twenty-five~~
9 ~~years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in the penitentiary not~~
10 ~~less than ten nor more than twenty-five years~~

§61-8B-4a. Sexual extortion.

1 (a) For the purposes of this section,

2 "Recording" includes without limitation an image, photograph, or video;

3 "Sexually explicit conduct" means sexual conduct, sexual intercourse, or sexual intrusion;

4 "State of nudity" means:

5 (1) The appearance of a human anus, human genitals, or female breast below a point
6 immediately above the top of the areola; or

7 (2) A state of dress that fails to opaquely cover a human anus, human genitals, or a female
8 breast below a point immediately above the top of the areola;

9 (b) A person is guilty of sexual extortion if:

10 (1) With purpose to coerce another person to engage in sexual contact or sexual
11 intercourse, the person communicates a threat to:

12 (A) Damage the property or harm the reputation of the other person; or

13 (B) Produce or distribute a recording of the other person engaged in sexually explicit
14 conduct or depicted in a state of nudity; or

15 (2) With purpose to produce or distribute a recording of a person in a state of nudity or

16 engaged in sexually explicit conduct, the person communicates a threat to:

17 (A) Damage the property or harm the reputation of the other person; or

18 (B) Produce or distribute a recording of the other person engaged in sexually explicit
19 conduct or depicted in a state of nudity; or

20 (3) The person knowingly causes another person to engage in sexual contact, sexually
21 explicit conduct, or to produce or distribute a recording of a person in a state of nudity or engaged
22 in a sexually explicit conduct by communicating a threat to:

23 (A) Damage the property or harm the reputation of the other person; or

24 (B) Produce or distribute a recording of the other person depicted in a state of nudity or
25 engaged in sexually explicit conduct.

26 (c) Any person who violates the provisions of this section is guilty of a felony, and upon
27 conviction thereof, shall be imprisoned in a state correctional facility for not less than two years
28 determinate nor more than 10 years determinate.

§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) The person, being 16 years old or more, engages in sexual intercourse or sexual
5 intrusion with another person who is less than 16 years old and who is at least four years younger
6 than the defendant and is not married to the defendant.

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

§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 14 years old or more, subjects another person to sexual contact
6 who is younger than 12 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 ~~determinate~~ nor more than five years ~~determinate~~, or fined not more than \$10,000 and imprisoned
10 in a state correctional 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 and
13 whose victim is younger than 12 years of age, shall be is guilty of a felony and, upon conviction,
14 shall be imprisoned ~~imprisonment~~ for not less than five years determinate nor more than ~~twenty-~~
15 ~~five~~ 30 years determinate, and fined not less than \$1,000 nor more than \$5,000

§61-8B-8. Sexual abuse in the second degree.

1 (a) A person is guilty of sexual abuse in the second degree when such person subjects
2 another person to sexual contact who is mentally defective or mentally incapacitated.

3 (b) Any person who violates the provisions of this section shall be is guilty of a
4 misdemeanor and, upon conviction thereof, shall be confined in the county jail not more than 12
5 months determinate, or fined not more than \$500 and confined in the county jail not more than
6 ~~twelve~~ _____ months

§61-8B-9. Sexual abuse in the third degree.

1 (a) A person is guilty of sexual abuse in the third degree when he subjects another person
2 to sexual contact without the latter's consent, when such lack of consent is due to the victim's
3 incapacity to consent by reason of being less than 16 years old.

4 (b) In any prosecution under this section it is a defense that:

5 (1) The defendant was less than 16 years old; or

6 (2) The defendant was less than four years older than the victim.

7 (c) Any person who violates the provisions of this section ~~shall be~~ is guilty of a
8 misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than 90
9 days. ~~or fined not more than \$500 and confined in the county jail not more than ninety days~~

§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 12 years old and thereafter commits and thereafter is convicted of one of the following
4 offenses shall be subject to the following penalties unless another provision of this code authorizes
5 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 years determinate nor more than 150 years determinate;

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

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 years determinate nor more than 25 years determinate;

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 years determinate nor more than 35 years determinate;

14 and

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

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

22 (c) Notwithstanding the provisions of §62-11A-1a, §62-11B-4, and §62-12-2 of this code, a
23 person sentenced under this section shall may not be eligible for home incarceration or an
24 alternative sentence.

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

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 ~~fin~~ed not more than \$5,000 or imprisoned in
8 a state correctional facility for not less than five years determinate nor more than 15 years
9 determinate. ~~not less than one nor more than five years or both fined and 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 of
14 a felony and, upon conviction thereof, shall be ~~fin~~ed not more than \$5,000 or imprisoned in a state
15 correctional facility for not less than five years determinate nor more than 15 years determinate.
16 ~~not less than one nor more than five years or both fined and 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 volunteer
19 duties, supervises program participants, engages in sexual intercourse, sexual intrusion, or sexual
20 contact with a program participant is guilty of a felony and, upon conviction thereof, shall be ~~fin~~

21 ~~not more than \$5,000 or imprisoned in a state correctional facility for not less than five years~~
 22 ~~determinate nor more than 15 years determinate. ~~not less than one nor more than five years or~~~~
 23 ~~both fined and imprisoned~~

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

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

§61-8B-12. Ignorance of victim incapacity to consent. ~~defense.~~ **Same — Defense**

1 (a) In any prosecution under this article in which the victim’s lack of consent is based solely
 2 on the incapacity to consent because such victim was below a critical age, mentally defective,
 3 mentally incapacitated or physically helpless, it is an affirmative defense that the defendant at the
 4 time he or she engaged in the conduct constituting the offense did not know of the facts or
 5 conditions responsible for such incapacity to consent, unless the defendant is reckless in failing to
 6 know such facts or conditions.

7 (b) The affirmative defense provided in subsection (a) of this section shall not be available
 8 in any prosecution under §61-8B-3(a)(2) and §61-8B-7(a)(3) of this code.

§61-8B-18. Rule-making authority.

1 [Repealed.]

NOTE: The purpose of this bill is to increase the penalties for sexual 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.