

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2499

FISCAL
NOTE

By Delegates Kimble, Ridenour, Kirby, Horst, Phillips,

Pinson, Burkhammer, C. Pritt and Mazzocchi

[Introduced January 11, 2023; 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, a
 2 person shall not be eligible for probation, home incarceration or an alternative sentence provided
 3 under this code if they are convicted of an offense under §61-8B-3, §61-8B-4, §61-8B-5, §61-8B-7,
 4 §61-8B-8 or §61-8B-9, ~~and §61-8B-8b~~ of this code, are 18 years of age or older, the victim is
 5 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 §15-12-
 9 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 from
 16 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 jury
22 a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the
23 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-3,
28 §61-8B-4, §61-8B-5, §61-8B-7, §61-8B-8 or §61-8B-9 of this code, and the person has previously
29 been convicted of such crimes against children, shall be sentenced to imprisonment in the custody
30 of the state correctional facility for life. A person who is sentenced to life is not eligible for
31 commutation, parole, work furlough, work release or release from confinement on any basis for the
32 remainder of the person's life. A person who is at least 18 years of age and who is convicted of a
33 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 be
34 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 than
16 \$10,000, or imprisoned in the ~~penitentiary~~ state correctional facility not more than ten years, or
17 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 15
4 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.