

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 635

By Senators Weld, Deeds, Plymale, and Phillips

[Introduced February 15, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8-9 of the Code of West Virginia, 1931, as amended, relating to
 2 indecent exposure of a person's nude penis, vagina, or anus; declaring that indecent
 3 exposure requires exposing one's nude penis, vagina, or anus; authorizing a person
 4 convicted of third offense indecent exposure for purposes of sexual gratification to be both
 5 fined and imprisoned; creating enhanced penalties for second and subsequent violations;
 6 creating the criminal offense of indecent exposure in front of minors; removing breast-
 7 feeding exemption as unnecessary due to definition clarification; defining terms; and
 8 establishing criminal penalties for the new offense.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-9. Indecent exposure.

1 (a) A person is guilty of indecent exposure when ~~such~~ that person intentionally exposes his
 2 or her sex organs or anus, ~~or the sex organs or anus of another person, or intentionally causes~~
 3 ~~such exposure by another or engages in any overt act of sexual gratification,~~ and does so under
 4 circumstances in which the person knows that the conduct is likely to cause affront or alarm to a
 5 person or persons to whom he or she exposes himself or herself. ~~Provided, That it is not~~
 6 ~~considered indecent exposure for a mother to breast feed a child in any location, public or private~~

7 (b) ~~Except as provided in subsection (c), any~~ Any person who violates the provisions of this
 8 ~~section §61-8-9(a) of this code shall be~~ is guilty of a misdemeanor and, upon conviction thereof,
 9 shall be confined in jail not more than 90 days, or fined not more than \$250, or both fined and
 10 confined.

11 (c) ~~Notwithstanding the provisions of §61-8-9(a) and §61-8-9(b) of this code, Any any~~
 12 ~~person who violates the provisions of subsection (a) of this section by intentionally exposing~~
 13 ~~himself or herself~~ exposes his or her sex organs or anus, to another person ~~and the exposure was~~
 14 ~~done for the purpose of sexual gratification~~ without that person's consent, and the exposure was
 15 is done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction

16 thereof, shall be fined not more than \$500 or confined in jail not more than ~~12 months~~ one year, or
17 both fined and confined. For a second offense under this subsection, the person is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, ~~and~~ or confined
19 in jail for not less than 30 days nor more than ~~12 months~~ one year, or both fined and confined. For a
20 third or subsequent offense under this subsection, the person is guilty of a felony and, upon
21 conviction thereof, shall be fined not more than \$3,000, ~~and~~ or imprisoned in a state correctional
22 facility for not less than one year nor more than five years, or both fined and imprisoned.

23 (d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, any
24 person who intentionally exposes his or her sex organs or anus, to another person and the
25 exposure is done for the purpose of sexual gratification and who knows or should know that any of
26 the persons present are younger than 16 years of age, is guilty of a felony and, upon conviction
27 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not
28 less than one year nor more than five years, or both fined and imprisoned.

29 (e) As used in this section, "intentionally exposes his or her sex organs or anus" means to
30 willfully display one's nude penis, vagina, or anus to another person.

NOTE: The purpose of this bill is to change language concerning indecent exposure and increase the penalties associated with it.

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