

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 635

BY SENATORS WELD, DEEDS, PLYMALE, AND PHILLIPS

[Originating in the Committee on the Judiciary;

reported on February 17, 2023]

1 A BILL to amend and reenact §61-8-9 of the Code of West Virginia, 1931, as amended, relating
2 to 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
2 his 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
8 ~~this section §61-8-9(a) of this code shall be~~ is guilty of a misdemeanor and, upon conviction
9 thereof, shall be confined in jail not more than 90 days or fined not more than \$250, or both fined
10 and 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, or the person engages in an overt act of sexual

16 gratification involving his or her nude sex organs or anus towards another person, including but
17 not limited to masturbation, is guilty of a misdemeanor and, upon conviction thereof, shall be fined
18 not more than \$500 or confined in jail not more than ~~12 months~~ one year, or both fined and
19 confined. For a second offense under this subsection, the person is guilty of a misdemeanor and,
20 upon conviction thereof, shall be fined not more than \$1,000 ~~and~~ or confined in jail for not less
21 than 30 days nor more than ~~12 months~~ one year, or both fined and confined. For a third or
22 subsequent offense under this subsection, the person is guilty of a felony and, upon conviction
23 thereof, shall be fined not more than \$3,000 ~~and~~ or imprisoned in a state correctional facility for
24 not less than one year nor more than five years, or both fined and imprisoned.

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

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