

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 695

FISCAL
NOTE

By Senators Hunt, Chapman, Clements, Deeds,
Karnes, Stuart, Phillips, Grady, Woelfel, and Taylor

[Introduced February 20, 2023; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §16-11-3, relating to performing orchiectomies on certain sex offenders;
 3 amending a section of code by changing the penalty associated with sexual assault in the
 4 first degree when the victim is a minor to life imprisonment, and that would allow the person
 5 convicted of sexual assault in the first degree the opportunity to receive an orchiectomy.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. SEXUAL STERILIZATION.

§16-11-3. Orchiectomy for Certain Sex Offenders.

1 (a) A physician employed or retained by the department may perform an orchiectomy on
 2 an inmate only if:

3 (1) The inmate has been convicted of an offense under §61-8B-3(a)(2), §61-8B-3(c), or
 4 §61-8B-5(a)(2) and has previously been convicted under one or more of those sections;

5 (2) The inmate is 21 years of age or older;

6 (3) The inmate requests the procedure in writing;

7 (4) The inmate signs a statement admitting the inmate committed the offense described in
 8 §16-11-3(a)(1) of this code for which the inmate has been convicted;

9 (5) A psychiatrist and a psychologist who are appointed by the Department of Corrections
 10 and have experience in the treatment of sex offenders:

11 (A) Evaluate the inmate and determine that the inmate is a suitable candidate for the
 12 procedure; and

13 (B) Counsel the inmate before the inmate undergoes the procedure;

14 (6) The physician obtains the inmate’s informed, written consent to undergo the procedure;

15 (7) The inmate has not previously requested that the procedure be performed and
 16 subsequently withdrawn the request; and

17 (8) The inmate consults with a monitor as provided by §16-11-3(f) of this code.

18 (b) The inmate may change his decision to undergo an orchiectomy at any time before the

19 physician performs the procedure. An inmate who withdraws his request to undergo an
20 orchiectomy is ineligible to have the procedure performed by the department.

21 (c) Either the psychiatrist or psychologist appointed by the department under this section
22 must be a member of the staff of a medical facility under contract with the department or the
23 institutional division to treat inmates in the division.

24 (d) A physician who performs an orchiectomy on an inmate under this section is not liable
25 for an act or omission relating to the procedure unless the act or omission constitutes negligence.

26 (e) The name of an inmate who requests an orchiectomy under this section is confidential,
27 and the department may use the inmate's name only for purposes of notifying and providing
28 information to the inmate's spouse if the inmate is married.

29 (f) The executive director of the West Virginia State Board of Medicine shall appoint, in
30 consultation with two or more executive directors of college or university institutes or centers for
31 the study of medical ethics or medical humanities, a monitor to assist an inmate in his decision to
32 have an orchiectomy. The monitor must have experience in the mental health field, in law, and in
33 ethics. The monitor shall consult with the inmate to:

34 (1) Ensure adequate information regarding the orchiectomy has been provided to the
35 inmate by medical professionals providing treatment or advice to the inmate;

36 (2) Provide information regarding the orchiectomy to the inmate if the monitor believes the
37 inmate is not adequately informed about the orchiectomy;

38 (3) Determine whether the inmate is free from coercion in his decision regarding the
39 orchiectomy; and

40 (4) Advise the inmate to withdraw his request for an orchiectomy if the monitor determines
41 the inmate is being coerced to have an orchiectomy.

42 (g) A monitor appointed under §16-11-3(f) of this code is not liable for damages arising
43 from an act or omission under §16-11-3(f) of this code unless the act or omission was intentional or
44 grossly negligent.

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 nor more than
10 35 years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a state
11 correctional facility not less than 15 nor more than 35 years.

12 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any
13 person violating the provisions of subsection (a) of this section who is 18 years of age or older and
14 whose victim is younger than 12 years of age or violating the provisions of subdivision (2) of this
15 section, shall be ~~imprisonment in a state correctional facility for not less than twenty-five nor more~~
16 ~~than one hundred years and a fine of not less than \$5,000 nor more than \$25,000~~ punished by
17 confinement in a state correctional facility for life without the possibility of parole.

18 (d) As part of any penalty associated with violating subsection (a) or subdivision (2) of this
19 section, the violator may elect to have an orchiectomy performed as part of any penalty associated
20 with violating the provisions of §61-8B-3 of this code.

NOTE: The purpose of this bill is to offer the option to receive an orchiectomy and to change the penalty to life imprisonment for crimes committed under §61-8B-3(a)(2), §61-8B-3(c), or §61-8B-5(a)(2) of this code.

Strike-throughs indicate language that would be stricken from a heading or the present law,

and underscoring indicates new language that would be added.