

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5235**

By Delegates Vance, Chiarelli, Coop-Gonzalez, Dean,

Kirby, Foggin, Bridges, McGeehan, Phillips,

Householder, and Ridenour

[Introduced January 26, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §61-8B-5, §61-8B-9, §61-8D-5, and §61-8D-6 of the Code of West  
 2 Virginia, 1931, as amended, all relating to increasing penalties for child sexual assault and  
 3 sexual abuse, and for distributing, possessing, and transporting material depicting a child  
 4 engaged in sexually explicit conduct, and to clarify that failure to report sexual assault,  
 5 sexual abuse, or sexual exploitation of a child is a felony.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 8B. SEXUAL OFFENSES.**

**§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 sixteen years old or more, engages in sexual intercourse or sexual  
 5 intrusion with another person who is less than sixteen years old and who is at least four years  
 6 younger 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~~ two  
 9 years nor more than ~~five~~ ten years, or fined not more than ~~\$10,000~~ \$20,000 and imprisoned in a  
 10 state correctional facility not less than ~~one year~~ two years nor more than ~~five~~ ten years.

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

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

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

5 (1) The defendant was less than sixteen 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 guilty of a ~~misdemeanor~~  
 8 felony, and, upon conviction thereof, shall be confined in ~~the county jail~~ a state correctional facility  
 9 not more ~~less~~ than ~~ninety days~~ one year, or fined not more than \$500 \$1,000 and confined in the  
 10 ~~county jail~~ a state correctional facility not more ~~less~~ than ~~ninety days~~ one year.

## **ARTICLE 8D. CHILD ABUSE.**

### **§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; failing to report sexual assault or abuse upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares a  
 2 separate and distinct offense under this subsection, as follows: If any parent, guardian or  
 3 custodian of or other person in a position of trust in relation to a child under his or her care, custody  
 4 or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse,  
 5 sexual intrusion or sexual contact with, a child under his or her care, custody or control,  
 6 notwithstanding the fact that the child may have willingly participated in such conduct, or the fact  
 7 that the child may have consented to such conduct or the fact that the child may have suffered no  
 8 apparent physical injury or mental or emotional injury as a result of such conduct, then such  
 9 parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon  
 10 conviction thereof, shall be imprisoned in a correctional facility not less than ~~ten~~ twenty nor more  
 11 than ~~twenty~~ forty years, or fined not less than \$500 \$1,000 nor more than \$5,000 \$10,000 and  
 12 imprisoned in a correctional facility not less than ~~ten~~ twenty years nor more than ~~twenty~~ forty years.

13 (b) Any parent, guardian, custodian or other person in a position of trust in relation to the  
 14 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
 15 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a  
 16 child under the care, custody or control of such parent, guardian, custodian or person in a position

17 of trust when such child is less than sixteen years of age, notwithstanding the fact that the child  
18 may have willingly participated in such conduct or the fact that the child may have suffered no  
19 apparent physical injury or mental or emotional injury as a result of such conduct, such parent,  
20 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction  
21 thereof, shall be imprisoned in a correctional facility not less than ~~five~~ ten years nor more than  
22 ~~fifteen~~ thirty years, or fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$10,000~~ \$20,000 and  
23 imprisoned in a correctional facility not less than ~~five~~ ten years nor more than ~~fifteen~~ thirty years.

24 (c) Any parent, guardian, custodian or other person in a position of trust in relation to the  
25 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
26 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a  
27 child under the care, custody or control of such parent, guardian, custodian or person in a position  
28 of trust when such child is sixteen years of age or older, notwithstanding the fact that the child may  
29 have consented to such conduct or the fact that the child may have suffered no apparent physical  
30 injury or mental or emotional injury as a result of such conduct, then such parent, guardian,  
31 custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof,  
32 shall be imprisoned in a correctional facility not less than ~~one year~~ two years nor more than ~~five~~ ten  
33 years.

34 (d) Notwithstanding any other provision of this code otherwise, any parent, guardian,  
35 custodian or other person in a position of trust in relation to a child who knows or learns that said  
36 child has been subjected to sexual assault or sexual abuse, sexual exploitation, sexual intrusion or  
37 sexual contact in violation of chapter sixty-one of this code, and who fails to report the same to law  
38 enforcement, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a  
39 correctional facility not less than two years nor more than ten years.

40 ~~(d)~~ (e) The provisions of this section shall not apply to a custodian or person in a position of  
41 trust whose age exceeds the age of the child by less than four years.

**§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material**

**by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct; penalty.**

1 Any parent, guardian or custodian who, with knowledge, sends or causes to be sent, or  
2 distributes, exhibits, possesses, displays or transports, any material visually portraying a child  
3 under his or her care, custody or control engaged in any sexually explicit conduct, is guilty of a  
4 felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than ~~two~~ four  
5 years, and fined not less than ~~\$400~~ \$800 nor more than ~~\$4,000~~ \$8,000.

NOTE: The purpose of this bill is to increase penalties related to child sexual assault and sexual abuse; to increase penalties for distributing, possessing and transporting material depicting a child engaged in sexually explicit conduct; and to clarify that that failure to report sexual assault, sexual abuse, or sexual exploitation of a child is a felony.

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