

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5344**

By Delegates Heckert, Jennings, Sheedy, Barnhart,

DeVault, Crouse, and Criss

[Originating in the Committee on the Judiciary;

Reported on February 23, 2024]





14 correctional facility not less than one year nor more than five years, or fined not more than \$10,000  
15 and imprisoned in a state correctional facility not less than one year nor more than five years .

16 ~~(b) Any person violating the provisions of this section is guilty of a felony and, upon~~  
17 ~~conviction thereof, shall be imprisoned in a state correctional facility not less than one year 10~~  
18 ~~years nor more than five 20 years, or fined not more than \$10,000 and imprisoned in a state~~  
19 ~~correctional facility not less than one year nor more than five years.~~

20 (c) Notwithstanding any provision of law to the contrary, a person who is the victim of  
21 sexual assault under this section, and who is mentally defective as defined in §61-8B-1 of this  
22 code, may be allowed to testify by two-way closed-circuit television or by the use of two-way  
23 videoconferencing technology: *Provided*, That in order for two-way closed-circuit television, or the  
24 two-way videoconferencing technology, to be utilized for testimonial purposes by the victim the  
25 trial court must make findings of fact addressing the following:

26 (1) The victim shall be required to give testimony under oath;

27 (2) The defendant shall have an opportunity to contemporaneously cross-examine the  
28 victim;

29 (3) The jury and the defendant shall possess the ability to observe the demeanor of the  
30 victim; and

31 (4) That such two-way videoconference, or two-way closed circuit-television, examination  
32 of the victim reduces risk that the victim will wrongfully implicate an innocent defendant when  
33 testifying.

NOTE: The purpose of this bill is to clarify when a mentally incapacitated victim may not be required to testify in open court; and providing judicial discretion to determine the appropriateness of a mentally capacitated victim to testify.

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