WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5423

By Delegates Heckert, Foggin, Criss, Hornby, Householder, Mazzocchi, Fehrenbacher, Anderson, and Akers

[Introduced February 02, 2024; Referred to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §57-5-1a; and to amend and reenact §61-8B-5 of said code, all relating to prohibiting a cognitively impaired or mentally defective person from being forced to testify in open court, and increasing the penalty for sexual assault of a mentally defective or mentally incapacitated person.

Be it enacted by the Legislature of West Virginia:

**Chapter 57: Evidence and Witnesses.**

ARTIcle 5. miscellaneous provisions.

§57-5-1a. Cognitively impaired or mentally defective persons as witnesses.

Notwithstanding any provision of this code to the contrary, no cognitively impaired or mentally defective person shall be forced to testify or give evidence in open court.

**Chapter 61: Crimes and Their Punishment.**

ARTIcle 8B. Sexual offenses.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section with a victim who is underage is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than $10,000 and imprisoned in a state correctional facility not less than one year nor more than five.

(c) Any person violating the provisions of this section with a victim who is mentally defective or mentally incapacitated is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen years nor more than thirty years, or fined not more than $10,000 and imprisoned in a state correctional facility not less than fifteen years nor more than thirty years.

NOTE: The purpose of this bill is to prohibit a cognitively impaired or mentally defective person from being forced to testify in open court, and to increase the penalty for sexual assault of a mentally defective or mentally incapacitated person.

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