

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 190

By Senators Weld, Deeds, Trump, Woelfel, Barrett,

Takubo, and Caputo

[Passed March 8, 2024]

1 AN ACT to amend and reenact §61-8B-1, §61-8B-3, and §61-8B-5 of the Code of West Virginia,
2 1931, as amended, all relating to removing the definition of "marriage"; amending the
3 definition of "sexual contact" to remove the exception where the victim is married to the
4 actor; eliminating the marital exception to the offenses of first and third degree sexual
5 assault; and removing duplicative language.

Be it enacted by the Legislature of West Virginia:

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| ARTICLE | 8B. | SEXUAL | OFFENSES. |
| §61-8B-1. | Definition | of | terms. |

1 In this article, unless a different meaning plainly is required:

2 (1) "Forcible compulsion" means:

3 (A) Physical force that overcomes such earnest resistance that is reasonably expected
4 under the circumstances;

5 (B) Threat or intimidation, expressed or implied, placing a person in fear of immediate
6 death or bodily injury to himself or herself or another person, or in fear that he or she or another
7 person will be kidnapped; or

8 (C) Fear by a person under 16 years of age caused by intimidation, expressed or implied,
9 by another person who is at least four years older than the victim.

10 For the purposes of this definition, "resistance" includes physical resistance or any clear
11 communication of the victim's lack of consent.

12 (2) "Mentally defective" means that a person suffers from a mental disease or defect which
13 renders that person incapable of appraising the nature of his or her conduct.

14 (3) "Mentally incapacitated" means that a person is rendered temporarily incapable of
15 appraising or controlling his or her conduct as a result of the influence of a controlled or
16 intoxicating substance administered to that person without his or her consent or as a result of any
17 other act committed upon that person without his or her consent.

18 (4) "Physically helpless" means that a person is unconscious or for any reason is physically

19 unable to communicate unwillingness to an act.

20 (5) "Sexual contact" means any intentional touching, either directly or through clothing, of
21 the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional touching
22 of any part of another person's body by the actor's sex organs and the touching is done for the
23 purpose of gratifying the sexual desire of either party.

24 (6) "Sexual intercourse" means any act between persons involving penetration, however
25 slight, of the female sex organ by the male sex organ or involving contact between the sex organs
26 of one person and the mouth or anus of another person.

27 (7) "Sexual intrusion" means any act between persons involving penetration, however
28 slight, of the female sex organ or of the anus of any person by an object for the purpose of
29 degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

30 (8) "Bodily injury" means substantial physical pain, illness, or any impairment of physical
31 condition.

32 (9) "Serious bodily injury" means bodily injury which creates a substantial risk of death,
33 which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged
34 loss or impairment of the function of any bodily organ.

35 (10) "Deadly weapon" means any instrument, device, or thing capable of inflicting death or
36 serious bodily injury and designed or specially adapted for use as a weapon, or possessed,
37 carried, or used as a weapon.

38 (11) "Forensic medical examination" means an examination provided to a possible victim
39 of a violation of the provisions of this article by medical personnel qualified to gather evidence of
40 the violation in a manner suitable for use in a court of law, to include: An examination for physical
41 trauma; a determination of penetration or force; a patient interview; and the collection and
42 evaluation of other evidence that is potentially relevant to the determination that a violation of the
43 provisions of this article occurred and to the determination of the identity of the assailant.

§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 (A) Inflicts serious bodily injury upon anyone;

5 (ii) (B) Employs a deadly weapon in the commission of the act.

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.

8 (b) Any person violating the provisions of this section is guilty of a felony and, upon
9 conviction thereof, shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned in a
10 state correctional facility not less than 15 nor more than 35 years.

11 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any
12 person violating the provisions of subsection (a) of this section who is 18 years of age or older and
13 whose victim is younger than 12 years of age, shall be imprisonment in a state correctional facility
14 for not less than 25 nor more than 100 years and a fine of not less than \$5,000 nor more than
15 \$25,000.

§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 16 years old or more, engages in sexual intercourse or sexual
5 intrusion with another person who is less than 16 years old and who is at least four years younger
6 than 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 nor
9 more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility
10 not less than one year nor more than five years.

