

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 190**

BY SENATORS WELD, DEEDS, TRUMP, WOELFEL,

BARRETT, TAKUBO, AND CAPUTO

[Originating in the Committee on the Judiciary;

reported February 23, 2024]



1 A BILL 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:*

## **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) (A)~~ Physical force that overcomes such earnest resistance ~~as might~~ that is reasonably  
4 ~~be~~ expected under the circumstances; ~~or~~

5 ~~(b) (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) (C)~~ Fear by a person under 16 years of age caused by intimidation, expressed or  
9 implied, 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) "Married", for the purposes of this article in addition to its legal meaning, includes~~  
13 ~~persons living together as husband and wife regardless of the legal status of their relationship.~~

14 ~~(3) (2)~~ "Mentally defective" means that a person suffers from a mental disease or defect  
15 which renders that person incapable of appraising the nature of his or her conduct.

16 ~~(4) (3)~~ "Mentally incapacitated" means that a person is rendered temporarily incapable of  
17 appraising or controlling his or her conduct as a result of the influence of a controlled or

18 intoxicating substance administered to that person without his or her consent or as a result of any  
19 other act committed upon that person without his or her consent.

20 ~~(5)~~ (4) "Physically helpless" means that a person is unconscious or for any reason is  
21 physically unable to communicate unwillingness to an act.

22 ~~(6)~~ (5) "Sexual contact" means any intentional touching, either directly or through clothing,  
23 of the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional  
24 touching of any part of another person's body by the actor's sex organs ~~where the victim is not~~  
25 ~~married to the actor~~ and the touching is done for the purpose of gratifying the sexual desire of  
26 either party.

27 ~~(7)~~ (6) "Sexual intercourse" means any act between persons involving penetration,  
28 however slight, of the female sex organ by the male sex organ or involving contact between the  
29 sex organs of one person and the mouth or anus of another person.

30 ~~(8)~~ (7) "Sexual intrusion" means any act ~~between~~ persons involving penetration, however  
31 slight, of the female sex organ or of the anus of any person by an object for the purpose of  
32 degrading or humiliating the person so penetrated or for gratifying the sexual desire of either  
33 party.

34 ~~(9)~~ (8) "Bodily injury" means substantial physical pain, illness, or any impairment of  
35 physical condition.

36 ~~(10)~~ (9) "Serious bodily injury" means bodily injury which creates a substantial risk of  
37 death, which causes serious or prolonged disfigurement, prolonged impairment of health, or  
38 prolonged loss or impairment of the function of any bodily organ.

39 ~~(14)~~ (10) "Deadly weapon" means any instrument, device, or thing capable of inflicting  
40 death or serious bodily injury and designed or specially adapted for use as a weapon, or  
41 possessed, carried, or used as a weapon.

42 ~~(42)~~ (11) "Forensic medical examination" means an examination provided to a possible  
43 victim of a violation of the provisions of this article by medical personnel qualified to gather

44 evidence of the violation in a manner suitable for use in a court of law, to include: An examination  
45 for physical trauma; a determination of penetration or force; a patient interview; and the collection  
46 and evaluation of other evidence that is potentially relevant to the determination that a violation  
47 of the 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 (i) ~~(A)~~ (A) Inflicts serious bodily injury upon anyone; ~~or~~

5 (ii) (B) 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~~  
10 ~~than 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  
14 and whose victim is younger than 12 years of age, shall be imprisonment in a state correctional  
15 facility for not less than 25 nor more than 100 years and a fine of not less than \$5,000 nor more  
16 than \$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. ~~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 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.