

Senate Bill No. 477

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(By Senators Barnes, Palumbo, Plymale, Tucker, Minard and Klempa)

[Introduced February 9, 2011; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §61-8B-1 of the Code of West Virginia,
11 1931, as amended, relating to sexual offenses; definitions;
12 and amending the definition of "sexual contact".

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

14 That §61-8B-1 of the Code of West Virginia, 1931, as amended,
15 be amended and reenacted to read as follows:

16 **ARTICLE 8B. SEXUAL OFFENSES.**

17 **§61-8B-1. Definition of terms.**

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

20 (1) "Forcible compulsion" means:

21 (a) Physical force that overcomes such earnest resistance as
22 might reasonably be expected under the circumstances; or

23 (b) Threat or intimidation, expressed or implied, placing a
24 person in fear of immediate death or bodily injury to himself or
25 herself or another person or in fear that he or she or another
26 person will be kidnapped; or

1 (c) Fear by a person under sixteen years of age caused by
2 intimidation, expressed or implied, by another person who is at
3 least four years older than the victim.

4 For the purposes of this definition "resistance" includes
5 physical resistance or any clear communication of the victim's lack
6 of consent.

7 (2) "Married", for the purposes of this article in addition to
8 its legal meaning, includes persons living together as husband and
9 wife regardless of the legal status of their relationship.

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

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

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

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

1 done for the purpose of gratifying the sexual desire of either
2 party.

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

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

12 (9) "Bodily injury" means substantial physical pain, illness
13 or any impairment of physical condition.

14 (10) "Serious bodily injury" means bodily injury which creates
15 a substantial risk of death, which causes serious or prolonged
16 disfigurement, prolonged impairment of health or prolonged loss or
17 impairment of the function of any bodily organ.

18 (11) "Deadly weapon" means any instrument, device or thing
19 capable of inflicting death or serious bodily injury, and designed
20 or specially adapted for use as a weapon, or possessed, carried or
21 used as a weapon.

22 (12) "Forensic medical examination" means an examination
23 provided to a possible victim of a violation of the provisions of
24 this article by medical personnel qualified to gather evidence of
25 the violation in a manner suitable for use in a court of law, to
26 include: An examination for physical trauma; a determination of

1 penetration or force; a patient interview; and the collection and
2 evaluation of other evidence that is potentially relevant to the
3 determination that a violation of the provisions of this article
4 occurred and to the determination of the identity of the assailant.

NOTE: The purpose of this bill is to amend the definition of
"sexual contact" by removing the words "where the victim is not
married to the actor".

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