

**Senate Bill No. 88**

(By Senators Laird, Barnes, Yost, Wills, Hall, Klempa, Miller,  
and Plymale)

[Introduced January 13, 2011; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**Interim  
Bill**

**FISCAL  
NOTE**

A BILL to amend and reenact §61-8B-10 of the Code of West Virginia,  
1931, as amended, relating to imposition of sexual intercourse  
or sexual intrusion on incarcerated persons; sexual abuse by  
employees of the Division of Corrections, Division of Juvenile  
Services and the Regional Jail and Correctional Facility  
Authority on incarcerated persons; and penalties.

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

That §61-8B-10 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-10. Imposition of sexual intercourse or sexual intrusion on  
incarcerated persons; penalties.**

(a) Notwithstanding any other section of this article, any  
person employed by the Division of Corrections, any person working

1 at a correctional facility managed by the Commissioner of  
2 Corrections pursuant to contract or as an employee of a state  
3 agency, any person working at a correctional facility managed by  
4 the Division of Juvenile Services pursuant to contract or as an  
5 employee of a state agency, any person employed by a jail or by the  
6 Regional Jail and Correctional Facility Authority, any person  
7 working at a facility managed by the Regional Jail and Correctional  
8 Facility Authority or a jail or any person employed by, or acting  
9 pursuant to, the authority of any sheriff, county commission or  
10 court to ensure compliance with the provisions of article eleven-b,  
11 chapter sixty-two of this code who engages in sexual intercourse,  
12 ~~or~~ sexual intrusion or sexual contact with a person who is  
13 incarcerated in this state is guilty of a felony and, upon  
14 conviction thereof, shall be confined in a state correctional  
15 facility under the control of the Commissioner of Corrections for  
16 not less than one nor more than five years or fined not more than  
17 five thousand dollars.

18 (b) Notwithstanding any other section of this article, any  
19 person employed by the Division of Corrections as a parole officer  
20 or by the West Virginia Supreme Court of Appeals as an adult or  
21 juvenile probation officer who engages in sexual intercourse, ~~or~~  
22 sexual intrusion or sexual contact with a person said parole  
23 officer or probation officer is charged as part of his or her  
24 employment with supervising, is guilty of a felony and, upon  
25 conviction thereof, shall be confined in a state correctional

1 facility under the control of the Commissioner of Corrections for  
2 not less than one nor more than five years or fined not more than  
3 five thousand dollars, or both.

4 (c) The term "incarcerated in this state" for purposes of this  
5 section includes in addition to its usual meaning, offenders  
6 serving a sentence under the provisions of article eleven-b,  
7 chapter sixty-two of this code.

8 (d) "Lack of consent" as defined in section two of this  
9 article is not an element to an offense charged under this section  
10 and consent is not a defense to a charged offense under this  
11 section.

12 (e) For purposes of this section, "sexual contact" has the  
13 same meaning as is given within this article: Provided, That a  
14 properly administered pat-down, strip search or other security  
15 related task that may involve touching, either directly or through  
16 clothing, of the breasts, buttocks, anus or any part of the sex  
17 organs of another person as part of such search or security measure  
18 is not an offense under this section.

NOTE: The purpose of this bill is to provide that any employee of the Division of Corrections, the Division of Juvenile Services and the Regional Jail and Correctional Facility Authority who engages in sexual intercourse, sexual intrusion or sexual contact with an inmate is guilty of a felony and, shall be confined for not less than one year nor more than five years or fined not more than \$5,000. The bill further provides that for the purposes of this section, properly administered pat-downs, strip searches or other security measures do not constitute sexual contact.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.