

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4060**

4 (By Delegates Perry, Skaff, Morgan and Ellem)

5 (Originated in the Committee on the Judiciary)

6
7
8 [January 26, 2012]

9
10 A BILL to amend and reenact §61-8B-2 and §61-8B-10 of the Code of
11 West Virginia, 1931, as amended, all relating to prohibiting
12 state and local jail, correctional, probation and parole
13 employees or contractors from engaging in sexual acts with
14 persons who are incarcerated, on probation or parole;
15 prohibiting sexual contact; removing consent of victim as a
16 defense for criminal acts; and establishing criminal
17 penalties.

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

19 That §61-8B-2 and §61-8B-10 of the Code of West Virginia,
20 1931, as amended, be amended and reenacted, all to read as follows:

21 **ARTICLE 8B. SEXUAL OFFENSES.**

22 **§61-8B-2. Lack of consent.**

23 (a) Whether or not specifically stated, it is an element of
24 every offense defined in this article that the sexual act was

1 committed without the consent of the victim.

2 (b) Lack of consent results from:

3 (1) Forcible compulsion; ~~or~~

4 (2) Incapacity to consent; or

5 (3) If the offense charged is sexual abuse, any circumstances
6 in addition to the forcible compulsion or incapacity to consent in
7 which the victim does not expressly or impliedly acquiesce in the
8 actor's conduct.

9 (c) A person is deemed incapable of consent when such person
10 is:

11 (1) Less than sixteen years old; ~~or~~

12 (2) Mentally defective; ~~or~~

13 (3) Mentally incapacitated; ~~or~~

14 (4) Physically helpless; or

15 (5) Subject to confinement or supervision by a state or local
16 government entity when the actor is a person prohibited from
17 engaging in sexual intercourse, sexual intrusion or sexual contact
18 pursuant to subsections (a) or (b) of section ten of this article.

19 **§61-8B-10. Imposition of sexual acts on persons incarcerated or**
20 **under supervision; penalties.**

21 (a) Any person employed by the Division of Corrections, any
22 person working at a correctional facility managed by the
23 Commissioner of Corrections pursuant to contract or as an employee
24 of a state agency, any person working at a correctional facility

1 managed by the Division of Juvenile Services pursuant to contract
2 or as an employee of a state agency, any person employed by a jail
3 or by the Regional Jail and Correctional Facility Authority, any
4 person working at a facility managed by the Regional Jail and
5 Correctional Facility Authority or a jail or any person employed
6 by, or acting pursuant to, the authority of any sheriff, county
7 commission or court to ensure compliance with the provisions of
8 article eleven-b, chapter sixty-two of this code who engages in
9 sexual intercourse, ~~or~~ sexual intrusion or sexual contact with a
10 person who is incarcerated in this state is guilty of a felony and,
11 upon conviction thereof, shall be confined in a state correctional
12 facility under the control of the Commissioner of Corrections for
13 not less than one nor more than five years or fined not more than
14 \$5,000.

15 (b) Any person employed by the Division of Corrections as a
16 parole officer or by the West Virginia Supreme Court of Appeals as
17 an adult or juvenile probation officer who engages in sexual
18 intercourse, ~~or~~ sexual intrusion or sexual contact with a person
19 said parole officer or probation officer is charged as part of his
20 or her employment with supervising, is guilty of a felony and, upon
21 conviction thereof, shall be confined in a state correctional
22 facility under the control of the Commissioner of Corrections for
23 not less than one nor more than five years or fined not more than
24 \$5,000, or both.

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

5 (d) An authorized pat-down, strip search or other security
6 related task does not constitute sexual contact pursuant to this
7 section.