

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 165**

5 (SENATORS LAIRD, TUCKER, YOST, BARNES, PLYMALE, UNGER AND WILLS, *original*
6 *sponsors*)

7 _____
8 [Passed February 6, 2012; in effect ninety days from passage.]
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10
11 AN ACT to amend and reenact §61-8B-2 and §61-8B-10 of the Code of
12 West Virginia, 1931, as amended, all relating to prohibiting
13 sexual acts between persons who are incarcerated, on probation
14 or parole with state and local jail, correctional, probation
15 and parole employees or contractors; prohibiting sexual
16 contact; removing consent of victim as a defense for criminal
17 acts; and establishing criminal 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
25 committed without the consent of the victim.

1 (b) Lack of consent results from:

2 (1) Forcible compulsion;

3 (2) Incapacity to consent; or

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

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

10 (1) Less than sixteen years old;

11 (2) Mentally defective;

12 (3) Mentally incapacitated;

13 (4) Physically helpless; or

14 (5) Subject to confinement or supervision by a state or local
15 government entity, when the actor is a person prohibited from
16 having sexual intercourse, or causing sexual intrusion or sexual
17 contact pursuant to subsections (a) and (b) of section ten of this
18 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
25 managed by the Division of Juvenile Services pursuant to contract
26 or as an employee of a state agency, any person employed by a jail

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

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

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

1 (d) Authorized pat-down, strip search or other security
2 related tasks does not constitute sexual contact pursuant to this
3 section.