

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 165**

4 (By Senators Laird, Tucker, Yost, Barnes, Plymale, Unger and
5 Wills)

6 _____
7 [Originating in the Committee on the Judiciary ;
8 reported January 25, 2012.]
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11 A BILL to amend and reenact §61-8B-10 of the Code of West Virginia,
12 1931, as amended, relating to criminalizing imposition of
13 sexual intercourse, sexual intrusion, sexual abuse or sexual
14 contact on incarcerated persons by employees of the Division
15 of Corrections, Division of Juvenile Services and the Regional
16 Jail and Correctional Facility Authority; clarifying that lack
17 of consent is not an element of the offense; clarifying that
18 consent is not a defense; exempting certain behaviors from
19 criminalization; and penalties.

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

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

23 **ARTICLE 8B. SEXUAL OFFENSES.**

24 **§61-8B-10. Imposition of sexual intercourse or sexual intrusion**
25 **on incarcerated persons; penalties.**

1 (a) Notwithstanding any other section of this article, any
2 person employed by the Division of Corrections, any person working
3 at a correctional facility managed by the Commissioner of
4 Corrections pursuant to contract or as an employee of a state
5 agency, any person working at a correctional facility managed by
6 the Division of Juvenile Services pursuant to contract or as an
7 employee of a state agency, any person employed by a jail or by the
8 Regional Jail and Correctional Facility Authority, any person
9 working at a facility managed by the Regional Jail and Correctional
10 Facility Authority or a jail or any person employed by, or acting
11 pursuant to, the authority of any sheriff, county commission or
12 court to ensure compliance with the provisions of article eleven-b,
13 chapter sixty-two of this code who engages in sexual intercourse,
14 ~~or~~ sexual intrusion or sexual contact with a person who is
15 incarcerated in this state is guilty of a felony and, upon
16 conviction thereof, shall be confined in a state correctional
17 facility under the control of the Commissioner of Corrections for
18 not less than one nor more than five years or fined not more than
19 \$5,000.

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

1 conviction thereof, shall be confined in a state correctional
2 facility under the control of the Commissioner of Corrections for
3 not less than one nor more than five years or fined not more than
4 \$5,000, or both.

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

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

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