

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4375

FISCAL
NOTE

BY DELEGATES BARRETT, STEELE, REYNOLDS, FOSTER,

SMITH, WAMSLEY, KELLY, D., AND HOTT

[BY REQUEST OF THE DEPARTMENT OF HOMELAND
SECURITY]

[Introduced January 25, 2022; Referred to the
Committee on Select Committee on Jails and Prisons
then the Judiciary]

1 A BILL to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, relating
2 to clarifying that a person working at a juvenile facility is subject to the provisions of this
3 section; clarifying that those working for a municipal home incarceration program are
4 subject to the provisions of this section; adding a proscription against sexual imposition
5 on those detained or committed to a facility; making a violation of law for attempts to
6 engage in the imposition of sexual acts proscribed by this section; and adding clarification
7 to the definition of “incarcerated or detained in this state” to include adult and juvenile
8 offenders sentenced, detained, committed, or serving a period of supervision pursuant to
9 §62-11B-1 et seq. of this code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-10. Imposition of sexual acts on persons incarcerated, detained, or under supervision; penalties.

1 (a) Any person employed by the Division of Corrections and Rehabilitation, any person
2 working at a correctional or juvenile facility managed by the Commissioner of Corrections and
3 Rehabilitation pursuant to contract or as an employee of a state agency or as a volunteer or any
4 person employed by, or acting pursuant to, the authority of any sheriff, county commission,
5 municipality, or court to ensure compliance with the provisions of §62-11B-1 *et seq.* of this code
6 who engages, or attempts to engage, in sexual intercourse, sexual intrusion, or sexual contact
7 with a person who is incarcerated or detained in this state is guilty of a felony and, upon conviction
8 thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not
9 less than one nor more than five years or both fined and imprisoned.

10 (b) Any person employed by the Division of Corrections and Rehabilitation as a parole
11 officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer,
12 who engages, or attempts to engage, in sexual intercourse, sexual intrusion, or sexual contact
13 with a person said parole officer or probation officer is charged as part of his or her employment

14 with supervising, is guilty of a felony and, upon conviction thereof, shall be fined not more than
15 \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years,
16 or both fined and imprisoned.

17 (c) Any person working or volunteering in an alternative sentence program authorized by
18 the provisions of §62-11C-1, et seq. of this code who, as part of his or her employment or
19 volunteer duties, supervises program participants, engages, or attempts to engage, in sexual
20 intercourse, sexual intrusion, or sexual contact with a program participant is guilty of a felony and,
21 upon conviction, shall be fined not more than \$5,000, imprisoned in a state correctional facility for
22 not less than one nor more than five years, or both fined and imprisoned.

23 (d) The term “incarcerated or detained in this state” for purposes of this section includes,
24 in addition to its usual meaning, adult offenders serving a sentence or a period of supervision
25 under the provisions of article §62-11B-1 et seq. of this code, and juvenile offenders detained,
26 committed, or serving a period of supervision under the provisions of §62-11B-1 et seq. of this
27 code.

28 (e) Authorized pat-down, strip search or other security related tasks do not constitute
29 sexual contact pursuant to this section.

NOTE: The purpose of this bill is to ensure that imposition of certain sexual offenses applies to those persons working in juvenile facilities against juveniles detained or committed in juvenile facilities. Furthermore, the amendments also make an attempt to engage in all acts proscribed by this section a criminal offense.

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