

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### Senate Bill 537

FISCAL  
NOTE

By Senator Woelfel

[Introduced February 01, 2023; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §61-8B-3 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §61-8B-5 of said code, all relating to eliminating the marital exception  
 3 to criminal prosecution of sexual assault offenses.

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

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-3. Sexual assault in the first degree.**

1 (a) A person is guilty of sexual assault in the first degree when:

2 (1) The person engages in sexual intercourse or sexual intrusion with another person and,  
 3 in so doing:

4 (i) Inflicts serious bodily injury upon anyone; or

5 (ii) Employs a deadly weapon in the commission of the act; or

6 (2) The person, being fourteen years old or more, engages in sexual intercourse or sexual  
 7 intrusion with another person who is younger than twelve years old; ~~and is not married to that~~  
 8 ~~person.~~

9 (3) The fact that the person victimized is the spouse of the actor shall not serve as a  
 10 defense to this offense.

11 (b) Any person violating the provisions of this section is guilty of a felony and, upon  
 12 conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more  
 13 than thirty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a  
 14 state correctional facility not less than fifteen nor more than thirty-five years.

15 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any  
 16 person violating the provisions of subsection (a) of this section who is eighteen years of age or  
 17 older and whose victim is younger than twelve years of age, shall be imprisonment in a state  
 18 correctional facility for not less than twenty-five nor more than one hundred years and a fine of not  
 19 less than \$5,000 nor more than \$25,000.

**§61-8B-5. Sexual assault in the third degree.**

1 (a) A person is guilty of sexual assault in the third degree when:

2 (1) The person engages in sexual intercourse or sexual intrusion with another person who  
3 is mentally defective or mentally incapacitated; or

4 (2) The person, being sixteen years old or more, engages in sexual intercourse or sexual  
5 intrusion with another person who is less than sixteen years old; ~~and who is at least four years~~  
6 ~~younger than the defendant and is not married to the defendant~~

7 (3) The fact that the person victimized is the spouse of the actor shall not serve as a  
8 defense to this offense.

9 (b) Any person violating the provisions of this section is guilty of a felony and, upon  
10 conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor  
11 more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility  
12 not less than one year nor more than five years.

NOTE: The purpose of this bill is to eliminate the marital exception to criminal prosecution of sexual assault offenses.

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