

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5344

FISCAL
NOTE

By Delegates Heckert, Jennings, Sheedy, Barnhart,

DeVault, Crouse, and Criss

[Introduced January 30, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §61-8B-5 of the Code of West Virginia, 1931, as amended, relating
 2 to sexual assault in the third degree; creating criminal penalties; clarifying when a mentally
 3 incapacitated victim may not be required to testify in open court; and providing judicial
 4 discretion to determine the appropriateness of a mentally capacitated victim to testify.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§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 16 years old or more, engages in sexual intercourse or sexual
 5 intrusion with another person who is less than 16 years old and who is at least four years younger
 6 than the defendant and is not married to the defendant.

7 (b) Any person violating the provisions of this section is guilty of a felony and, upon
 8 conviction thereof, shall be imprisoned in a state correctional facility not less than ~~one year~~ 10
 9 years nor more than ~~five~~ 20 years, or fined not more than \$10,000 and imprisoned in a state
 10 correctional facility not less than one year nor more than five years.

11 (c) Notwithstanding any provision of law to the contrary, a person who is the victim of
 12 sexual assault under this section, and who is mentally incapacitated as defined in §61-8B-1 of this
 13 code, may not be required to testify in open court. However, the judge presiding at a trial for an
 14 offense committed pursuant to this section may determine, based on the cognitive age of a victim,
 15 if it is appropriate to permit the mentally incapacitated victim to testify.

NOTE: clarifying when a mentally incapacitated victim may not be required to testify in open court; and providing judicial discretion to determine the appropriateness of a mentally capacitated victim to testify.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.