

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5423**

By Delegates Heckert, Foggin, Criss, Hornby,  
Householder, Mazzocchi, Fehrenbacher, Anderson,  
and Akers

[Introduced February 02, 2024; Referred to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section  
 2 designated §57-5-1a; and to amend and reenact §61-8B-5 of said code, all relating to  
 3 prohibiting a cognitively impaired or mentally defective person from being forced to testify  
 4 in open court, and increasing the penalty for sexual assault of a mentally defective or  
 5 mentally incapacitated person.

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

**CHAPTER 57: EVIDENCE AND WITNESSES.**

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§57-5-1a. Cognitively impaired or mentally defective persons as witnesses.**

1 Notwithstanding any provision of this code to the contrary, no cognitively impaired or  
 2 mentally defective person shall be forced to testify or give evidence in open court.

**CHAPTER 61: CRIMES AND THEIR PUNISHMENT.**

**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 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 (b) Any person violating the provisions of this section with a victim who is underage is guilty  
 8 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less  
 9 than one year nor more than five 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.

11 (c) Any person violating the provisions of this section with a victim who is mentally

12 defective or mentally incapacitated is guilty of a felony and, upon conviction thereof, shall be  
13 imprisoned in a state correctional facility not less than fifteen years nor more than thirty years, or  
14 fined not more than \$10,000 and imprisoned in a state correctional facility not less than fifteen  
15 years nor more than thirty years.

NOTE: The purpose of this bill is to prohibit a cognitively impaired or mentally defective person from being forced to testify in open court, and to increase the penalty for sexual assault of a mentally defective or mentally incapacitated person.

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