

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 498**

BY SENATORS WELD, IHLENFELD, WOELFEL, ROMANO,

BALDWIN, AND LINDSAY

[Originating in the Committee on the Judiciary;

reported on March 5, 2021]



1 A BILL to amend and reenact §61-8B-1 of the Code of West Virginia, 1931, as amended, relating  
2 to modifying the definition of “sexual contact”; and removing the element that the parties  
3 not being married to each other from the definition.

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

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-1. Definition of terms.**

1 In this article, unless a different meaning plainly is required:

2 (1) “Forcible compulsion” means:

3 (a) Physical force that overcomes such earnest resistance as might reasonably be  
4 expected under the circumstances; or

5 (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate  
6 death or bodily injury to himself or herself or another person, or in fear that he or she or another  
7 person will be kidnapped; or

8 (c) Fear by a person under 16 years of age caused by intimidation, expressed or implied,  
9 by another person who is at least four years older than the victim.

10 For the purposes of this definition, “resistance” includes physical resistance or any clear  
11 communication of the victim’s lack of consent.

12 (2) “Married”, for the purposes of this article in addition to its legal meaning, includes  
13 persons living together as husband and wife regardless of the legal status of their relationship.

14 (3) “Mentally defective” means that a person suffers from a mental disease or defect which  
15 renders that person incapable of appraising the nature of his or her conduct.

16 (4) “Mentally incapacitated” means that a person is rendered temporarily incapable of  
17 appraising or controlling his or her conduct as a result of the influence of a controlled or  
18 intoxicating substance administered to that person without his or her consent or as a result of any  
19 other act committed upon that person without his or her consent.

20 (5) "Physically helpless" means that a person is unconscious or for any reason is physically  
21 unable to communicate unwillingness to an act.

22 (6) "Sexual contact" means any intentional touching, either directly or through clothing, of  
23 the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional  
24 touching of any part of another person's body by the actor's sex organs ~~where the victim is not~~  
25 ~~married to the actor~~ and the touching is done for the purpose of gratifying the sexual desire of  
26 either party.

27 (7) "Sexual intercourse" means any act between persons involving penetration, however  
28 slight, of the female sex organ by the male sex organ or involving contact between the sex organs  
29 of one person and the mouth or anus of another person.

30 (8) "Sexual intrusion" means any act between persons involving penetration, however  
31 slight, of the female sex organ or of the anus of any person by an object for the purpose of  
32 degrading or humiliating the person so penetrated or for gratifying the sexual desire of either  
33 party.

34 (9) "Bodily injury" means substantial physical pain, illness, or any impairment of physical  
35 condition.

36 (10) "Serious bodily injury" means bodily injury which creates a substantial risk of death,  
37 which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged  
38 loss or impairment of the function of any bodily organ.

39 (11) "Deadly weapon" means any instrument, device, or thing capable of inflicting death  
40 or serious bodily injury and designed or specially adapted for use as a weapon, or possessed,  
41 carried, or used as a weapon.

42 (12) "Forensic medical examination" means an examination provided to a possible victim  
43 of a violation of the provisions of this article by medical personnel qualified to gather evidence of  
44 the violation in a manner suitable for use in a court of law, to include: An examination for physical  
45 trauma; a determination of penetration or force; a patient interview; and the collection and

- 46 evaluation of other evidence that is potentially relevant to the determination that a violation of the  
47 provisions of this article occurred and to the determination of the identity of the assailant.