## WEST VIRGINIA LEGISLATURE 2024 REGULAR SESSION

## Introduced

## House Bill 4982

By Delegate Young

[Introduced January 22, 2024; Referred to the Committee on the Judiciary]

Intr HB 2024R2681

1 A BILL to amend and reenact §61-8B-1, §61-8B-3, and §61-8B-5 of the Code of West Virginia. 2 1931, as amended, all relating to removing marriage from the definitions listed for crimes of 3 sexual offenses. 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 sixteen years of age caused by intimidation, expressed or 9 implied, 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) (2) "Mentally defective" means that a person suffers from a mental disease or defect 15 which renders that person incapable of appraising the nature of his or her conduct. 16 (4) (3) "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.

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(5) (4) "Physically helpless" means that a person is unconscious or for any reason is

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physically unable to communicate unwillingness to an act.

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

- (7) (6) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.
- (8) (7) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.
- (9) (8) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.
- (10) (9) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
- (11) (10) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.
- (12) (11) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.

	§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	(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 fifteen nor more						
11	than thirty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a						
12	state correctional facility not less than fifteen nor more than thirty-five years.						
13	(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any						
14	person violating the provisions of subsection (a) of this section who is eighteen years of age or						
15	older and whose victim is younger than twelve years of age, shall be imprisonment in a state						
16	correctional facility for not less than twenty-five nor more than one hundred years and a fine of not						
17	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	(b) Any person violating the provisions of this section is guilty of a felony and, upon						

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8 conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor

9 more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility

10 not less than one year nor more than five years.

NOTE: The purpose of this bill is to remove marriage from the definitions listed for crimes of sexual 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.