

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5235

By Delegates Vance, Chiarelli, Coop-Gonzalez, Dean,

Kirby, Foggin, Bridges, McGeehan, Phillips,

Householder, and Ridenour

[Originating in the Committee on the Judiciary;

Reported on February 19, 2024]

1 A BILL to amend and reenact §61-8B-5 and §61-8B-9 of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §61-8D-5 and §61-8D-6 of the Code of West Virginia,
3 1931, as amended, all relating to increasing penalties for child sexual assault and sexual
4 abuse, and for distributing, possessing, and transporting material depicting a child
5 engaged in sexually explicit conduct, and to clarify that failure to report sexual assault,
6 sexual abuse, or sexual exploitation of a child is a felony.

Be it enacted by the Legislature of West Virginia:

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~~ 16 years old or more, engages in sexual intercourse or
5 sexual intrusion with another person who is less than ~~sixteen~~ 16 years old and who is at least four
6 years 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
8 conviction thereof, shall be imprisoned in a state correctional facility not less than ~~one year~~ two
9 years nor more than ~~five~~ 10 years, or fined not more than ~~\$40,000~~ \$20,000 and imprisoned in a
10 state correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years.

§61-8B-9. Sexual abuse in the third degree.

1 (a) A person is guilty of sexual abuse in the third degree when he or she subjects another
2 person to sexual contact without the latter's consent, when such lack of consent is due to the
3 victim's incapacity to consent by reason of being less than ~~sixteen~~ 16 years old.

4 (b) In any prosecution under this section it is a defense that:

5 (1) The defendant was less than ~~sixteen~~ 16 years old; or

6 (2) The defendant was less than four years older than the victim.

7 (c) Any person who violates the provisions of this section shall be guilty of a ~~misdemeanor~~
8 felony, and, upon conviction thereof, shall be confined in ~~the county jail~~ a state correctional facility
9 not ~~more~~ less than ~~ninety days~~ one year, or fined not more than ~~\$500~~ \$1,000 and confined in ~~the~~
10 ~~county jail~~ a state correctional facility not ~~more~~ less than ~~ninety days~~ one year.

ARTICLE 8D. CHILD ABUSE.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; failing to report sexual assault or abuse upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

1 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares a
2 separate and distinct offense under this subsection, as follows: If any parent, guardian or
3 custodian of or other person in a position of trust in relation to a child under his or her care, custody
4 or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse,
5 sexual intrusion or sexual contact with, a child under his or her care, custody or control,
6 notwithstanding the fact that the child may have willingly participated in such conduct, or the fact
7 that the child may have consented to such conduct or the fact that the child may have suffered no
8 apparent physical injury or mental or emotional injury as a result of such conduct, then such
9 parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon
10 conviction thereof, shall be imprisoned in a correctional facility not less than ~~ten~~ 20 nor more than
11 ~~twenty~~ 40 years, or fined not less than ~~\$500~~ \$1,000 nor more than ~~\$5,000~~ \$10,000 and imprisoned
12 in a correctional facility not less than ~~ten~~ 20 years nor more than ~~twenty~~ 40 years.

13 (b) Any parent, guardian, custodian or other person in a position of trust in relation to the
14 child who knowingly procures, authorizes, or induces another person to engage in or attempt to
15 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a

16 child under the care, custody or control of such parent, guardian, custodian or person in a position
17 of trust when such child is less than ~~sixteen~~ 16 years of age, notwithstanding the fact that the child
18 may have willingly participated in such conduct or the fact that the child may have suffered no
19 apparent physical injury or mental or emotional injury as a result of such conduct, such parent,
20 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction
21 thereof, shall be imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than
22 ~~fifteen~~ 30 years, or fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$10,000~~ \$20,000 and
23 imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years.

24 (c) Any parent, guardian, custodian or other person in a position of trust in relation to the
25 child who knowingly procures, authorizes, or induces another person to engage in or attempt to
26 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a
27 child under the care, custody or control of such parent, guardian, custodian or person in a position
28 of trust when such child is ~~sixteen~~ 16 years of age or older, notwithstanding the fact that the child
29 may have consented to such conduct or the fact that the child may have suffered no apparent
30 physical injury or mental or emotional injury as a result of such conduct, then such parent,
31 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction
32 thereof, shall be imprisoned in a correctional facility not less than ~~one year~~ two years nor more
33 than ~~five~~ 10 years.

34 (d) Notwithstanding any other provision of this code otherwise, any parent, guardian,
35 custodian or other person in a position of trust in relation to a child who knows or learns that said
36 child has been subjected to sexual assault or sexual abuse, sexual exploitation, sexual intrusion or
37 sexual contact in violation of chapter sixty-one of this code, and who fails to report the same to law
38 enforcement, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a
39 correctional facility not less than two years nor more than 10 years.

40 ~~(d)~~ (e) The provisions of this section shall not apply to a custodian or person in a position of
41 trust whose age exceeds the age of the child by less than four years.

§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian, ~~or~~ custodian, or person in a position of trust, depicting a child engaged in sexually explicit conduct; penalty.

1 Any parent, guardian, ~~or~~ custodian, or person of position of trust who, with knowledge,
2 sends or causes to be sent, or distributes, exhibits, possesses, displays or transports, any material
3 visually portraying a child under his or her care, custody or control engaged in any sexually explicit
4 conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary
5 not more than ~~two~~ four years, and fined not less than ~~\$400~~ \$800 nor more than ~~\$4,000~~ \$8,000.

NOTE: The purpose of this bill is to increase penalties related to child sexual assault and sexual abuse; to increase penalties for distributing, possessing and transporting material depicting a child engaged in sexually explicit conduct; and to clarify that that failure to report sexual assault, sexual abuse, or sexual exploitation of a child is a felony.

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