

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 5243

By Delegates Crouse, W. Clark, C. Pritt, Willis,
Linville, Cannon, Moore, Foster, Kimble, Mazzocchi
and Warner

[Originating in the Committee on the Judiciary;

Reported on February 5, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-67-1, §16-67-2, §16-67-3, §16-67-4, and §16-67-5, all relating to the
3 Women's Bill of Rights; providing short title; setting forth purpose; establishing application
4 of act; defining terms; establishing the state interest in certain single sex environments;
5 creating parameters for certain data collection; and allowing severability.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 67. WEST VIRGINIA WOMEN'S BILL OF RIGHTS ACT.

§16-67-1. Short title; purposes; general application.

1 (a) This act shall be known and may be cited as the "West Virginia Women's Bill of Rights."

2 (b) The purpose of the West Virginia Women's Bill of Rights is to bring clarity, certainty, and
3 uniformity to the laws of the state regarding sex discrimination, equality of the sexes, and benefits
4 or services specifically provided to males and to females.

5 (c) The West Virginia Women's Bill of Rights applies wherever West Virginia, or an
6 instrumentality of the state, classifies people on the basis of sex or otherwise defines people as
7 being female or male, women or men, girls or boys; the definitions contained in §16-67-2 of this
8 code apply.

§16-67-2. Definitions of terms used in statutory construction.

1 (a) Notwithstanding any provision of law to the contrary, with respect to the application of
2 an individual's biological sex pursuant to any state laws, rules, regulations, or official public
3 policies, the following shall apply:

4 (1) An individual's "sex" means such individual's biological sex, either male or female, at
5 birth;

6 (2) A "female", when used in reference to a natural person, is an individual who has, had,
7 will have, or would have (but for a developmental anomaly, genetic anomaly, or accident) the
8 reproductive system that at some point produces ova;

9 (3) A "male" when used in reference to a natural person, means an individual who has,
10 had, will have, or would have (but for a developmental anomaly, genetic anomaly, or accident) the
11 reproductive system that at some point produces sperm;

12 (4) A "woman" is an adult human of the female sex, and a "man" is an adult human of the
13 male sex;

14 (5) A "girl" is a human female who has not yet reached adulthood, and a "boy" is a human
15 male who has not yet reached adulthood;

16 (6) A "mother" is a female parent of a child or children as those terms are defined in this
17 code; a "father" is a male parent of a child or children as those terms are defined in this code;

18 (7) "Equal" does not mean "same" or "identical" with respect to equality of the sexes;

19 (8) A person's "sex" is his or her biological sex (either male or female) at birth.

20 (A) There are only two sexes, and every individual is either male or female;

21 (B) "Sex" is objective and fixed; and

22 (C) "Sex" does not include "gender identity" or any other terms intended to convey a
23 person's subjective sense of self; "gender identity" and other subjective terms may not be used as
24 synonyms or substitutes for "sex".

25 (b) Individuals with "differences in sex development" (also known as "DSD" or "intersex
26 conditions") are not a third sex. Individuals with a congenital and medically verifiable DSD
27 diagnosis must be accommodated consistent with state and federal law.

§16-67-3. Sex discrimination; single-sex environments.

1 (a) Any state policy, program, or statute that prohibits sex discrimination shall be construed
2 to pertain to females or males.

3 (b) Because the state has an important interest in preventing unjust discrimination and in
4 maintaining safety, privacy, and fairness, West Virginia and its political subdivisions and
5 instrumentalities may provide separate single-sex environments.

6 (c) Wherever West Virginia or its political subdivisions or instrumentalities, in fact, provide
7 separate single-sex environments for males and females, the definitions established in §16-67-2
8 of this code must apply.

§16-67-4. Data collection.

1 (a) Any public school, public school district, agency, department, or instrumentality of the
2 state that collects vital statistics related to sex for the purpose of complying with state or federal
3 anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or
4 other data shall identify each natural person who is part of the collected data set as either male or
5 female as defined in this article.

6 (b) Compliance with this section shall not require the collection of data regarding sex
7 unless otherwise required by law, and it shall not prevent the collection of additional data points
8 other than biological sex.

§16-67-5. Severability.

1 If any provision of this article, an amendment made by this article, or the application of such
2 provision or amendment to any person or circumstance is held to be unconstitutional, the
3 remainder of this article, the amendments made by this article, and the application of the
4 provisions of such to any person or circumstance shall not be affected thereby.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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 touching
24 of any part of another person's body by the actor's sex organs ~~where the victim is not married to~~
25 ~~the actor~~ and the touching is done for the purpose of gratifying the sexual desire of either party.

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

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

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

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

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

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