WEST VIRGINIA LEGISLATURE

**FISCAL NOTE**

2024 REGULAR SESSION

Introduced

House Bill 5344

By Delegates Heckert, Jennings, Sheedy, Barnhart, DeVault, Crouse, and Criss

[Introduced January 30, 2024; Referred to the Committee on the Judiciary]

A BILL to amend and reenact §61-8B-5 of the Code of West Virginia, 1931, as amended, relating to sexual assault in the third degree; creating criminal penalties; clarifying when a mentally incapacitated victim may not be required to testify in open court; and providing judicial discretion to determine the appropriateness of a mentally capacitated victim to testify.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being 16 years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ~~one year~~ 10 years nor more than ~~five~~ 20 years, or fined not more than $10,000 and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding any provision of law to the contrary, a person who is the victim of sexual assault under this section, and who is mentally incapacitated as defined in §61-8B-1 of this code, may not be required to testify in open court. However, the judge presiding at a trial for an offense committed pursuant to this section may determine, based on the cognitive age of a victim, if it is appropriate to permit the mentally incapacitated victim to testify.

NOTE: clarifying when a mentally incapacitated victim may not be required to testify in open court; and providing judicial discretion to determine the appropriateness of a mentally capacitated victim to testify.

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