

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2634

By Delegates Vance, Brooks, Toney, Hornby, D.

Smith, Jeffries, Phillips, Ferrell, and Dean

[Originating in the Committee on the Judiciary;

Reported March 5, 2025]

1 A BILL to amend and reenact §61-8B-5, §61-8B-9, §61-8D-5 and §61-8D-6 of the Code of West
2 Virginia, 1931, as amended, relating to increasing penalties for sexual assault in the third
3 degree, sexual abuse in the third degree, sexual abuse by a parent, guardian, custodian or
4 person in a position of trust to a child; parent, guardian, custodian or person in a position of
5 trust allowing sexual abuse to be inflicted upon a child, and for sending, distributing,
6 exhibiting, possessing, displaying or transporting material by a parent, guardian, or
7 custodian, or person in a position of trust, depicting a child engaged in sexually explicit
8 conduct.

Be it enacted by the Legislature of West Virginia:

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 16 years old or more, engages in sexual intercourse or sexual
5 intrusion with another person who is less than 16 years old and who is at least four years younger
6 than 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 16 years old.

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

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

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

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

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

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

child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than 16 years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years, or fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$40,000~~ \$20,000 and imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years.

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

(d) The provisions of this section shall not apply to a custodian or person in a position of 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.

Any parent, guardian, or custodian, or person in a position of trust who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit

- 3 conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary
- 4 not more than ~~two~~ four years, and fined not less than ~~\$400~~ \$800 nor more than ~~\$4,000~~ \$8,000.