

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 783**

By Senators Helton and Rose

[Introduced February 5, 2026; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,  
2 designated §61-8B-20, relating to providing for a sentence of death or life imprisonment for  
3 capital felony offense of a sexual battery upon, or in an attempt to commit sexual battery,  
4 injures the sexual organs of, a person less than 12 years of age.

*Be it enacted by the Legislature of West Virginia:*

**§61-8B-20. Sentence of death or life imprisonment for capital sexual battery; further  
proceedings to determine sentence.**

1 (a) Intent. – The Legislature finds that a person who commits a sexual battery upon, or in  
2 an attempt to commit sexual battery, injures the sexual organs of, a person less than 12 years of  
3 age carries a great risk of death and danger to vulnerable members of this state. Such crimes  
4 destroy the innocence of a young child and violate all standards of decency held by civilized  
5 society. The Legislature further finds that KENNEDY V. LOUISIANA, 554 U.S. 407, (2008) was  
6 wrongly decided and an egregious infringement on the states' power to punish the most heinous of  
7 crimes.

8 (b) Notwithstanding any other provision to the contrary, it is the intent of the Legislature that  
9 the procedure set forth in this section shall be followed, and a prosecutor shall file notice, if he or  
10 she intends to seek the death penalty.

11 (c) Separate proceedings on issue of penalty. – Upon conviction or adjudication of guilt of a  
12 defendant of a capital felony offense of a sexual battery upon, or in an attempt to commit sexual  
13 battery, injures the sexual organs of, a person less than 12 years of age, the court shall conduct a  
14 separate sentencing proceeding to determine whether the defendant should be sentenced to  
15 death or life imprisonment. The proceeding shall be conducted by the trial judge before the trial  
16 jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene  
17 for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge  
18 may summon a special juror or jurors to determine the issue of the imposition of the penalty. If the  
19 trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be

20 conducted before a jury impaneled for that purpose, unless waived by the defendant. In the  
21 proceeding, evidence may be presented as to any matter that the court deems relevant to the  
22 nature of the crime and the character of the defendant and shall include matters relating to any of  
23 the aggravating factors for which notice has been provided or mitigating circumstances. Any such  
24 evidence that the court deems to have probative value may be received, regardless of its  
25 admissibility under the exclusionary rules of evidence: *Provided*, That the defendant is accorded a  
26 fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed  
27 to authorize the introduction of evidence secured in violation of the United States Constitution or  
28 the State Constitution. The state and the defendant or the defendant's counsel shall be permitted  
29 to present argument for or against a sentence of death.

30 (d) Findings and recommended sentence by the jury. – This subsection applies only if the  
31 defendant has not waived his or her right to a sentencing proceeding by a jury.

32 (1) After a hearing all of the evidence presented regarding aggravating factors and  
33 mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a  
34 reasonable doubt, the existence of at least two aggravating factors set forth in subsection (j) of this  
35 section.

36 (2) The jury shall return findings identifying each aggravating factor found to exist. A finding  
37 that at least two aggravating factors exist must be unanimous. If the jury:

38 (A) Does not unanimously find at least two aggravating factors, the defendant is ineligible  
39 for a sentence of death.

40 (B) Unanimously finds at least two aggravating factors, the defendant is eligible for a  
41 sentence of death and the jury shall make a recommendation to the court as to whether the  
42 defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The  
43 recommendation shall be based on a weighing of all of the following:

44 (i) Whether sufficient aggravating factors exist.

45 (ii) Whether aggravating factors exist which outweigh the mitigating circumstances found

46 to exist.

47 (iii) Based on the consideration in sub-subparagraphs (i) and (ii) of this subdivision,  
48 whether the defendant should be sentenced to life imprisonment without the possibility of parole or  
49 death.

50 (e) If at least eight jurors determine that the defendant should be sentenced to death, the  
51 jury's recommendation to the court shall be a sentence of death. If fewer than eight jurors  
52 determine that the defendant should be sentenced to death, the jury's recommendation to the  
53 court shall be a sentence of life imprisonment without the possibility of parole.

54 (f) Imposition of sentence of life imprisonment or death. – If the jury has recommended a  
55 sentence of:

56 (1) Life imprisonment without the possibility of parole, the court shall impose the  
57 recommended sentence of life imprisonment without the possibility of parole.

58 (2) Death, the court, after considering each aggravating factor found by the jury and all  
59 mitigating circumstances, may impose a sentence of life imprisonment without the possibility of  
60 parole or a sentence of death. The court may consider only an aggravating factor that was  
61 unanimously found to exist by the jury. The court may impose a sentence of death only if the jury  
62 unanimously found at least two aggravating factors beyond a reasonable doubt.

63 (g) If the defendant waived his or her right to a sentencing proceeding by a jury, the court,  
64 after considering all aggravating factors and mitigating circumstances, may impose a sentence of  
65 life imprisonment without the possibility of parole or a sentence of death. The court may impose a  
66 sentence of death only if the court finds that at least two aggravating factors have been proving to  
67 exist beyond a reasonable doubt.

68 (h) Order of the court in support of sentence of life imprisonment or death. – In each case  
69 in which the court imposes a sentence of life imprisonment without the possibility of parole or  
70 death, the court shall, considering the records of the trial and the sentencing proceedings, enter a  
71 written order addressing the aggravating factors set forth in subsection (j) of this section found to

72 exist, the mitigating circumstances in subsection (k) reasonably established by the evidence,  
73 whether there are sufficient aggravating factors to warrant the death penalty, and whether the  
74 aggravating factors outweigh the mitigating circumstances reasonably established by the  
75 evidence. The court shall include in its written order the reasons for not accepting the jury's  
76 recommended sentence, if applicable. If the court does not issue its order requiring the death  
77 sentence within 30 days after the rendition of the judgement and sentence, the court shall impose  
78 a sentence of life imprisonment without the possibility of parole.

79       (i) Review of judgment and sentence. – The judgment of conviction and sentence of death  
80 shall be subject to automatic review by the West Virginia Supreme Court after filing of a notice of  
81 appeal. Such review by the Supreme Court shall have priority over all other cases and shall be  
82 heard in accordance with rules adopted by the West Virginia Supreme Court.

83       (j) Aggravating factors shall be:

84       (1) The capital felony was committed by a person designated as a sexual predator or a  
85 person previously designated as a sexual predator who had the designation removed.

86       (2) The capital felony was committed by a person who is required to register or a person  
87 previously required to register as a sexual offender who had such a requirement removed.

88       (3) The defendant knowingly created a great risk of death to one or more persons such that  
89 the participation in the offense constituted reckless indifference or disregard for human life.

90       (k) Mitigating circumstances shall be the following:

91       (1) The defendant has no significant history of prior criminal activity.

92       (2) The capital felony was committed while the defendant was under the influence of  
93 extreme mental or emotional disturbance.

94       (3) The defendant was an accomplice in the capital felony committed by another person  
95 and his or her participation was relatively minor.

96       (4) The defendant acted under extreme duress or under the substantial domination of  
97 another person.

98       (5) The capacity of the defendant to appreciate the criminality of his or her conduct or to  
99 conform his or her conduct to the requirements of law was substantially impaired.

100       (6) The age of the defendant at the time of the crime.

101       (7) The existence of any other factors in the defendant's background that would mitigate  
102 against imposition of the death penalty.

103       (I) Victim impact evidence – Once the prosecution has provided evidence of the existence  
104 of two or more aggravating factors as described in subsection (j) of this section, the prosecution  
105 may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be  
106 designed to demonstrate the victim's uniqueness as an individual human being and the physical  
107 and psychological harm to the victim. Characterizations and opinions about the crime, the  
108 defendant, and the appropriate sentence shall not be permitted as a part of victim impact  
109 evidence.

110       (m) Constitutionality – Notwithstanding any other provision of law, a sentence of death  
111 shall be imposed under this section notwithstanding existing case law which holds such a  
112 sentence is unconstitutional under the State Constitution and the United States Constitution. In  
113 any case for which the West Virginia Supreme Court or the United States Supreme Court reviews  
114 a sentence of death imposed pursuant to this section, and in making such a review reconsiders the  
115 prior holdings in *Kennedy v. Louisiana*, *supra*, and determines a sentence of death remains  
116 unconstitutional, the court having jurisdiction over the person previously sentenced to death shall  
117 cause such person to be brought before the court, and the court shall sentence such person to life  
118 imprisonment.

119       (m) Applicability – This section applies to any capital felony under this section that is  
120 committed on or after January 1, 2027.

NOTE: The purpose of this bill is to provide for a sentence of death or life imprisonment for capital sexual battery of a person less than 12 years of age.

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