

FILED

2010 APR -2 PM 4: 07

**WEST VIRGINIA LEGISLATURE**  
SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2010

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**ENROLLED**

**Senate Bill No. 533**

(BY SENATORS KESSLER, UNGER,  
MINARD, CHAFIN AND PLYMALE)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 533

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OFFICE OF THE CLERK  
SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 533**

(BY SENATORS KESSLER, UNGER, MINARD, CHAFIN AND PLYMALE)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §61-8D-5 of the Code of West Virginia, 1931, as amended, relating to sex crimes involving a child; making it unlawful for a parent, guardian, custodian or other person in a position of trust in relation to a child to knowingly procure, authorize, or induce another person to engage in or attempt to engage in prohibited sexual conduct.

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

That §61-8D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**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; displaying of sex organs by a parent, guardian, or custodian; penalties.**

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

21 (b) Any parent, guardian, custodian or other person in a  
22 position of trust in relation to the child who knowingly  
23 procures, authorizes, or induces another person to engage  
24 in or attempt to engage in sexual exploitation of, or sexual  
25 intercourse, sexual intrusion or sexual contact with, a  
26 child under the care, custody or control of such parent,  
27 guardian, custodian or person in a position of trust when  
28 such child is less than sixteen years of age, notwithstand-  
29 ing the fact that the child may have willingly participated  
30 in such conduct or the fact that the child may have  
31 suffered no apparent physical injury or mental or emo-  
32 tional injury as a result of such conduct, such parent,  
33 guardian, custodian or person in a position of trust shall  
34 be guilty of a felony and, upon conviction thereof, shall be  
35 imprisoned in a correctional facility not less than five  
36 years nor more than fifteen years, or fined not less than

37 \$1,000 nor more than \$10,000 and imprisoned in a correc-  
38 tional facility not less than five years nor more than  
39 fifteen years.

40 (c) Any parent, guardian, custodian or other person in a  
41 position of trust in relation to the child who knowingly  
42 procures, authorizes, or induces another person to engage  
43 in or attempt to engage in sexual exploitation of, or sexual  
44 intercourse, sexual intrusion or sexual contact with, a  
45 child under the care, custody or control of such parent,  
46 guardian, custodian or person in a position of trust when  
47 such child is sixteen years of age or older, notwithstanding  
48 the fact that the child may have consented to such conduct  
49 or the fact that the child may have suffered no apparent  
50 physical injury or mental or emotional injury as a result of  
51 such conduct, then such parent, guardian, custodian or  
52 person in a position of trust shall be guilty of a felony and,  
53 upon conviction thereof, shall be imprisoned in a correc-  
54 tional facility not less than one year nor more than five  
55 years.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker House of Delegates

The within *is* approved..... this the *2nd*.....

Day of..... *April*....., 2010.

.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2010

Time 3:45 pm