WEST VIRGINIA CODE: §61-8B-11

§61-8B-11. Sexual offenses; evidence.

(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: *Provided,* That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admissible: *Provided,* That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(c) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

(d) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is 11 years old or less to use anatomically correct dolls, mannequins, or drawings to assist such child in testifying.

(e)(1) A court may not order or otherwise require an alleged victim in a prosecution for a sexual offense to submit to or undergo a gynecological or physical examination of the breasts, buttocks, anus, or any part of the sex organs.

(2) The refusal of an alleged victim to undergo an examination described in subdivision (1) of this subsection may not serve as the basis to exclude evidence obtained from other relevant examinations of the victim, except where constitutionally required.

(3) For the purposes of this subsection, the term "sexual offense" means any offense in which sexual intercourse, sexual contact, or sexual intrusion is an element of the offense, and includes any prosecution under this article, §61-8-12, or §61-8D-5 of this code.

WV Legislature