WEST VIRGINIA CODE: §61-8B-9

§61-8B-9. Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent, when the lack of consent is due to the victim's incapacity to consent by reason of being less than 16 years old.

(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 is guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than three years, or fined not more than $1,000 and imprisoned in a state correctional facility not less than one year nor more than three years.

WV Legislature