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**WEST VIRGINIA CODE CHAPTER 61**  
**ARTICLE 8B**

WV Legislature

**§61-8B-1. Definition of terms.**

In this article, unless a different meaning plainly is required:

(1) "Forcible compulsion" means:

(A) Physical force that overcomes such earnest resistance that is reasonably expected under the circumstances;

(B) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person, or in fear that he or she or another person will be kidnapped; or

(C) Fear by a person under 16 years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition, "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

(2) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

(3) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

(4) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

(5) "Sexual contact" means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs and the touching is done for the purpose of gratifying the sexual desire of either party.

(6) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(7) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(8) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition.

(9) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(10) "Deadly weapon" means any instrument, device, or thing capable of inflicting death or serious bodily injury and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

(11) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.

**§61-8B-2. Lack of consent.**

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion;

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old;

(2) Mentally defective;

(3) Mentally incapacitated;

(4) Physically helpless; or

(5) Subject to incarceration, confinement or supervision by a state, county, or local government entity, when the actor is a person prohibited from having sexual intercourse or causing sexual intrusion or sexual contact pursuant to §61-8B-10 of this code.

**§61-8B-3. Sexual assault in the first degree.**

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(A) Inflicts serious bodily injury upon anyone;

(ii) (B) Employs a deadly weapon in the commission of the act.

(2) The person, being 14 years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than 12 years old.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned in a state correctional facility not less than 15 nor more than 35 years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is 18 years of age or older and whose victim is younger than 12 years of age, shall be imprisonment in a state correctional facility for not less than 25 nor more than 100 years and a fine of not less than \$5,000 nor more than \$25,000.

**§61-8B-4. Sexual assault in the second degree.**

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in the penitentiary not less than ten nor more than twenty-five years.

**§61-8B-5. Sexual assault in the third degree.**

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being 16 years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least four years younger than the defendant.

(b) Any person violating 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 five years, or fined not more than \$10,000 and imprisoned in a state correctional facility not less than one year nor more than five years.

**§61-8B-6. Sexual extortion and aggravated sexual extortion.**

(a) As used in this section:

"Adult" means a person 18 years of age or older.

"Consideration" includes, but is not limited to, sexual contact, sexual intercourse, and sexual intrusion as those terms are defined in §61-8B-1, and private images as that term is defined in this subsection.

"Disclose" means to exhibit, transfer, publish, distribute, deliver, circulate, or disseminate by any means, including, but not limited to, electronic transmission.

"Image" means a photograph, video, videotape, live transmission, digital or computer-generated visual depiction, or any recording or product of any mechanical or electronic recording process or device that can preserve, for later viewing, an image.

"Minor" means any person under 18 years of age at the time of the alleged offense.

"Private image" means an image depicting sexually explicit nudity or sexual activity including, but not limited to, an image that includes a person's genitalia, pubic area, anus, or female post-pubescent breasts.

"Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

"Vulnerable adult" means any person over the age of 18, or an emancipated minor who, by reason of physical or mental condition, is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection.

(b) A person commits the offense of sexual extortion if he or she knowingly and intentionally discloses, causes to disclose, or threatens to disclose a private image of another person in order to compel or attempt to compel the victim, any member of the victim's family or household, as defined in §48-27-204 of this code, residing in the household at the time of the offense, or his or her spouse or child, to do any act or refrain from doing any act against his or her will, with the intent to obtain additional private images, anything of value, or other consideration.

(c) Any person who commits a violation of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility:

(1) Not less than one year nor more than five years for a first offense;

(2) Not less than three years nor more than 10 years for a second offense; or

(3) Not less than 10 years nor more than 20 years for a third or subsequent offense.

(d) Notwithstanding the provisions of subsection (c) of this section, if a minor violates the provisions of subsection (b) of this section, he or she shall be guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code. The circuit court may order as a condition of any community supervision period or disposition, behavioral health counseling from an appropriate agency or provider.

(e) A person commits the offense of aggravated sexual extortion if he or she knowingly and intentionally discloses, causes to be disclosed, or threatens to disclose a private image of another person in order to compel or attempt to compel the victim, any member of the victim's family or household, as defined in §48-27-204 of this code, residing in the household at the time of the offense, or his or her spouse or child, to do any act or refrain from doing any act against his or her will, with the intent to obtain additional private images, anything of value, or other consideration and either:

(1) The victim is a minor or a vulnerable adult and the person convicted of sexual extortion is an adult; or

(2) The victim suffers serious bodily injury or death and the finder of fact finds beyond a reasonable doubt that the sexual extortion of the victim was the proximate cause of the serious bodily injury or death.

(f) Any person violating the provisions of subsection (e) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than 10 years nor more than 20 years.

(g) A prosecution pursuant to this section may be in the county in which the threat was either made or received.

**§61-8B-7. Sexual abuse in the first degree.**

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor more than twenty-five years and fined not less than \$1,000 nor more than \$5,000.

**§61-8B-8. Sexual abuse in the second degree.**

(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than \$500 and confined in the county jail not more than twelve months.

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

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

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

- (1) The defendant was less than sixteen 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, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than \$500 and confined in the county jail not more than ninety days.

**§61-8B-9a. Mandatory sentence for person committing certain sex offenses against children.**

(a) Notwithstanding the provisions of section one-a, article eleven-a, section four, article eleven-b and section two, article twelve of chapter sixty-two of this code, a person shall not be eligible for probation, home incarceration or an alternative sentence provided under this code if they are convicted of an offense under section three, four, five, seven, eight or nine, article eight-b, chapter sixty-one of this code, are eighteen years of age or older, the victim is younger than twelve years of age and the finder of fact determines that one of the following aggravating circumstances exists:

- (1) The person employed forcible compulsion in commission of the offense;
- (2) The offense constituted, resulted from or involved a predatory act as defined in subsection (m), section two, article twelve, chapter fifteen of this code;
- (3) The person was armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the victim to submit; or
- (4) The person removed the victim from one place to another and did not release the victim in a safe place. For the purposes of this section, "release the victim in a safe place" means release of a victim in a place and manner which realistically conveys to the victim that he or she is free from captivity in circumstances and surroundings wherein aid is readily available.

(b)(1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) Insofar as the provisions of this section relate to mandatory sentences without probation, home incarceration or alternative sentences, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

**§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.**

(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, against a victim under the age of twelve years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:

(1) For a violation of section three of this article, the penalty shall be imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty years;

(2) For a violation of section four of this article, the penalty shall be imprisonment in a state correctional facility for not less than thirty nor more than one hundred years;

(3) For a violation of section five of this article, the penalty shall be imprisonment in a state correctional facility for not less than five nor more than twenty-five years;

(4) For a violation of section seven of this article, the penalty shall be imprisonment in a state correctional facility for not less than ten nor more than thirty-five years; and

(5) Notwithstanding the penalty provisions of section eight of this article, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, shall be a felony and, the penalty therefor shall be imprisonment in a state correctional facility for not less than three nor more than fifteen years.

(b) Notwithstanding the provisions of section two, article twelve, chapter sixty-two of this code, any person sentenced pursuant to this section shall not be eligible for probation.

(c) Notwithstanding the provisions of section one-a, article eleven-a and section four, article eleven-b of chapter sixty-two of this code, a person sentenced under this section shall not be eligible for home incarceration or an alternative sentence.

**§61-8B-10. Imposition of sexual acts on persons incarcerated, detained, or under supervision; penalties.**

(a) Any person employed by the Division of Corrections and Rehabilitation, any person working at a correctional or juvenile facility managed by the Commissioner of Corrections and Rehabilitation pursuant to contract, such as a vendor, or as an employee of a state agency or as a volunteer or any person employed by, or acting pursuant to, the authority of any sheriff, county commission, municipality, or court to ensure compliance with the provisions of §62-11B-1 *et seq.* of this code who engages in sexual intercourse, sexual intrusion, or sexual contact with a person who is incarcerated or detained in this state is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Any person employed by the Division of Corrections and Rehabilitation as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer, who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(c) Any person working or volunteering in an alternative sentence program authorized by the provisions of §62-11C-1 *et seq.* of this code who, as part of his or her employment or volunteer duties, supervises program participants, and engages in sexual intercourse, sexual intrusion, or sexual contact with a program participant is guilty of a felony, and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(d) The term "incarcerated or detained in this state" for purposes of this section includes, in addition to its usual meaning, adult offenders serving a sentence or a period of supervision under the provisions of §62-11B-1 *et seq.* of this code, and juvenile offenders detained, committed, or serving a period of supervision under the provisions of §62-11B-1 *et seq.* of this code.

(e) An authorized pat-down, strip search, or other security-related task does not constitute sexual contact pursuant to this section.

**§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.

**§61-8B-11a. Convictions for offenses against children.**

In any case where a person is convicted of an offense described in this article against a child and the person has custodial, visitation, or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of §49-4-601 through §49-4-610 of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take further action in accord with the provisions of those sections.

**§61-8B-11b. Prohibiting sexual intercourse, sexual intrusion, or sexual contact, against students by school employees; exception; penalties.**

(a) Any teacher, principal, counselor, coach, other employee, volunteer, or school resource officer of any private or public elementary or secondary school who engages in sexual intercourse, sexual intrusion, or sexual contact, as those terms are defined in §61-8B-1 of this code, with any student enrolled in any private or public elementary or secondary school regardless of the age of the student is guilty of a felony and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years or fined not more than \$5,000 or both imprisoned and fined. The fact that the student may have consented to the act or that the act did not occur on school property or during a school function is not a defense.

(b) For purposes of this section:

(1) A private elementary or secondary school means any private school or other entity authorized to provide an elementary or secondary education to students who are exempt from compulsory school attendance pursuant to §18-8-1 of this code; and

(2) A public elementary or secondary school means any school under the general supervision of the West Virginia Board of Education pursuant to section two, article XII of the West Virginia Constitution.

(c) Any student under the age of 18 years currently enrolled in a secondary school and engaged in a wage-earning registered youth apprenticeship program, as authorized under §18A-3-1 of this code or approved by the state board, may not be prosecuted for a violation of subsection (a) of this section, including those secondary school students under the age of 18 years participating in the Grow Your Own teacher pathway or any Career Technical Education school service personnel training programs.

(d) This is a separate and distinct criminal offense from any other applicable offense under this code. The penalties set forth in this section are in addition to any other penalties for any other applicable offense.

(e) A final conviction under this section shall cause the permanent forfeiture of any teaching or other certificate issued pursuant to §18A-3-2a of this code.

**§61-8B-12. Same -- Defense.**

(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, mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant at the time he or she engaged in the conduct constituting the offense did not know of the facts or conditions responsible for such incapacity to consent, unless the defendant is reckless in failing to know such facts or conditions.

(b) The affirmative defense provided in subsection (a) of this section shall not be available in any prosecution under subdivision (2), subsection (a), section three, and under subdivision (3), subsection (a), section seven of this article.

**§61-8B-13. Payment of treatment cost for victim.**

In addition to any penalty provided under this article and any restitution, which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this article to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the defendant is convicted, whether or not the victim is considered to have sustained bodily injury.

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**§61-8B-14. Limits on interviews of children eleven years old or less.**

In any prosecution under this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is a child who is eleven years old or less must submit for law enforcement or discovery purposes. The rule shall to the extent possible protect the mental and emotional health of the child from the psychological damage of repeated interrogations while at the same time preserve the rights of the public and the defendant.

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**§61-8B-15. Forensic Medical Examination Fund; training of sexual assault nurse examiners.**

There is continued the "Forensic Medical Examination Fund", created as a special fund in the state Treasury, into which shall be deposited legislative appropriations to the fund. The West Virginia prosecuting attorneys Institute, created by the provisions of section six, article four, chapter seven of this code, shall make expenditures from the fund, where it is determined to be practical by the executive council and the executive director to pay the costs of forensic medical examinations as defined in section sixteen of this article, to train nurses to examine sexual assault victims and to reimburse the institute for its expenses in administering payments from the fund.

**§61-8B-16. Payment for costs of forensic medical examination.**

(a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund the cost of the forensic medical examination for the alleged victim on the following conditions and in the following manner:

(1) The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;

(2) The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund: Provided, That nothing in this section shall be construed to prohibit a licensed medical facility from seeking payment for services referred to in this subdivision from the alleged victim or his or her insurer, if any;

(3) The forensic medical examination must have been conducted within a reasonable time of the alleged violation;

(4) The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;

(5) The licensed medical facility shall certify that the forensic medical examination was performed and may submit a statement of charges to the West Virginia prosecuting attorneys Institute for payment from the fund.

(b) No licensed medical facility may collect the costs of a forensic medical examination from the alleged victim of a violation of this article or from the alleged victim's insurance coverage, if any.

(c) Nothing in this section shall be construed to require an alleged victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided a forensic medical examination pursuant to the provisions of this section.

**§61-8B-17. Study of reimbursement; recordkeeping; disclosure; confidentiality.**

(a) The West Virginia prosecuting attorneys institute is hereby directed to undertake a study of the viability of the state seeking reimbursement from private insurance companies for the cost of forensic medical examinations. The study shall be completed prior to the first day of the regular legislative session, one thousand nine hundred ninety-seven, and provided to the President of the Senate and the Speaker of the House of Delegates.

(b) The West Virginia prosecuting attorneys institute shall develop and maintain a database for use by law-enforcement personnel, prosecuting attorneys and persons engaged in lawful research of the information collected pursuant to its administration of the forensic medical examination fund. The database shall include the number of examinations performed, the facilities performing the examination and where feasible, other information considered to be of assistance to law-enforcement and the prosecution of sexual offenses. The database shall be maintained in a manner which assures the confidentiality of the information.

**§61-8B-18. Rule-making authority.**

The executive council of the West Virginia prosecuting attorneys institute, created by the provisions of section six, article four, chapter seven of this code, shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, for the administration of the forensic medical examination fund, establishing qualifications for medical personnel performing a forensic medical examination and any other rules necessary to the implementation of this program. The institute shall also create and distribute to all licensed medical facilities, law-enforcement agencies and prosecuting attorneys' offices the instructional manuals and forms necessary to perform forensic medical examinations and to receive payment from the fund. From the effective date of this section until the date of the promulgation of these rules, the executive council of the West Virginia prosecuting attorneys institute may file rules as emergency rules in accordance with the applicable provisions of this code in order to govern during this period of time the administration of the fund.

**§61-8B-19. Court files and law-enforcement records; confidentiality.**

(a) *Records confidential.*— All records and information maintained by the courts of this state or any law enforcement agency of this state or any of its political subdivisions, which contain identifying information of a victim in an arrest, investigation, or complaint for the offenses enumerated in §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-14-1 *et seq.* of this code, or for the offenses included in §61-8D-3a, §61-8D-5, and §61-8DB-6 of this code, shall be kept confidential and withheld from inspection, except: (1) When required by law; (2) when necessary for law-enforcement purposes or preparation for court proceedings; or (3) pursuant to an order of a court issued in accordance with subsection (c) of this section.

(b) *Orders permitting examination or copying of file contents.*— Upon written motion filed in the circuit court of the county where the criminal action is pending or has been prosecuted, a circuit court, for good cause shown, may enter an order allowing a person who is precluded access to a court file or law-enforcement record pursuant to subsection (a) of this section the authority to examine and copy documents in a file. The order shall set forth specific findings which demonstrate why the interests of justice necessitate the examination, specify the particular documents to be examined or copied, or both examined and copied and the circumstances under which such action or actions shall take place.

(c) *Obtaining confidential records.*— Absent a waiver of confidentiality by the subject of the confidential records, the records are only subject to subpoena pursuant to subsection (d) of this section.

(d) *Subpoena Duces Tecum.*— Any court file or law-enforcement record in the offenses included in subsection (a) of this section may be supplied to any person presenting a valid subpoena duces tecum issued by a state or federal court in any criminal action. Any file or record obtained under this subsection shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.

(e) *Victim request.*— Upon a written request of a victim, decisions of the West Virginia Intermediate Court of Appeals and the West Virginia Supreme Court of Appeals issued on or after July 1, 2022, involving the offenses enumerated in subsection (a) of this section shall not contain the first and last names of the victim.

(f) *Supreme Court authorization.*— The Supreme Court of Appeals is requested to promulgate rules prior to July 1, 2022, to the extent necessary to comply with the provisions of this article that become effective on that date.