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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

Committee Substitute for
SENATE BILL NO. 304

(By Senator *Burdette, Mr. President, et al*)



PASSED March 9, 1991

In Effect July 1, 1991 ~~Repealed~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 304

(SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
original sponsors)

[Passed March 9, 1991; to take effect July 1, 1991.]

AN ACT to amend and reenact section twelve, article eight; sections three and four, article eight-b; and section five, article eight-d, all of chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the offenses of incest, sexual assault in the first degree, sexual assault in the second degree, and sexual exploitation, sexual intercourse, sexual intrusion, or sexual contact by a parent, guardian or custodian, and the penalties therefor; and increasing the criminal penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight; sections three and four, article eight-b; and section five, article eight-d, all of chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

- 1 (a) For the purposes of this section:

- 2 (1) "Aunt" means the sister of a person's mother or
3 father;
- 4 (2) "Brother" means the son of a person's mother or
5 father;
- 6 (3) "Daughter" means a person's natural daughter,
7 adoptive daughter or the daughter of a person's
8 husband or wife;
- 9 (4) "Father" means a person's natural father,
10 adoptive father or the husband of a person's mother;
- 11 (5) "Granddaughter" means the daughter of a
12 person's son or daughter;
- 13 (6) "Grandfather" means the father of a person's
14 father or mother;
- 15 (7) "Grandmother" means the mother of a person's
16 father or mother;
- 17 (8) "Grandson" means the son of a person's son or
18 daughter;
- 19 (9) "Mother" means a person's natural mother,
20 adoptive mother or the wife of a person's father;
- 21 (10) "Niece" means the daughter of a person's
22 brother or sister;
- 23 (11) "Nephew" means the son of a person's brother
24 or sister;
- 25 (12) "Sexual intercourse" means any act between
26 persons involving penetration, however slight, of the
27 female sex organ by the male sex organ or involving
28 contact between the sex organs of one person and the
29 mouth or anus of another person;
- 30 (13) "Sexual intrusion" means any act between
31 persons involving penetration, however slight, of the
32 female sex organ or of the anus of any person by an
33 object for the purpose of degrading or humiliating the
34 person so penetrated or for gratifying the sexual desire
35 of either party;
- 36 (14) "Sister" means the daughter of a person's father
37 or mother;

38 (15) "Son" means a person's natural son, adoptive
39 son or the son of a person's husband or wife; and

40 (16) "Uncle" means the brother of a person's father
41 or mother.

42 (b) A person is guilty of incest when such person
43 engages in sexual intercourse or sexual intrusion with
44 his or her father, mother, brother, sister, daughter,
45 son, grandfather, grandmother, grandson, granddaugh-
46 ter, nephew, niece, uncle or aunt.

47 (c) Any person who violates the provisions of this
48 section shall be guilty of a felony, and, upon conviction
49 thereof, shall be imprisoned in the penitentiary not
50 less than five years nor more than fifteen years, or
51 fined not less than five hundred dollars nor more than
52 five thousand dollars and imprisoned in the peniten-
53 tiary not less than five years nor more than fifteen
54 years.

55 (d) In addition to any penalty provided under this
56 section and any restitution which may be ordered by
57 the court under article eleven-a of this chapter, the
58 court may order any person convicted under the
59 provisions of this section where the victim is a minor,
60 to pay all or any portion of the cost of medical,
61 psychological or psychiatric treatment of the victim,
62 the need for which results from the act or acts for
63 which the person is convicted, whether or not the
64 victim is considered to have sustained bodily injury.

ARTICLE 8B. SEXUAL OFFENSES.

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

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

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

5 (i) Inflicts serious bodily injury upon anyone; or

6 (ii) Employs a deadly weapon in the commission of
7 the act; or

8 (2) Such person, being fourteen years old or more,

9 engages in sexual intercourse or sexual intrusion with
10 another person who is eleven years old or less.

11 (b) Any person who violates the provisions of this
12 section shall be guilty of a felony, and, upon conviction
13 thereof, shall be imprisoned in the penitentiary not
14 less than fifteen nor more than thirty-five years, or
15 fined not less than one thousand dollars nor more than
16 ten thousand dollars and imprisoned in the peniten-
17 tiary not less than fifteen nor more than thirty-five
18 years.

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

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

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

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

10 (b) Any person who violates the provisions of this
11 section shall be guilty of a felony, and, upon conviction
12 thereof, shall be imprisoned in the penitentiary not
13 less than ten nor more than twenty-five years, or
14 fined not less than one thousand dollars nor more than
15 ten thousand dollars and imprisoned in the peniten-
16 tiary not less than ten nor more than twenty-five
17 years.

ARTICLE 8D. CHILD ABUSE.

**§61-8D-5. Sexual abuse by a parent, guardian or custodian;
parent, guardian or custodian allowing sexual
abuse to be inflicted upon a child; dis-
playing 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
4 any parent, guardian or custodian of a child under his

5 or her care, custody or control, shall engage in or
6 attempt to engage in sexual exploitation of, or in
7 sexual intercourse, sexual intrusion or sexual contact
8 with, a child under his or her care, custody or control,
9 notwithstanding the fact that the child may have
10 willingly participated in such conduct, or the fact that
11 the child may have consented to such conduct or the
12 fact that the child may have suffered no apparent
13 physical injury or mental or emotional injury as a
14 result of such conduct, then such guardian or custo-
15 dian shall be guilty of a felony, and, upon conviction
16 thereof, shall be imprisoned in the penitentiary not
17 less than five nor more than fifteen years, or fined not
18 less than five hundred nor more than five thousand
19 dollars and imprisoned in the penitentiary not less
20 than five years nor more than fifteen years.

21 (b) If any parent, guardian or custodian shall know-
22 ingly procure another person to engage in or attempt
23 to engage in sexual exploitation of, or sexual inter-
24 course, sexual intrusion or sexual contact with, a child
25 under the care, custody or control of such parent,
26 guardian or custodian when such child is less than
27 sixteen years of age, notwithstanding the fact that the
28 child may have willingly participated in such conduct
29 or the fact that the child may have suffered no
30 apparent physical injury or mental or emotional
31 injury as a result of such conduct, such parent,
32 guardian or custodian shall be guilty of a felony, and,
33 upon conviction thereof, shall be imprisoned in the
34 penitentiary not less than one year nor more than five
35 years, or fined not less than one thousand nor more
36 than ten thousand dollars and imprisoned in the
37 penitentiary not less than one year nor more than five
38 years.

39 (c) If any parent, guardian or custodian shall know-
40 ingly procure another person to engage in or attempt
41 to engage in sexual exploitation of, or sexual inter-
42 course, sexual intrusion or sexual contact with, a child
43 under the care, custody or control of such parent,
44 guardian or custodian when such child is sixteen years
45 of age or older, notwithstanding the fact that the child

46 may have consented to such conduct or the fact that
47 the child may have suffered no apparent physical
48 injury or mental or emotional injury as a result of
49 such conduct, then such parent, guardian or custodian
50 shall be guilty of a misdemeanor, and, upon conviction
51 thereof, shall be confined in the county jail not less
52 than six months nor more than one year.

53 (d) The provisions of this section shall not apply to
54 a custodian whose age exceeds the age of the child by
55 less than four years.

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

Tomer Heck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1991.

Samuel Adams
.....
Clerk of the Senate

Donald L. Kapp
.....
Clerk of the House of Delegates

Keith Smutko
.....
President of the Senate

Bob C. Call
.....
Speaker House of Delegates

The within ~~is approved~~... this the ~~1st~~.....

day of *April*, 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:25 am