

SB 100

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. SUB. FOR Com. SUB. FOR
SENATE BILL NO. 100

(By Senator TOMBLIN, MR. PRESIDENT, ET AL)



PASSED MARCH 9, 1996
In Effect NINETY DAYS FROM Passage

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FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 100

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections fifteen, sixteen, seventeen and eighteen, all relating to the definition of terms; creating a forensic medical examination fund; administration of the fund by the West Virginia prosecuting attorneys institute; reimbursement of institute for expenses; payment from the forensic medical examination fund of the costs of forensic medical exams given to victims of certain sexual offenses; directing a study regarding reimbursement from private insurance companies; development and maintenance of a database;

disclosure; confidentiality; and development of rules, instructional manuals and forms by the institute.

Be it enacted by the Legislature of West Virginia:

That section one, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections fifteen, sixteen, seventeen and eighteen, all to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.

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

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resis-
5 tance as might reasonably be expected under the circum-
6 stances; or

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

11 (c) Fear by a person under sixteen years of age caused
12 by intimidation, expressed or implied, by another person
13 who is at least four years older than the victim.

14 For the purposes of this definition "resistance" in-
15 cludes physical resistance or any clear communication of
16 the victim's lack of consent.

17 (2) "Married", for the purposes of this article in
18 addition to its legal meaning, includes persons living
19 together as husband and wife regardless of the legal
20 status of their relationship.

21 (3) "Mentally defective" means that a person suffers
22 from a mental disease or defect which renders that
23 person incapable of appraising the nature of his or her

24 conduct.

25 (4) "Mentally incapacitated" means that a person is
26 rendered temporarily incapable of appraising or control-
27 ling his or her conduct as a result of the influence of a
28 controlled or intoxicating substance administered to that
29 person without his or her consent or as a result of any
30 other act committed upon that person without his or her
31 consent.

32 (5) "Physically helpless" means that a person is uncon-
33 scious or for any reason is physically unable to commu-
34 nicate unwillingness to an act.

35 (6) "Sexual contact" means any intentional touching,
36 either directly or through clothing, of the anus or any
37 part of the sex organs of another person, or the breasts
38 of a female or intentional touching of any part of another
39 person's body by the actor's sex organs, where the victim
40 is not married to the actor and the touching is done for
41 the purpose of gratifying the sexual desire of either
42 party.

43 (7) "Sexual intercourse" means any act between
44 persons not married to each other involving penetration,
45 however slight, of the female sex organ by the male sex
46 organ or involving contact between the sex organs of one
47 person and the mouth or anus of another person.

48 (8) "Sexual intrusion" means any act between persons
49 not married to each other involving penetration, however
50 slight, of the female sex organ or of the anus of any
51 person by an object for the purpose of degrading or
52 humiliating the person so penetrated or for gratifying
53 the sexual desire of either party.

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

56 (10) "Serious bodily injury" means bodily injury which
57 creates a substantial risk of death, which causes serious
58 or prolonged disfigurement, prolonged impairment of
59 health or prolonged loss or impairment of the function of

60 any bodily organ.

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

65 (12) "Forensic medical examination" means an exami-
66 nation provided to a possible victim of a violation of the
67 provisions of this article by medical personnel qualified
68 to gather evidence of the violation in a manner suitable
69 for use in a court of law, to include: An examination for
70 physical trauma; a determination of penetration or force;
71 a patient interview; and the collection and evaluation of
72 other evidence that is potentially relevant to the deter-
73 mination that a violation of the provisions of this article
74 occurred and to the determination of the identity of the
75 assailant.

§61-8B-15. Creation of a forensic medical examination fund.

1 There is hereby created "The Forensic Medical Exami-
2 nation Fund" created as a special fund in the state
3 treasury into which shall be deposited the appropri-
4 ations made to the fund by the Legislature. Expenditures
5 from the fund shall be made by the West Virginia
6 prosecuting attorneys institute, created by the provisions
7 of section six, article four, chapter seven of this code, for
8 the payment of the costs of forensic medical examina-
9 tions as they are defined in section sixteen of this article
10 and for the reimbursement to the institute of its expenses
11 in administering the payment of the costs from the fund.

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

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

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

10 (2) The costs of additional nonforensic procedures
11 performed by the licensed medical facility, including,
12 but not limited to, prophylactic treatment, treatment of
13 injuries, testing for pregnancy and testing for sexually
14 transmitted diseases, may not be paid from the fund;

15 (3) The forensic medical examination must have been
16 conducted within seventy-two hours of the alleged
17 violation;

18 (4) The licensed medical facility must apply for pay-
19 ment of the costs of a forensic medical examination from
20 the fund within ninety days of the examination;

21 (5) The licensed medical facility shall submit a state-
22 ment of charges to the prosecuting attorney in the county
23 in which the alleged offense occurred and the prosecut-
24 ing attorney shall certify, if proper, that the forensic
25 medical examination was conducted as a part of a
26 criminal investigation; and

27 (6) The prosecuting attorney shall, within sixty days of
28 receipt of a statement of charges from the licensed
29 medical facility, forward the statement of charges and
30 the certification to the West Virginia prosecuting attor-
31 neys institute for payment from the fund and for the
32 reimbursement of the institute from the fund for the
33 reasonable costs of processing and recording the pay-
34 ment.

35 (b) No licensed medical facility may collect the costs of
36 a forensic medical examination from the victim of an
37 alleged violation of this article if the reasonable, custom-
38 ary and usual costs of the forensic medical examination
39 qualifies for payment from the forensic medical exami-
40 nation fund as set forth in subsection (a) of this section.

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

1 (a) The West Virginia prosecuting attorneys institute is

2 hereby directed to undertake a study of the viability of
3 the state seeking reimbursement from private insurance
4 companies for the cost of forensic medical examinations.
5 The study shall be completed prior to the first day of the
6 regular legislative session, one thousand nine hundred
7 ninety-seven, and provided to the president of the Senate
8 and the speaker of the House of Delegates.

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

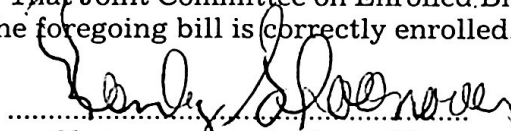
§61-8B-18. Rule-making authority.

1 The executive council of the West Virginia prosecuting
2 attorneys institute, created by the provisions of section
3 six, article four, chapter seven of this code, shall promul-
4 gate rules in accordance with article three, chapter
5 twenty-nine-a of this code, for the administration of the
6 forensic medical examination fund, establishing qualifi-
7 cations for medical personnel performing a forensic
8 medical examination and any other rules necessary to
9 the implementation of this program. The institute shall
10 also create and distribute to all licensed medical facili-
11 ties, law-enforcement agencies and prosecuting attor-
12 neys' offices the instructional manuals and forms neces-
13 sary to perform forensic medical examinations and to
14 receive payment from the fund. From the effective date
15 of this section until the date of the promulgation of these
16 rules, the executive council of the West Virginia prose-
17 cuting attorneys institute may file rules as emergency
18 rules in accordance with the applicable provisions of this

19 code in order to govern during this period of time the
20 administration of the fund.

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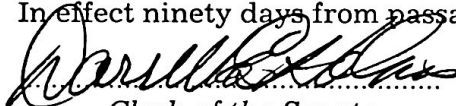
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



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Chairman Senate Committee

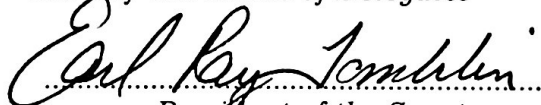

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

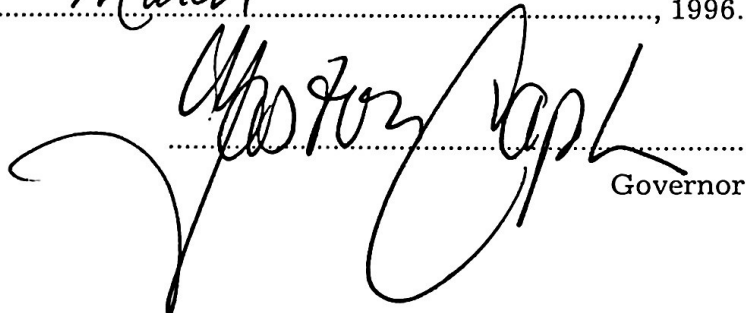

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Clerk of the Senate


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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 25th
day of March, 1996.


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Governor

PRESENTED TO THE

GVERNOR

Date

3/19/96

Time

3:10 pm