

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000

ENROLLED

House Bill No. 4561

(By Delegates Mahan, Spencer, Hunt,
Amores, Hines, Capito and Webb)

Passed March 9, 2000

In Effect Ninety Days from Passage

ENROLLED

H. B. 4561

(BY DELEGATES MAHAN, SPENCER, HUNT,
AMORES, HINES, CAPITO AND WEBB)

[Passed March 9, 2000; in effect ninety days from passage.]

AN ACT to repeal section six, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three and five of said article, all relating to sexual assault.

Be it enacted by the Legislature of West Virginia:

That section six, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, three and five of said article be amended and reenacted, all to read as follows: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 re-
2 quired:

3 (1) “Forcible compulsion” means:

4 (a) Physical force that overcomes such earnest resistance as
5 might reasonably be expected under the circumstances; or

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

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

13 For the purposes of this definition “resistance” includes
14 physical resistance or any clear communication of the victim’s
15 lack of consent.

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

19 (3) “Mentally defective” means that a person suffers from
20 a mental disease or defect which renders that person incapable
21 of appraising the nature of his or her conduct.

22 (4) “Mentally incapacitated” means that a person is
23 rendered temporarily incapable of appraising or controlling his
24 or her conduct as a result of the influence of a controlled or
25 intoxicating substance administered to that person without his
26 or her consent or as a result of any other act committed upon
27 that person without his or her consent.

28 (5) “Physically helpless” means that a person is uncon-
29 scious or for any reason is physically unable to communicate
30 unwillingness to an act.

31 (6) “Sexual contact” means any intentional touching, either
32 directly or through clothing, of the anus or any part of the sex

33 organs of another person, or the breasts of a female or inten-
34 tional touching of any part of another person's body by the
35 actor's sex organs, where the victim is not married to the actor
36 and the touching is done for the purpose of gratifying the sexual
37 desire of either party.

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

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

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

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

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

58 (12) "Forensic medical examination" means an examination
59 provided to a possible victim of a violation of the provisions of
60 this article by medical personnel qualified to gather evidence of
61 the violation in a manner suitable for use in a court of law, to
62 include: An examination for physical trauma; a determination
63 of penetration or force; a patient interview; and the collection

64 and evaluation of other evidence that is potentially relevant to
65 the determination that a violation of the provisions of this
66 article occurred and to the determination of the identity of the
67 assailant.

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

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

3 (1) The person engages in sexual intercourse or sexual
4 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 the act;
7 or

8 (2) The person, being fourteen years old or more, engages
9 in sexual intercourse or sexual intrusion with another person
10 who is eleven years old or less and is not married to that person.

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

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

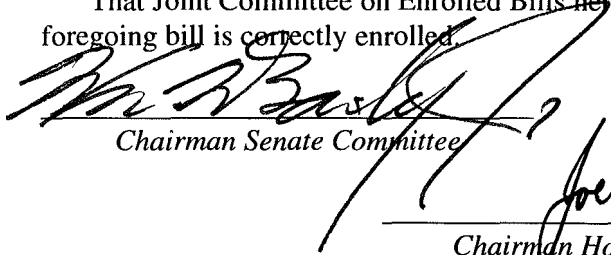
1 (a) A person is guilty of sexual assault in the third degree
2 when:

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

6 (2) The person, being sixteen years old or more, engages in
7 sexual intercourse or sexual intrusion with another person who
8 is less than sixteen years old and who is at least four years
9 younger than the defendant and is not married to the defendant.

10 (b) Any person violating the provisions of this section is
11 guilty of a felony and, upon conviction thereof, shall be
12 imprisoned in a state correctional facility not less than one year
13 nor more than five years, or fined not more than ten thousand
14 dollars and imprisoned in a state correctional facility not less
15 than one year nor more than five years.

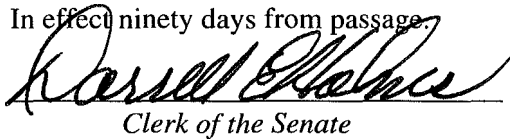
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

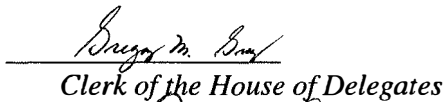

Chairman Senate Committee

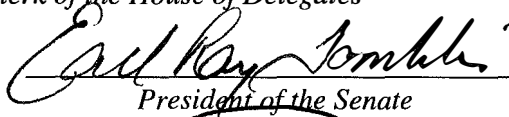

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

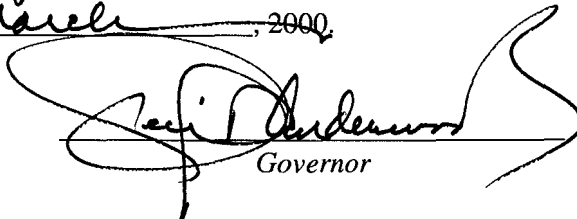

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 12th
day of March, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/14/00

Time

12:14 pm