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article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, three and five of said article be amended and reenacted, all to read as follows: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

3 (1) “Forcible compulsion” means:
(a) Physical force that overcomes such earnest resistance as
might reasonably be expected under the circumstances; or

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

(3) “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.

(4) “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.

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

(6) “Sexual contact” means any intentional touching, either
directly or through clothing, of the anus or any part of the sex
(7) “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.

(8) “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.

(9) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition.

(10) “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.

(11) “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.

(12) “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

(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:

(i) Inflicts serious bodily injury upon anyone; or

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

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

(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 fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

§61-SB-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 sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to 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 ten thousand dollars and imprisoned in a state correctional facility not less 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