WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4036

(By Mr. Speaker, Mr. Kiss, and Delegates Varner, Campbell, Stemple, Kominar, Amores, Crosier, R. M. Thompson and Craig)

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Passed March 11, 2006

In Effect Ninety Days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-8a, relating to creating the offense of solicitation to commit a felony crime of violence against the person; defining terms; penalties; and defenses.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-11-8a, to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.
§61-11-8a. Solicitation to commit certain felonies; classification; defenses.

(a) Any person who solicits another to commit a violation of the law which constitutes a felony crime of violence against the person is guilty of a felony, and upon conviction thereof, shall be:

1. Confined in a state correctional facility for not less than three nor more than fifteen years if the offense solicited is punishable by life imprisonment;

2. Imprisoned in the state correctional facility for not less than one nor more than three years or fined not more than five thousand dollars, or both, if the offense solicited is punishable by incarceration in the state correctional facility for a term of less than life imprisonment. In the circuit court’s discretion a person so convicted may be ordered confined in jail for a term not to exceed one year in lieu of incarceration in a state correctional facility;

(b)(1) As used in this section, “solicitation” means the willful and knowing instigation or inducement of another to commit a felony crime of violence against the person of a third person; and

2. As used in this section, “felony crime of violence against the person” means the felony offense set forth in sections one, nine, ten-b and twelve, article two of this chapter.

(c) In a prosecution under the provisions of this section, it is not a defense:

1. That the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or
(2) That a person whom the defendant solicits could not be guilty of a crime that is the object of the solicitation.

(d) It is an affirmative and complete defense to a prosecution under the provisions of this section that the defendant under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a felony, prevented the commission of the crime.
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 is approved this the 31st day of March, 2006.

Governor