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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2007

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**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 2498**

(By Delegates Azinger and Craig)

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Passed March 10, 2007

In Effect Ninety Days from Passage

HB 2498  
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FOR

# **H. B. 2498**

(BY DELEGATES AZINGER AND CRAIG)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §61-8-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8B-1 of said code, all relating to sexual offenses; increased penalties for indecent exposure for the purpose of sexual gratification; and, expanding the definition of sexual contact to include the touching of the buttocks.

*Be it enacted by the Legislature of West Virginia:*

That §61-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8B-1 of said code be amended and reenacted, all to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY  
AND DECENCY.**

**§61-8-9. Indecent exposure.**

1 (a) A person is guilty of indecent exposure when such  
2 person intentionally exposes his or her sex organs or anus or  
3 the sex organs or anus of another person, or intentionally  
4 causes such exposure by another or engages in any overt act  
5 of sexual gratification, and does so under circumstances in  
6 which the person knows that the conduct is likely to cause  
7 affront or alarm.

8 (b) Except as provided in subsection (c), any person who  
9 violates the provisions of this section shall be guilty of a  
10 misdemeanor and, upon conviction thereof, shall be confined  
11 in jail not more than ninety days, or fined not more than two  
12 hundred fifty dollars and confined in jail not more than ninety  
13 days.

14 (c) Any person who violates the provisions of subsection  
15 (a) of this section by intentionally exposing himself or herself  
16 to another person and the exposure was done for the purpose  
17 of sexual gratification, is guilty of a misdemeanor and, upon  
18 conviction thereof, shall be fined not more than five hundred  
19 dollars or confined in jail not more than twelve months, or  
20 both. For a second offense, the person is guilty of a  
21 misdemeanor and, upon conviction thereof, shall be fined not  
22 more than one thousand dollars and confined in jail for not  
23 less than thirty days nor more than twelve months. For a  
24 third or subsequent offense, the person is guilty of a felony  
25 and, upon conviction thereof, shall be fined not more than  
26 three thousand dollars and imprisoned in a state correctional  
27 facility for not less than one year nor more than five years.

**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 resistance  
5 as might reasonably be expected under the circumstances; or

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

10 (c) Fear by a person under sixteen years of age caused  
11 by intimidation, expressed or implied, by another person who  
12 is at 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  
15 victim's lack of consent.

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

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

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

29 (5) "Physically helpless" means that a person is  
30 unconscious or for any reason is physically unable to  
31 communicate unwillingness to an act.

32 (6) "Sexual contact" means any intentional touching,  
33 either directly or through clothing, of the breasts, buttocks,  
34 anus or any part of the sex organs of another person, or

35 intentional touching of any part of another person's body by  
36 the actor's sex organs, where the victim is not married to the  
37 actor and the touching is done for the purpose of gratifying  
38 the sexual desire of either party.

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

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

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

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

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

60 (12) "Forensic medical examination" means an  
61 examination provided to a possible victim of a violation of  
62 the provisions of this article by medical personnel qualified  
63 to gather evidence of the violation in a manner suitable for  
64 use in a court of law, to include: An examination for  
65 physical trauma; a determination of penetration or force; a  
66 patient interview; and the collection and evaluation of other  
67 evidence that is potentially relevant to the determination that  
68 a violation of the provisions of this article occurred and to the  
69 determination of the identity of the assailant.

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

*Randy White*  
Chairman Senate Committee

*John Hoyle / B.D.S.*

*Richard J. Aquino*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Carol Williams*  
Clerk of the Senate

*Gregory W. Sawyer*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*R. B.*  
Speaker of the House of Delegates

The within *is disappeared* this the *16<sup>th</sup>*  
day of *March*, 2007.

*Paul H. Raabe*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 15 2007

Time 3:45 pm