

SB 197 -- Redline

sb197 hfa akers 3-13_1 adopted.htm to Enrolled -- Relating to crime of sexual abuse by parent, guardian, custodian, or person in position of trust to child

Deletions ~~struck~~ · Insertions underlined

~~SB197WEST HFAVIRGINIA AkersLEGISLATURE 3-13REGULAR #1MorganSESSION 3345-DelegateEnrolled AkersSenate movedBill to197 amendBYS theENATORSW billELD, onWOELFEL, pageEEDS, 3,ARR,AND byZ.-striking the section heading for section 5 and inserting in lieu thereof the following language: Sec.61-8D-5.~~

M AYNARD [Passed March 14, 2026;

in effect 90 days from passage (June 12, 2026)] Enr SB 197 AN ACT to amend and reenact Sec.61-8B-5, Sec.61-8B-9, Sec.61-8D-4a, Sec.61-8D-5 and Sec.61-8D-6 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalties and fines for crimes against minors;

increasing criminal penalties and fines for the offenses of sexual assault in the third degree;

increasing criminal penalties and fines for sexual abuse in the third degree;

increasing criminal penalties and fines for child neglect resulting in death;

increasing criminal penalties and fines relating to the crime of when any parent, guardian, or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, engages in or attempts to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control;

creating the crime of when any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly attempts to procure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody, or control of such parent, guardian, custodian, or person in a position of trust when such child is less than 16 years of age or any age if the child is a disabled child and establishing criminal penalties and fines;

increasing criminal penalties and fines for the crime of when any parent, guardian, custodian, or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody, or control of such parent, guardian, custodian, or person in a position of trust when such child is less than 16 years of age or any age if the child is a disabled child;

creating the crime of when any parent, guardian, custodian, or other person in a position of trust in relation to the child who knowingly attempts to procure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody, or control of such parent, guardian, custodian or person in a position of trust when such child is 16 years of age or older and Enr SB 197 establishing criminal penalties;

increasing criminal penalties for the crime of when any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is 16 years of age or older;

and increasing criminal penalties and fines for knowingly sending, distributing, exhibiting, possessing, displaying, or transporting material by a parent, guardian, or custodian, or person in a position of trust, depicting a child engaged in sexually explicit conduct.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B.

SEXUAL OFFENSES.

Sec.61-8B-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 is 16 years old or more and engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least four years younger than 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 two years nor more than 10 years, or fined not more than \$20,000 and imprisoned in a state correctional facility not less than two years nor more than 10 years.

Sec.61-8B-9.

Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent, when the lack of consent is due to the victim's incapacity to consent by reason of being less than 16 years old.

(b) In any prosecution under this section it is a defense that:

Enr SB 197 (1) The defendant was less than 16 years old;

or (2) The defendant was less than four years older than the victim.

(c) Any person who violates 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 three years, or fined not more than \$1,000 and imprisoned in a state correctional facility not less than one year nor more than three years.

ARTICLE 8D.

CHILD ABUSE.

Sec.61-8D-4a.

Child neglect resulting in death;

criminal penalties.

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall neglect a child under his or her care, custody or control and by such neglect cause the death of said child, then such parent, guardian or custodian, or person in a position of trust in relation to a child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,000 nor more than \$10,000 or committed to the custody of the Division of Corrections and Rehabilitation for not less than 10 nor more than 40 years, or both fined and imprisoned.

(b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall, for that reason alone, be considered to have been neglected within the provisions of this section.

A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with the treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States Internal Revenue Service:

Provided, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.

(c) A child whose parent, guardian or legal custodian, or person in a position of trust in relation to that child has inhibited or interfered with the provision of medical treatment in Enr SB 197 accordance with a court order may be considered to have been neglected for the purposes of this section.

Sec.61-8D-5.

~~Adopted~~Rejected (a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows:

If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, engages in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in the conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than 20 nor more than 40 years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a correctional facility not less than 20 years nor more than 40 years.

(b) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces or attempts to procure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than 16 years of age or any age if the child is a disabled child, as identified in Sec.61-8F-2 of this code, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, Enr SB 197 such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than 10 years nor more than 30 years, or fined not less than \$2,000 nor more than \$20,000 and imprisoned in a correctional facility not less than 10 years nor more than 30 years.

(c) Any parent, guardian, custodian or other person in a position of trust in relation to the child who

knowingly procures, authorizes, or induces or attempts to procure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is 16 years of age or older, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than two years nor more than 10 years.
Sec.61-8D-6.

Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, or person in a position of trust, depicting a child engaged in sexually explicit conduct; penalty.

Any parent, guardian or custodian, or person in a position of trust who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than four years, and fined not less than \$800 nor more than \$8,000.

Enr SB 197 The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the Senate

Clerk of the House of Delegates Originated in the Senate.

In effect 90 days from passage.

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President of the Senate

Speaker of the House of Delegates _____ The within is

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this the.....

Day of

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..., 2026.

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Governor 7