

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3190**

By Delegate Steele

[Introduced January 31, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §61-8A-1 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §61-14-1 of said code, all relating to the definition of minor being  
 3 amended to be an individual that is less than the age 18, or purported to be less than the  
 4 age of 18.

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

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE  
 MATTER TO MINORS.**

**§61-8A-1. Definitions.**

1 When used in this article, the following words, and any variations thereof required by the  
 2 context, shall have the meaning ascribed to them in this section:

3 (a) "Adult" means a person 18 years of age or older.

4 (b) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-  
 5 speed data processing device performing logical, arithmetic, or storage functions and includes any  
 6 data storage facility or communication facility directly related to or operating in conjunction with  
 7 such device. As used in this article, computer includes file servers, mainframe systems, desktop  
 8 personal computers, laptop personal computers, tablet personal computers, cellular telephones,  
 9 game consoles, and any electronic data storage device or equipment. The term "computer"  
 10 includes any connected or directly related device, equipment or facility which enables the  
 11 computer to store, retrieve or communicate computer programs, computer data, or the results of  
 12 computer operations to or from a person, another computer or another device, but such term does  
 13 not include an automated typewriter or typesetter, a portable hand-held calculator or other similar  
 14 device.

15 (c) "Computer network" means the interconnection of hardware or wireless communication  
 16 lines with a computer through remote terminals, or a complex consisting of two or more  
 17 interconnected computers.

18 (d) "Display" means to show, exhibit or expose matter, in a manner visible to general or  
19 invited public, including minors. As used in this article, display shall include the placing or  
20 exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display  
21 rack, window, showcase, display case, or similar public place.

22 (e) "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with  
23 or without consideration.

24 (f) "Employee" means any individual who renders personal services in the course of a  
25 business, who receives compensation and who has no financial interest in the ownership or  
26 operation of the business other than his or her salary or wages.

27 (g) "Internet" means the international computer network of both federal and nonfederal  
28 interoperable packet switched data networks.

29 (h) "Knowledge of the character of the matter" means having awareness of or notice of the  
30 overall sexual content and character of matter as depicting, representing or describing obscene  
31 matter.

32 (i) "Matter" means any visual, audio, or physical item, article, production transmission,  
33 publication, exhibition, or live performance, or reproduction thereof, including any two- or three-  
34 dimensional visual or written material, film, picture, drawing, video, graphic, or computer  
35 generated or reproduced image; or any book, magazine, newspaper, or other visual or written  
36 material; or any motion picture or other pictorial representation; or any statue or other figure; or  
37 any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other  
38 articles, video laser disc, computer hardware and software, or computer generated images or  
39 message recording, transcription, or object, or any public or commercial live exhibition performed  
40 for consideration or before an audience of one or more.

41 (j) "Minor" means ~~an unemancipated~~ a person under less than or purported to be less than  
42 18 years of age.

43 (k) "Obscene matter" means matter that:

44 (1) An average person, applying contemporary adult community standards, would find,  
45 taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is  
46 pandered to a prurient interest;

47 (2) An average person, applying community standards, would find depicts or describes, in  
48 a patently offensive way, sexually explicit conduct; and

49 (3) A reasonable person would find, taken as a whole, lacks serious literary, artistic,  
50 political, or scientific value.

51 (l) "Parent" includes a biological or adoptive parent, legal guardian, or legal custodian.

52 (m) "Person" means any adult, partnership, firm, association, corporation, or other legal  
53 entity.

54 (n) "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or  
55 simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism  
56 and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

**ARTICLE 14. HUMAN TRAFFICKING.**

**§61-14-1. Definitions.**

1 When used in this article, the following words and terms shall have meaning specified  
2 unless the context clearly indicates a different meaning:

3 (1) "Adult" means an individual 18 years of age or older.

4 (2) "Coercion" means:

5 (A) The use or threat of force against, abduction of, serious harm to or physical restraint of  
6 an individual;

7 (B) The use of a plan, pattern, or statement with intent to cause an individual to believe that  
8 failure to perform an act will result in the use of force against, abduction of, serious harm to,  
9 physical restraint of, or deportation of an individual;

10 (C) The abuse or threatened abuse of law or legal process;

11 (D) The destruction or taking of, or the threatened destruction or taking of, an individual's

12 identification document or other property; or

13 (E) The use of an individual's physical or mental impairment when the impairment has a  
14 substantial adverse effect on the individual's cognitive or volitional function.

15 As used in this article, "coercion" does not include statements or actions made by a duly  
16 authorized state or federal law-enforcement officer as part of a lawful law enforcement  
17 investigation or undercover action.

18 (3) "Commercial sexual activity" means sexual activity for which anything of value is given  
19 to, promised to or received by a person.

20 (4) "Debt bondage" means inducing an individual to provide:

21 (A) Commercial sexual activity in payment toward or satisfaction of a real or purported  
22 debt; or

23 (B) Labor or services in payment toward or satisfaction of a real or purported debt if:

24 (i) The reasonable value of the labor or services is not applied toward the liquidation of the  
25 debt; or

26 (ii) The length of the labor or services is not limited, and the nature of the labor or services  
27 is not defined.

28 (5) "Forced labor" means labor or services that are performed or provided by another  
29 person and are obtained or maintained through the following:

30 (A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other  
31 action intended to cause a person to believe that, if the person did not perform or provide the labor  
32 or services, that person or another person would suffer serious bodily harm, physical restraint or  
33 deportation;

34 (B) Physically restraining or threatening to physically restrain a person;

35 (C) Abuse or threatened abuse of the legal process; or

36 (D) Destroying, concealing, removing, confiscating or possessing any actual or purported  
37 passport or other immigration document, or any other actual or purported government

38 identification document of another person: *Provided*, That "forced labor" does not mean labor or  
39 services required to be performed by a person in compliance with a court order or as a required  
40 condition of probation, parole, or imprisonment.

41 As applied in this article, forced labor shall not include labor, work or services provided by a  
42 minor to the minor's parent, legal custodian or legal guardian, so long as the legal guardianship or  
43 custody of the minor was not obtained for the purpose of compelling the minor to participate in  
44 commercial sex acts or sexually explicit performance, or perform forced labor or services; nor shall  
45 it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her  
46 parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the  
47 purpose of discipline, supervision or teaching.

48 (6) "Human trafficking", "trafficking", or "traffics" means knowingly recruiting, transporting,  
49 transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an  
50 individual to engage in debt bondage, forced labor, or sexual servitude.

51 (7) "Identification document" means a passport, driver's license, immigration document,  
52 travel document or other government-issued identification document, including a document issued  
53 by a foreign government.

54 (8) "Labor or services" means activity having economic value.

55 (9) "Minor" means an individual a person less than or purported to be less than 18 years of  
56 age.

57 (10) "Patronize" means giving, agreeing to give or offering to give anything of value to  
58 another person in exchange for commercial sexual activity.

59 (11) "Person" means an individual, estate, business or nonprofit entity, or other legal entity.  
60 The term does not include a public corporation or government or governmental subdivision,  
61 agency or instrumentality.

62 (12) "Serious harm" means harm, whether physical or nonphysical, including  
63 psychological, economic or reputational, to an individual which would compel a reasonable

64 individual of the same background and in the same circumstances to perform or continue to  
65 perform labor or services or sexual activity to avoid incurring the harm.

66 (13) "Sexual activity" means sexual contact, sexual intercourse or sexual intrusion, as  
67 defined in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in  
68 section one, article eight-c of this chapter.

69 (14) "Sexual servitude" means:

70 (A) Maintaining or making available a minor for the purpose of engaging the minor in  
71 commercial sexual activity; or

72 (B) Using coercion to compel an adult to engage in commercial sexual activity.

73 (15) "Victim" means an individual who is subjected to human trafficking, regardless of  
74 whether a perpetrator is prosecuted or convicted.

NOTE: The purpose of this bill is to amend these two code provisions in regards to the definition of a minor which would now be a person under the age of 18, or purported to be under the age of 18.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.