

**H. B. 4006**

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(By Delegates L. Phillips, Rowan, Fleischauer, Sobonya,  
Guthrie, Sumner, Lawrence, Miller, Poore, Border and Arvon)  
[Introduced January 8, 2014; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §61-8C-3 of the Code of West Virginia,  
1931, as amended, relating to crimes pertaining to the  
possession, transmission, transportation, distribution and  
exhibiting of material depicting minors in sexually explicit  
conduct; adding the accessing of such materials with intent to  
view as a defined offense; creating an enhanced felony offense  
and penalty for possessing, accessing with intent to view,  
transporting, receiving or distributing files or materials  
which contain more than five hundred images in digital,  
photographic or video format which depict minors engaging in  
sexually explicit conduct; providing enhanced criminal  
penalties when the offender was previously convicted of a  
sexual offense when the victim was a child; and establishing  
criminal penalties for second or subsequent violations.

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

That §61-8C-3 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

1 **ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

2 **§61-8C-3. Distribution and exhibiting of material depicting minors**  
3 **engaged in sexually explicit conduct prohibited;**  
4 **penalty.**

5 (a) Any person who, with knowledge, sends or causes to be  
6 sent, or distributes, exhibits, possesses, accesses with intent to  
7 view, or displays or transports any material visually portraying a  
8 minor engaged in any sexually explicit conduct is guilty of a  
9 felony, and, upon conviction thereof, shall be imprisoned in the  
10 penitentiary correctional facility, not more than two years, and  
11 fined not more than \$2,000.

12 (b) Any person who, with knowledge, sends or causes to be  
13 sent, distributes, exhibits, displays or transports, or possesses  
14 or accesses with intent to view, files or other materials that  
15 contain more than five hundred separate images visually portraying  
16 a minor engaged in any sexually explicit conduct is guilty of a  
17 felony and, upon conviction, shall be imprisoned in a correctional  
18 facility, not less than eighteen months nor more than five years,  
19 and fined not more than \$10,000. For purposes of determining  
20 violations under this defined offense, each video frame and each  
21 image file or photograph that includes such sexually explicit  
22 content shall be counted as a separate image.

23 (c) Any person who violates this section and has been  
24 previously convicted of a felony for a sexual offense committed  
25 against a victim who was under the age of eighteen at the time of  
26 offense shall be imprisoned in a correctional facility, not less  
27 than two nor more than ten years, and fined not more than \$10,000.

1        (d) Any person convicted of a second or subsequent violation  
2 or the provisions of this section is guilty of a felony, and upon  
3 conviction, shall be imprisoned in a correctional facility, not  
4 less than two nor more than ten years, and fined not more than  
5 \$10,000.

NOTE: The purpose of this bill is to amend the defined crimes and penalties imposed by West Virginia law related to the possession and distribution of child pornography. The bill adds the "accessing with to intent to view" images of child pornography to the defined offense, and amends and clarifies certain elements of the defined offenses. The bill also creates enhanced penalties for offenders who intentionally view, possess, distribute or transmit a large quantity of such images. The bill also creates enhanced penalties for those who are convicted of a second and subsequent offenses and for those who were previously convicted of a felony sex offense where the victim was a minor.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the House Select Committee for Crimes Against Children.