

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Originating**

### **House Bill 4842**

BY DELEGATES CAPITO, PACK, WESTFALL, AND D. KELLY

[Originating in the Committee on the Judiciary;

reported on February 24, 2022]



1 A BILL to amend and reenact §61-8C-3 of the Code of West Virginia, 1931, as amended, relating  
2 to preparation, distribution, or exhibition of obscene matter to minors; and clarifying that  
3 the provisions of the section shall not apply to a certified law-enforcement officer or  
4 prosecuting attorney, or persons acting under the immediate direction of a certified law-  
5 enforcement officer or prosecuting attorney, certain court personnel, or attorneys  
6 representing an accused person, all while acting in the course of official duties.

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

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

1 (a) Any person who, knowingly and willfully, sends or causes to be sent or distributes,  
2 exhibits, possesses, electronically accesses with intent to view or displays or transports any  
3 material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony;  
4 Provided, That the provisions of this section shall not be construed as applying to the performance  
5 of official duties by a certified law-enforcement officer or prosecuting attorney or persons  
6 employed by, or acting at the immediate direction of, a law enforcement officer or prosecuting  
7 attorney, the performance of official duties by court personnel in the court with jurisdiction over an  
8 offense charged under the provisions of this article, or the performance of official duties by  
9 licensed attorneys representing a person accused of a violation of the provisions of this article.

10 (b) Any person who violates the provisions of subsection (a) of this section when the  
11 conduct involves fifty or fewer images shall, upon conviction, be imprisoned in a state correctional  
12 facility for not more than two years or fined not more than \$2,000 or both.

13 (c) Any person who violates the provisions of subsection (a) of this section when the  
14 conduct involves more than fifty but fewer than six hundred images shall, upon conviction, be  
15 imprisoned in a state correctional facility for not less than two nor more than ten years or fined  
16 not more than \$5,000, or both.

17           (d) Notwithstanding the provisions of subsections (b) and (c) of this section any person  
18 who violates the provisions of subsection (a) of this section when the conduct involves six hundred  
19 or more images or depicts violence against a child or a child engaging in bestiality shall, upon  
20 conviction, be imprisoned in a state correctional facility for not less than five nor more than fifteen  
21 years or fined not more than \$25,000, or both.

22           (e) For purposes of this section each video clip, movie or similar recording of five minutes  
23 or less shall constitute seventy-five images. A video clip, movie or similar recording of a duration  
24 longer than five minutes shall be deemed to constitute seventy-five images for every two minutes  
25 in length it exceeds five minutes.

NOTE: The purpose of this bill is to clarify that the provisions of the section shall not apply to a certified law-enforcement officer or prosecuting attorney, or persons acting under the immediate direction of a certified law-enforcement officer or prosecuting attorney, certain court personnel, or attorneys representing an accused person, all while acting in the course of official duties.

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