

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Introduced

House Bill 2363

By Delegate Kelly

[Introduced February 13, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8C-3 of the Code of West Virginia, 1931, as amended, relating
2 to child pornography; and clarifying the groups of persons to whom the criminal
3 prohibitions related to child pornography are inapplicable when such persons are
4 performing their official or employment duties.

Be it enacted by the Legislature of West Virginia:

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

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually

explicit	conduct	prohibited;	penalty.
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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 (b) Any person who violates the provisions of subsection (a) of this section when the
5 conduct involves 50 or fewer images shall, upon conviction, be imprisoned in a state correctional
6 facility for not more than two years or fined not more than \$2,000 or both.

7 (c) Any person who violates the provisions of subsection (a) of this section when the
8 conduct involves more than 50 but fewer than 600 images shall, upon conviction, be imprisoned in
9 a state correctional facility for not less than two nor more than 10 years or fined not more than
10 \$5,000, or both.

11 (d) Notwithstanding the provisions of subsections (b) and (c) of this section any person
12 who violates the provisions of subsection (a) of this section when the conduct involves 600 or more
13 images or depicts violence against a child or a child engaging in bestiality shall, upon conviction,
14 be imprisoned in a state correctional facility for not less than five nor more than 15 years or fined
15 not more than \$25,000, or both.

16 (e) For purposes of this section each video clip, movie or similar recording of five minutes
17 or less shall constitute 75 images. A video clip, movie, or similar recording of a duration longer

18 than five minutes shall be deemed to constitute 75 images for every two minutes in length it
19 exceeds five minutes.

20 (f) The provisions of this section are inapplicable to:

21 (1) Law enforcement personnel while acting in the performance of their official duties;

22 (2) Prosecuting attorneys while acting in the performance of their official duties;

23 (3) Attorneys representing persons charged with a violation of this article or a substantially

24 similar federal law while acting in the performance of their official duties;

25 (4) Judges and magistrates while acting in the performance of their official duties;

26 (5) Jurors while acting in the performance of their official duties; and

27 (6) Support personnel for the persons listed in subdivisions (1) through (4) of this

28 subsection in the performance of their professional, employment, and fact-finding duties.

29 (g) The Supreme Court of Appeals is hereby requested to promulgate such rules,

30 protocols, and forms as are necessary to regulate access to, use, and handling of materials

31 depicting minors engaging in sexually explicit conduct with due consideration given to the privacy

32 rights of victims and the due process rights of defendants in judicial proceedings.

NOTE: The purpose of this bill is to clarify that the provisions of the section shall not apply to certain official law-enforcement acts.

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