

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 2363

By Delegates Kelly and Heckert

[Originating in the Committee on the Judiciary;

Reported on February 20, 2025]

1 A BILL to amend and reenact §61-8C-3 of the Code of West Virginia, 1931, as amended, relating
2 to child pornography; clarifying the groups of persons to whom the criminal prohibitions
3 related to child pornography are inapplicable when such persons are performing their
4 official or employment duties; requesting the Supreme Court of Appeals to promulgate
5 certain rules; authorizing mandatory reporting of certain individuals who observe images
6 appearing to be a minor engaged in sexually explicit conduct on electronic devices; and
7 creating an affirmative defense for persons complying with the mandatory reporting
8 requirements.

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.**

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

not more than \$25,000, or both.

(e) For purposes of this section each video clip, movie or similar recording of five minutes or less shall constitute 75 images. A video clip, movie, or similar recording of a duration longer than five minutes shall be deemed to constitute 75 images for every two minutes in length it exceeds five minutes.

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

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

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

(3) Attorneys acting as officers of the court and while acting in the performance of their official duties;

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

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

(6) Support personnel for the persons listed in subdivisions (1) through (4) of this subsection in the performance of their professional, employment, and fact-finding duties; and

(7) Any person acting in accordance and in compliance with a valid order issued by a circuit court of this state or the Supreme Court of Appeals.

(g) The Supreme Court of Appeals is hereby requested to promulgate such rules, protocols, and forms as are necessary to regulate access to, use, and handling of materials depicting minors engaging in sexually explicit conduct with due consideration given to the privacy rights of victims and the due process rights of defendants in judicial proceedings.

(h)(1) Any person not listed in subsection (f) of this section who, in the course and scope of employment or business, views an image or images on a computer or electronic device that is or appears to be material visually portraying a minor engaged in any sexually explicit conduct shall immediately report the discovery of the image or images to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report must include the name and address of the owner or person claiming a right to possession of the

41 computer or electronic device, if known, and as permitted by federal law. For purposes of this
42 subdivision, such reporting may include furnishing the law enforcement officer with any image,
43 information, or data that the person reasonably believes to be evidence of material visually
44 portraying a minor engaged in any sexually explicit conduct, transmission of material visually
45 portraying a minor engaged in any sexually explicit conduct, or an image, information, or data that
46 is harmful to minors.

47 (2) Except in a case of willful or wanton misconduct, compliance with subdivision (1) of this
48 subsection is an affirmative defense to an alleged violation of this section.

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.