

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 198

BY SENATORS GRADY AND DEEDS

[Passed April 10, 2025; in effect 90 days from passage (July 9, 2025)]

1 AN ACT to amend and reenact §61-8-28a, §61-8C-1, §61-8C-2, §61-8C-3, §61-8C-3a, and §61-
2 8C-3b of the Code of West Virginia, 1931, as amended; and to amend the code by adding
3 a new section, designated §61-8C-3c, relating to unlawful computer-generated images;
4 creating definitions relating to intimate images; clarifying the offense of nonconsensual
5 disclosure of intimate images includes certain fabricated intimate images; creating
6 criminal offenses for nonconsensual disclosure of fabricated intimate images; clarifying
7 the definitions relating to filming sexually explicit conduct of minors; creating definitions
8 relating to filming sexually explicit conduct of minors; creating definitions relating to
9 computer-generated child pornography; clarifying certain exemptions for the definitions
10 relating to computer-generated child pornography; amending the article for consistent use
11 of defined terms; clarifying facts or circumstances applicable to liability for offenses
12 involving filming sexually explicit conduct of minors; creating criminal offenses for
13 computer-generated child pornography; increasing certain penalties for distribution and
14 exhibiting of material depicting minors engaged in sexually explicit conduct or computer-
15 generated child pornography; reducing the number of images required for prosecution of
16 certain offenses relating to distribution and exhibiting of material depicting minors engaged
17 in sexually explicit conduct or computer-generated child pornography; clarifying the
18 number of images attributable to certain video clips, movies, or similar recordings;
19 clarifying that certain acts involving computer-generated child pornography may be acts
20 of delinquency for minors; creating confidentiality provisions for restricted materials used
21 for prosecution of offenses; clarifying the groups of persons to whom the criminal
22 prohibitions related to child pornography are inapplicable when such persons are
23 performing their official or employment duties; requesting the Supreme Court of Appeals
24 to promulgate certain rules; authorizing mandatory reporting of certain individuals who
25 observe images appearing to be a minor engaged in sexually explicit conduct on electronic
26 devices; creating an affirmative defense for persons complying with the mandatory

27 reporting requirements; creating criminal penalties; and making technical and stylistic
28 corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

1 (a) As used in this section:

2 (1) "Disclose" means to publish, publicly display, distribute, deliver, circulate or
3 disseminate by any means, including, but not limited to, electronic transmission.

4 (2) "Image" means a photograph, videotape, motion picture film, digital recording or any
5 product of any mechanical or electronic recording process or device that can preserve, for later
6 viewing, a visual image.

7 (3) "Intimate parts" means a person's genitalia, pubic area, anus, or female post-
8 pubescent breasts.

9 (4) To "publicly disclose" means to disclose an image to one or more persons other than
10 those persons whom the person depicted understood would view the image at the time it was
11 captured.

12 (5) "Fabricated intimate image" means an image of an identifiable depicted individual that
13 was created by the use of artificial intelligence or other computer technology capable of
14 processing and interpreting specific data inputs and depicts computer-generated intimate parts
15 or the intimate parts of another human being as the intimate parts of the depicted individual.

16 (b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten
17 to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, a
18 fabricated intimate image of another or an image of another which shows the intimate parts of the
19 depicted person or shows the depicted person engaged in sexually explicit conduct which was

captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed.

(c)(1) A person convicted of a violation of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than three years, fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.

(d) The provisions of this section do not apply to:

(1) Images disclosed with the prior written consent of the person depicted;

(2) Images depicting the person voluntarily exposing himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

(e) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.

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

§61-8C-1. Definitions.

(a) For the purposes of this article:

(1) "Minor" means any child under 18 years of age.

(2) "Knowledge" means knowing or having reasonable cause to know which warrants further inspection or inquiry.

(3) "Sexually explicit conduct" includes any of the following, whether actually performed or simulated:

(A) Genital to genital intercourse;

(B) Fellatio;

(C) Cunnilingus;

(D) Anal intercourse;

(E) Oral to anal intercourse;

(F) Bestiality;

(G) Masturbation;

(H) Sadomasochistic abuse, including, but not limited to, flagellation, torture, or bondage;

(I) Excretory functions in a sexual context; or

(J) Exhibition of the genitals, pubic, or rectal areas of any person in a sexual context.

(4) "Person" means an individual, partnership, firm, association, corporation, or other legal entity: *Provided*, That this term does not apply to the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.

(5) "Visual portrayal" means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording;

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices; or

(F) Any media listed in this subdivision which was created, generated, or otherwise produced, in whole or in part, by any manner of manipulation, including, but not limited to, artificial intelligence.

(6) "Computer-generated child pornography" means:

(A) Any visual portrayal of an identifiable minor that has been created, adapted, or modified to depict the minor as engaging in sexually explicit conduct; or

(B) Any visual portrayal that appears to depict a minor engaged in sexually explicit conduct if the visual portrayal is:

(i) Created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to create a visual portrayal; and

(ii) Indistinguishable from a minor.

(7) "Identifiable minor" means any visual portrayal that depicts a minor who is identifiable from the matter itself or from information displayed with or otherwise connected to the matter, and that was created or altered by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to depict the minor.

(8) "Indistinguishable" as used with respect to a visual portrayal, means virtually indistinguishable, in that the visual portrayal is such that an ordinary person viewing the visual portrayal would conclude that the visual portrayal is of an actual minor engaged in sexually explicit conduct. This definition does not apply to visual portrayals that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

(b) Nothing in this article shall be construed to include a visual portrayal of an actual and identifiable person who was not a minor at the time the visual portrayal was created.

§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct is guilty of a felony when the act is being used to create a visual portrayal. Upon conviction thereof,

4 such person shall be fined not more than \$10,000 or imprisoned in the penitentiary not more than
5 10 years, or both fined and imprisoned.

6 (b) Any person who creates a visual portrayal of a minor engaging in any sexually explicit
7 conduct is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000,
8 or imprisoned in the penitentiary not more than 10 years, or both fined and imprisoned.

9 (c) Any parent, legal guardian, or person having custody and control of a minor, who
10 creates a visual portrayal of such minor in any sexually explicit conduct or causes or knowingly
11 permits, uses, persuades, induces, entices, or coerces such minor child to engage in or assist in
12 any sexually explicit act is guilty of a felony when such act is used to create a visual portrayal.
13 Upon conviction thereof, such person shall be fined not more than \$10,000 or imprisoned in the
14 penitentiary not more than 10 years, or both fined and imprisoned.

15 (d) It is not a defense under this section that the minor depicted has attained the age of at
16 least 18 years old at the time of investigation and/or prosecution, as long as the visual portrayal
17 of the minor used was originally taken or captured when the subject was less than 18 years of
18 age.

19 (e) It is not a defense under this section that the minor depicted is deceased at the time of
20 investigation and/or prosecution, regardless of whether the minor depicted had attained the age
21 of 18 years of age at the time of his or her death.

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

1 (a) Any person who knowingly sends or causes to be sent or distributes, exhibits,
2 possesses, electronically accesses with intent to view or displays or transports any visual
3 portrayal of a minor engaged in any sexually explicit conduct or computer-generated child
4 pornography is guilty of a felony.

5 (b) It is sufficient for purposes of this section that the material visually portrays a minor,
6 regardless of whether the subject's age is represented to be less than age 18 years old or whether
7 the minor subject's actual identity can be ascertained.

8 (c) A visual portrayal created in whole or in part by digital manipulation, artificial
9 intelligence, or any other means may satisfy the requirements of this section.

10 (d) It is not a defense under this section that the minor depicted has attained the age of at
11 least 18 years old at the time of investigation and/or prosecution, as long as the visual portrayal
12 of the minor was originally taken or captured when the subject was under the age of 18 years of
13 age.

14 (e) It is not a defense under this section that the minor depicted is deceased at the time of
15 investigation and/or prosecution, regardless of whether the minor depicted had attained the age
16 of at least 18 years of age at the time of his or her death.

17 (f) Any person who violates the provisions of subsection (a) of this section when the
18 conduct involves 50 or fewer images shall, upon conviction, be imprisoned in a state correctional
19 facility for not less than two years nor more than five years or fined not more than \$5,000 or both.

20 (g) Any person who violates the provisions of subsection (a) of this section when the
21 conduct involves more than 50 but fewer than 300 images shall, upon conviction, be imprisoned
22 in a state correctional facility for not less than three nor more than 15 years or fined not more than
23 \$10,000, or both.

24 (h) Notwithstanding the provisions of subsections (b) and (c) of this section, any person
25 who violates the provisions of subsection (a) of this section when the conduct involves 300 or
26 more images or depicts violence against a child or a child engaging in bestiality shall, upon
27 conviction, be imprisoned in a state correctional facility for not less than five nor more than 20
28 years or fined not more than \$25,000, or both.

(i) For purposes of this section each video clip, movie, or similar recording of five minutes or less shall constitute 100 images. A video clip, movie or similar recording of a duration longer than five minutes constitutes 100 images for every two minutes in length it exceeds five minutes.

§61-8C-3a. Prohibiting child erotica; penalties.

(a) Any person age 18 or over who knowingly and intentionally produces, possesses, displays or distributes, in any form, any visual portrayals of minors who are partially clothed, where the visual portrayals are: (1) Unrelated to the sale of a commercially available legal product; and (2) used for purely prurient purposes, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year or fined not more than \$1,000, or both confined and fined.

(b) As used in this section only:

(1) "Purely prurient purposes" means for the specific purpose of sexual gratification or sexual arousal from viewing the visual portrayals prohibited by this section; and

(2) "Commercially available" means for sale to the general public.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing, and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates any computer-generated child pornography or a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

(b) As used in this section, “posing in an inappropriate sexual manner” means exhibition of a bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual gratification.

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual portrayal did neither solicit its receipt nor distribute, transmit, or present it to another person by any means.

(d) Notwithstanding the provisions of §15-12-1 *et seq.* of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of that article and chapter.

§61-8C-3c. Confidentiality; exemption from prosecution.

(a) Nothing in this article shall be construed to prevent the lawful investigation and/or prosecution of the criminal offenses described in this article: *Provided*, That prohibited media or visual portrayal described in this article shall not be published to the public at any time.

(b) It does not constitute an offense of the crimes set forth in this article when the following persons possess or distribute prohibited media or material, or visual portrayal while acting in the performance of their official duties:

(1) Law enforcement officials, including those entities with specialized investigatory experience with whom law enforcement agencies regularly contract for the purpose of providing investigatory services and assistance;

(2) Prosecuting attorneys;

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

(4) Judges and magistrates;

(5) Jurors hearing a case involving an alleged violation of offenses in this article;

(6) Support personnel for the persons listed in this section; and

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

18 (c) The Supreme Court of Appeals is hereby requested to promulgate such rules,
19 protocols, and forms which are necessary to regulate access to, use, and handling of prohibited
20 media and visual portrayals described in this article, giving due consideration to the privacy rights
21 of victims and the due process rights of defendants in criminal proceedings.

22 (d)(1) Any person not listed in subsection (b) of this section who, in the course and scope
23 of employment or business, views an image or images on a computer or electronic device that is
24 or appears to be material visually portraying a minor engaged in any sexually explicit conduct
25 shall immediately report the discovery of the image or images to a local or state law-enforcement
26 agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report
27 must include the name and address of the owner or person claiming a right to possession of the
28 computer or electronic device, if known, and as permitted by federal law. For purposes of this
29 subdivision, such reporting may include furnishing the law enforcement officer with any image,
30 information, or data that the person reasonably believes to be evidence of material visually
31 portraying a minor engaged in any sexually explicit conduct, transmission of material visually
32 portraying a minor engaged in any sexually explicit conduct, or an image, information, or data that
33 is harmful to minors.

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

The Clerk of the Senate and the Clerk of the House of Delegates hereby
certify that the foregoing bill is correctly enrolled.

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Clerk of the Senate

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Clerk of the House of Delegates

Originated in the Senate.

In effect 90 days from passage.

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President of the Senate

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Speaker of the House of Delegates

The within is this the.....
Day of, 2025.

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Governor