

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 198

BY SENATOR GRADY

[Reported February 26, 2025, from the Committee on
the Judiciary]

1 A BILL to amend and reenact §61-8C-1, §61-8C-2, §61-8C-3, §61-8C-3a, and §61-8C-3b of the
2 Code of West Virginia, 1931, as amended; and to amend the code by adding a new
3 section, designated §61-8C-3c, relating to modifying and modernizing language of the
4 offenses of filming of sexually explicit conduct of minors; adding language to include media
5 which has been digitally created or altered to said offenses; declaring that certain facts
6 shall not be a defense; clarifying certain terms; enumerating certain individuals who are
7 exempt from prosecution of these offenses; and requesting the Supreme Court of Appeals
8 to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

§61-8C-1. Definitions.

1 For the purposes of this article:

2 ~~(a) (1)~~ "Minor" means any child under ~~eighteen~~ 18 years of age.

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

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

7 ~~(1) (A)~~ Genital to genital intercourse;

8 ~~(2) (B)~~ Fellatio;

9 ~~(3) (C)~~ Cunnilingus;

10 ~~(4) (D)~~ Anal intercourse;

11 ~~(5) (E)~~ Oral to anal intercourse;

12 ~~(6) (F)~~ Bestiality;

13 ~~(7) (G)~~ Masturbation;

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

~~(9)~~ (I) Excretory functions in a sexual context; or

~~(40)~~ (J) Exhibition of the genitals, pubic, or rectal areas of any person in a sexual context.

~~(d)~~ (4) "Person" means an individual, partnership, firm, association, corporation, or other legal entity: Provided, That this term does not apply to a telecommunications service or an information service, as those terms are defined in 47 U.S.C. Section 153, for transmitting 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; or

(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;

(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.

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

(a) Any person who causes or ~~knowingly~~ willfully 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 ~~shall be~~ is guilty of a felony when ~~such person has knowledge that any such the~~ act is being ~~photographed or filmed~~ used to create a visual portrayal. Upon conviction thereof, such person shall be fined not more than \$10,000 or imprisoned in the penitentiary not more than ~~ten~~ 10 years, or both fined and imprisoned.

(b) Any person who ~~photographs or films such~~ creates a visual portrayal of a minor engaging in any sexually explicit conduct ~~shall be~~ is guilty of a felony, and, upon conviction

thereof, shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than ~~ten~~ 10 years, or both fined and imprisoned.

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

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

(e) It is not a defense under this section that the minor depicted is deceased at the time of investigation and/or prosecution, regardless of whether the minor depicted had attained the age 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 prohibited; penalty.

(a) Any person who, ~~knowingly and~~ willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view or displays or transports any ~~material visually portraying~~ visual portrayal of a minor engaged in any sexually explicit conduct is guilty of a felony.

(b) It is not a defense to this section that a minor subject's identity and/or age cannot be ascertained. It is sufficient that the material visually portrays a person who is represented to be a minor or when viewed by a reasonably prudent person appears to portray a minor, regardless of whether the subject's age is represented to be less than age 18 years old.

9 ~~(c)~~ It is not a defense under this section that the visual portrayal was created, in whole or
10 in part, by digital manipulation, artificial intelligence, or any other means.

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

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

18 ~~(b)~~ (f) Any person who violates the provisions of subsection (a) of this section when the
19 conduct involves ~~fifty~~ 50 or fewer images shall, upon conviction, be imprisoned in a state
20 correctional facility for not more than two years or fined not more than \$2,000 or both.

21 ~~(c)~~ (g) Any person who violates the provisions of subsection (a) of this section when the
22 conduct involves more than ~~fifty~~ 50 but fewer than ~~six hundred~~ 600 images shall, upon conviction,
23 be imprisoned in a state correctional facility for not less than two nor more than ~~ten~~ 10 years or
24 fined not more than \$5,000, or both.

25 ~~(d)~~ (h) Notwithstanding the provisions of subsections (b) and (c) of this section, any person
26 who violates the provisions of subsection (a) of this section when the conduct involves ~~six hundred~~
27 600 or more images or depicts violence against a child or a child engaging in bestiality shall, upon
28 conviction, be imprisoned in a state correctional facility for not less than five nor more than ~~fifteen~~
29 15 years or fined not more than \$25,000, or both.

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

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

(a) Any person age ~~eighteen~~ 18 or over who ~~knowingly and intentionally~~ willfully 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.

~~(3) A "minor" is a child under the age of sixteen years, or a person who is sixteen years of age or older but less than eighteen years old and who is mentally defective or mentally incapacitated.~~

§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 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 titillation.

~~(1) "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 titillation.~~

~~(2) "Visual portrayal" means:~~

~~(A) A photograph;~~

~~(B) A motion picture;~~

~~(C) A digital image;~~

~~(D) A digital video recording; or~~

~~(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;~~

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual ~~depiction~~ 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;

10 (2) Prosecuting attorneys;

11 (3) Attorneys representing persons charged with a violation of offenses in this article or a
12 substantially similar federal statute;

13 (4) Judges and magistrates;

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

15 (6) Support personnel for the persons listed in this section.

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