

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2226

FISCAL
NOTE

By Delegate Westfall

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended, relating to
 2 the offense of criminal invasion of privacy by visual portrayal; changing the offense from a
 3 misdemeanor to a felony and increasing the penalties for this offense.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28. Criminal invasion of privacy; penalties.

1 (a) For the purposes of this section, the words or terms defined in this subsection have the
 2 meanings ascribed to them. These definitions are applicable unless a different meaning clearly
 3 appears from the context:

4 (1) "A person fully or partially nude" means a male or female who is either clothed or
 5 unclothed so that: (A) All or any part of his or her genitals, pubic area or buttocks is visible; or (B) in
 6 the case of a female only, a part of a nipple of her breast is visible and is without a fully opaque
 7 covering;

8 (2) "To visually portray" a person means to create a reproducible image of that person by
 9 means of:

10 (A) A photograph;

11 (B) A motion picture;

12 (C) A video tape;

13 (D) A digital recording; or

14 (E) Any other mechanical or electronic recording process or device that can preserve, for
 15 later viewing, a visual image of a person; and

16 (3) "Place where a reasonable person would have an expectation of privacy" means a
 17 place where a reasonable person would believe that he or she could, in privacy, be fully or partially
 18 nude without expecting that the act of exposing his or her body was being visually portrayed by
 19 another person.

20 (b) It is unlawful for a person to knowingly visually portray another person without that other
21 person's knowledge, while that other person is fully or partially nude and is in a place where a
22 reasonable person would have an expectation of privacy. A person who violates the provisions of
23 this subsection is guilty of a ~~misdemeanor~~ felony and, upon conviction, shall be confined in a
24 ~~county or regional jail~~ state correctional facility for not ~~more than one year~~ less than one year nor
25 more than three years or fined not more than \$5,000, or both.

26 (c) Any person who displays or distributes visual images of another person with knowledge
27 that said visual images were obtained in violation of subsection (b) of this section is guilty of a
28 misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than
29 one year or fined not more than \$5,000, or both.

30 (d) A person who is convicted of a second or subsequent violation of subsection (b) or (c)
31 of this section is guilty of a felony and, upon conviction, shall be confined in a state correctional
32 facility for not less than one year nor more than five years or fined not more than \$10,000, or both.

NOTE: The purpose of this bill is to increase the offense of criminal invasion of privacy by visual portrayal from a misdemeanor to a felony, with a corresponding increase in the penalty for this offense.

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