

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5360**

By Delegates Kelly, Hott, Hornby, Phillips, Jeffries,

Pinson, Brooks, and Steele

[Introduced January 30, 2024; 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.**

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 fifty 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 fifty but fewer than six hundred images shall, upon conviction, be  
 9 imprisoned in a state correctional facility for not less than two nor more than ~~ten~~ 10 years or fined  
 10 not more than \$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 ~~six hundred~~  
 13 600 or more images or depicts violence against a child or a child engaging in bestiality shall, upon  
 14 conviction, be imprisoned in a state correctional facility for not less than five nor more than ~~fifteen~~  
 15 15 years or fined 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 ~~seventy-five~~ 75 images. A video clip, movie or similar recording of a  
 18 duration longer than five minutes shall be deemed to constitute ~~seventy-five~~ 75 images for every

19 two minutes in length it 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.