

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 855

By Senator Chapman

[Introduced February 19, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8A-2, §61-8A-3, §61-8A-4, and §61-8A-5 of the Code of West
 2 Virginia, 1931, as amended, relating to clarifying the felony of exhibiting obscene matter to
 3 a minor for the purpose of abuse to be clarified to include any depiction of sexually graphic
 4 material to a minor for the purpose of seducing a minor.

Be it enacted by the Legislature of West Virginia:

§61-8A-2. Distribution and display to minor of obscene matter or matter depicting sexually explicit conduct for the purpose of seducing a minor; penalties; defenses.

1 (a) Any adult, with knowledge of the character of the matter, who knowingly and
 2 intentionally distributes, offers to distribute, or displays to a minor any obscene matter or matter
 3 depicting sexually explicit conduct for the purpose of seducing a minor, is guilty of a felony and,
 4 upon conviction thereof, shall be fined not more than \$25,000, or confined in a state correctional
 5 facility for not more than five years, or both.

6 (b) It is a defense to a prosecution under the provisions of this section that the obscene
 7 matter or matter depicting sexually explicit conduct:

8 (1) Was displayed in an area from which minors are physically excluded and the matter so
 9 located cannot be viewed by a minor from nonrestricted areas; or

10 (2) Was covered by a device, commonly known as a "blinder rack," such that the lower two
 11 thirds of the cover of the material is not exposed to view; or

12 (3) Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the
 13 material was not exposed to view; or

14 (4) Was displayed or distributed after taking reasonable steps to receive, obtain or check
 15 an adult identification card, such as a driver's license or other technically or reasonably feasible
 16 means of verification of age.

17 (c) It is a defense to an alleged violation under this section that a parent had taken
 18 reasonable steps to limit the minor's access to the obscene matter.

§61-8A-3. Exemptions from criminal liability.

1 The criminal provisions of §61-8A-2 of this code do not apply to:

2 (a) A bona fide school, in the presentation of local or state approved curriculum;

3 (b) A public library, or museum, which is displaying or distributing any obscene matter to a
4 minor only when the minor was accompanied by his or her parent;

5 (c) A licensed medical or mental health care provider, or judicial or law-enforcement officer,
6 during the course of medical, psychiatric, or psychological treatment or judicial or law-enforcement
7 activities;

8 (d) A person who did not know or have reason to know, and could not reasonably have
9 learned, that the person to whom the obscene matter was distributed or displayed was a minor and
10 who took reasonable measures to ascertain the identity and age of the minor;

11 (e) A person who routinely distributes obscene matter depicting sexually explicit conduct or
12 matter depicting sexually explicit conduct for the purpose of seducing a minor by the use of
13 telephone, computer network or the Internet and who distributes such matter to any minor under
14 the age of eighteen years after the person has taken reasonable measures to prevent access by
15 minors to the obscene matter; or

16 (f) A radio or television station, cable television service or other telecommunications
17 service regulated by the federal communications commission.

**§61-8A-4. Use of obscene matter and matter depicting sexually explicit conduct with intent
to seduce minor.**

1 Any adult, having knowledge of the character of the matter, who knows or believes that a
2 person is a minor at least four years younger than the adult, and distributes, offers to distribute or
3 displays by any means any obscene matter depicting sexually explicit conduct or matter depicting
4 sexually explicit conduct for the purpose of seducing a minor to the person who is known or
5 believed to be a minor at least four years younger than the adult, and such distribution, offer to
6 distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual
7 seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not

8 more than \$25,000, or imprisoned in a state correctional facility for not more than five years, or
9 both. For a second and each subsequent commission of such offense, such person is guilty of a
10 felony and, upon conviction, shall be fined not more than \$50,000 or imprisoned in a state
11 correctional facility for not more than ten years, or both.

§61-8A-5. Employment or use of minor to produce obscene matter depicting sexually explicit conduct or assist in doing sexually explicit conduct; penalties.

1 Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable
2 care in ascertaining the age of a minor, hires, employs or uses such minor to produce obscene
3 matter depicting sexually explicit conduct or matter depicting sexually explicit conduct for the
4 purpose of seducing a minor, or to do or assist in doing any sexually explicit conduct, is guilty of a
5 felony and, upon conviction thereof, shall be fined not more than \$50,000 or confined in a state
6 correctional facility for not more than ten years, or both.

NOTE: The purpose of this bill is to amend and clarify the felony of exhibiting "obscene matter" to a minor for the purpose of abuse to be clarified to include any depiction of sexually graphic material to a minor for the purpose of seducing a minor.

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