WEST VIRGINIA CODE CHAPTER 61 ARTICLE 8

WV Legislature

§61-8-1. Bigamy -- Penalty.

Any person, being married, who, during the life of the former husband or wife, shall marry another person in this state, or, if the marriage with such other person take place out of this state, shall thereafter cohabit with such other person in this state, shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years.

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§61-8-2. Same -- Effect of absence, divorce or void marriage.

The preceding section shall not extend to a person whose former husband or wife has been continuously absent from such person for seven years next before the marriage of such person to another, and shall not have been known by such person to be living within that time; nor to a person who shall, at the time of the subsequent marriage, have been divorced from the bond of the former marriage, and the term fixed by the decree of the court granting the divorce, in which the parties may not remarry save to each other, shall have elapsed, or whose former marriage shall, at that time, have been declared void by the sentence of a court of competent jurisdiction.

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§61-8-3.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

WV Legislature

§61-8-4.

Repealed.

Acts, 2010 Reg. Sess., Ch. 34.

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§61-8-5. Houses of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts.

(a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period not less than six months nor more than one year, and by a fine of not less than $100 and not to exceed $250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than 60 days nor more than six months, and by a fine of not less than $50 and not to exceed $100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than $100 and not to exceed $250, and upon conviction for any subsequent offense under this section shall be punished by confinement in a state correctional facility for not less than one year nor more than three years: *Provided*, That no minor shall be prosecuted nor held criminally liable for an offense of prostitution in violation this subsection if the court determines that the minor is a victim of an offense under §61-14-1 *et seq*. of this code.

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The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator, or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting, or renting any house, place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution, lewdness, or assignation, shall be void from and after the date of any person who is a party to such an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person, charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp, or other structure, and of the person or persons who reside in or frequent same, and of the defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and determine the misdemeanors set forth and described in this section.

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§61-8-6. Detention of person in place of prostitution; penalty.

Whoever shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly, keep, hold, detain or restrain, or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than $100 nor more than $500, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for not less than one nor more than three years: Provided, That in any offense under this section where the person so kept, held, detained or restrained is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two years nor more than five years or fined not more than $5,000, or both.

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§61-8-7. Procuring for house of prostitution; penalty; venue; competency as witness; marriage no defense.

Any person who shall procure an inmate for a house of prostitution, or who, by promises, threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person; or any person who shall, by promises, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into or leave this state for the purpose of prostitution, or who shall procure any person to become an inmate of a house of ill fame within this state or to come into or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this state, or to come into or leave this state for the purpose of prostitution, shall be guilty of pandering, and, upon a first conviction for an offense under this section, shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than $100 nor more than $500, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than five years: Provided, That where the inmate referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction shall be confined in the penitentiary not less than two years nor more than five years or fined not more than $5,000, or both.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this state, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in any county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

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§61-8-8. Receiving support from prostitution; pimping; penalty; prostitute may testify.

Any person who, knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution, shall be guilty of pimping, and, upon the first conviction for such offense, shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than $100 nor more than $500; and, upon a conviction for any subsequent offense hereunder, shall be punished by imprisonment in the penitentiary for a period of not less than one nor more than three years: Provided, That where the prostitute referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction shall be confined in the penitentiary not less than two years or fined not more than $5,000, or both. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

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§61-8-9. Indecent exposure.

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: Provided, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than $250, or both fined and confined.

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than $3,000 and imprisoned in a state correctional facility for not less than one year nor more than five years.

WV Legislature

§61-8-9a. Child abuse; education; curriculum.

The Legislature finds the best way to avoid child abuse in West Virginia is to educate our young people on the skills of parenting; therefore, the Legislature directs the commissioner of the department of health, the state Superintendent of Schools and the commissioner of the department of human services to develop a curriculum to be taught in each of the secondary grades; such curriculum shall include, but not be limited to, discipline, handling stresses of raising children, and the health care needs of children. Such curriculum shall start no later than the 1990-1991 school year.

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§61-8-10. Administering anesthetics to female save in presence of third person; penalty.

It shall be unlawful for any physician, dentist or other person to administer chloroform, ether, or any anaesthetic whatsoever, whereby sleep or total loss of sensation or consciousness may be produced, to any female person, unless in the presence of some third person. Any person offending against this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding $100 or be confined in jail not exceeding sixty days, or both fined and imprisoned, in the discretion of the court.

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§61-8-11. Breathing, inhaling, or drinking certain intoxicating compounds; penalty.

(a) No person shall intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichloroethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the Auditory, visual, or mental processes. For the purposes of this section, any condition so induced shall be deemed to be an intoxicated condition.

(b) This section does not apply to:

(1) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or

(2) To any alcoholic liquor or nonintoxicating beer as defined in section five, article one, chapter sixty of this code.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or be confined in a county or regional jail for not more than sixty days, or both fined and imprisoned.

WV Legislature

§61-8-12. Incest; penalty.

(a) For the purposes of this section:

(1) “Aunt” means the sister of a person’s mother or father;

(2) “Brother” means the son of a person’s mother or father;

(3) “Daughter” means a person’s natural daughter, adoptive daughter, or the daughter of a person’s husband or wife;

(4) “Father” means a person’s natural father, adoptive father, or the husband of a person’s mother;

(5) “Granddaughter” means the daughter of a person’s son or daughter;

(6) “Grandfather” means the father of a person’s father or mother;

(7) “Grandmother” means the mother of a person’s father or mother;

(8) “Grandson” means the son of a person’s son or daughter;

(9) “Mother” means a person’s natural mother, adoptive mother, or the wife of a person’s father;

(10) “Niece” means the daughter of a person’s brother or sister;

(11) “Nephew” means the son of a person’s brother or sister;

(12) “Sexual intercourse” means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) “Sexual intrusion” means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) “Sister” means the daughter of a person’s father or mother;

(15) “Son” means a person’s natural son, adoptive son, or the son of a person’s husband or wife; and

(16) “Uncle” means the brother of a person’s father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual

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intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle, or aunt.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor more than 15 years, or fined not less than $500 nor more than $5,000 and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under §61-11A-1 et seq. of this code, the court may order any person convicted under the provisions of this section, where the victim is a minor, to pay all or any portion of the cost of medical, psychological, or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(e) In any case where a person is convicted of an offense described in this section against a child and further has or may have custodial, visitation, or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of §49-4-601 through §49-4-610 of this code, and shall take further action in accord with the provisions of those sections.

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§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

(a) In any prosecution under the provisions of section twelve of this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law-enforcement or discovery purposes. To the extent possible the rule shall protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

(c) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(d) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(e) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

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§61-8-14. Disinterment or displacement of dead body or part thereof; damage to cemetery or graveyard; penalties; damages in civil action.

(a) Any person who unlawfully and intentionally disinters or displaces a dead human body, or any part of a dead human body, placed or deposited in any vault, mausoleum or any temporary or permanent burial place, removes personal effects of the decedent removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a felony, and, upon conviction thereof, shall be confined in a state correctional facility for a determinate sentence of not more than five years.

(b)(1) Any person who intentionally desecrates any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery, graveyard, mausoleum or other designated human burial site is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $2,000, or confined in jail not more than one year, or both fined and confined.

(2) Any person who intentionally and without legal right destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, landscape contents, including a tree, shrub, flower, or plant, within the limits of a cemetery, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $2,000, or confined in jail not more than one year, or both fined and confined.

(3) For the purposes of this subsection, “desecrate” means destroying, cutting, mutilating, effacing, injuring, tearing down, removing, defacing, damaging or otherwise physically mistreating in a way that a reasonable person knows will outrage the sensibilities of persons likely to observe or discover his or her actions.

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§61-8-15. Prohibition on certain demonstrations at funerals.

(a) No person may carry out, with respect to any cemetery or building at which a funeral or memorial service or ceremony is to be held, a demonstration within 500 feet of the cemetery or building that:

(1) Is conducted during the period beginning 60 minutes before and ending 60 minutes after the funeral or memorial service or ceremony is held; and

(2) Includes, as a part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.

(b) For purposes of this section, the term "demonstration" includes the following:

(1) Any picketing or similar conduct.

(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony.

(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral or memorial service or ceremony.

(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral or memorial service or ceremony.

(c) Any person who violates the provisions of subsection (a) is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for an indeterminate sentence of not more than one year and fined not less than $200 nor more than $500.

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§61-8-16. Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty.

(a) It is unlawful for any person with intent to harass or abuse another by means of telephone to:

(1) Make any comment, request, suggestion or proposal which is obscene; or

(2) Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or

(3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or

(5) Threaten to commit a crime against any person or property.

(b) It shall be unlawful for any person to knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

(d) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in jail not more than six months, or both fined and confined.

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§61-8-17.

Repealed.

Acts, 1964 Reg. Sess., Ch. 12.

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§61-8-18.

Repealed.

Acts, 1964 Reg. Sess., Ch. 12.

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§61-8-19. Cruelty to animals; penalties; exclusions.

(a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,

(A) Mistreat an animal in cruel manner;

(B) Abandon an animal;

(C) Withhold;

(i) Proper sustenance, including food or water;

(ii) Shelter that protects from the elements of weather; or

(iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;

(D) Abandon an animal to die;

(E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;

(F) Ride an animal when it is physically unfit;

(G) Bait or harass an animal for the purpose of making it perform for a person's amusement;

(H) Cruelly chain or tether an animal; or

(I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

(2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 nor more than $2,000 or confined in jail not more than six months, or both.

(b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than five years and be fined not less than $1,000 nor more than $5,000. For the purposes of this subsection, "torture" means an action taken for the primary purpose of inflicting pain.

(c) A person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less

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than $500 nor more than $2,000.

(d) Any person convicted of a violation of this section forfeits his or her interest in any animal and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(e) For the purpose of this section, the term "controlled substance" has the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and, shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than $500 nor more than $3,000, or both. The incarceration set forth in this subsection is mandatory unless the provisions of subsection (h) of this section are complied with.

(h)(1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the evaluation.

(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

(i) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding $2,000 and forfeiture of the animal.

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§61-8-19a. Animal fighting ventures prohibited.

(a) For the purpose of this article, "animal fighting venture" means any event that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment: Provided, That it shall not be deemed to include any lawful activity the primary purpose of which involves the use of one or more animals in racing or in hunting another animal: Provided, however, That “animal fighting venture” does not include the lawful use of livestock as such is defined in section two, article ten-b, chapter nineteen of this code or exotic species of animals bred or possessed for exhibition purposes when such exhibition purposes do not include animal fighting or training therefor.

(b) It is unlawful for any person to conduct, finance, manage, supervise, direct, engage in, be employed at, or sell an admission to any animal fighting venture or to knowingly allow property under his care, custody or control to be so used.

(c) It is unlawful for any person to possess an animal with the intent to engage the animal in an animal fighting venture.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 and not more than $2,000, or confined in the county jail not exceeding one year, or both so fined and confined: Provided, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 and not more than $5,000, and imprisoned in a state correctional facility for not less than two nor more than five years, or both fined and imprisoned.

(e) Any person convicted of a violation of this section shall be divested of ownership and control of such animals and liable for all costs of their care and maintenance pursuant to section four, article ten, chapter seven of this code.

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§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.

(a) It is unlawful for any person to knowingly attend or knowingly cause an individual who has not attained the age of eighteen to attend, an animal fighting venture involving animals as defined in section nineteen-a, article eight of this chapter.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 and not more than $2,000, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person convicted of a third or subsequent violation of subsection (a) of this section is guilty of a felony and, shall be fined not less than $2,500 and not more than $5,000, imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

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§ 61-8-19c. Wagering at animal fighting venture prohibited; penalty.

(a) It is unlawful for any person to bet or wager money or any other thing of value in any location or place where an animal fighting venture occurs.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 and not more than $2,000, or confined in jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person who is convicted of a third or subsequent violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 and not more than $5,000, or imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

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§61-8-20. Keeping or using live birds to be shot at; penalty.

Whoever keeps or uses a live bird to be shot at either for amusement or as a test of skill in marksmanship, or shoots at a bird kept or used as aforesaid, or is a party to such shooting, or lets any building, room, field, or premises, or knowingly permits the use thereof, for the purpose of such shooting, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not more than $50 or by imprisonment for not more than one month, or by both. Nothing herein contained shall apply to the shooting of wild game.

WV Legislature

§61-8-21. Search warrants relating to cruelty to animals.

If complaint is made to a court or magistrate which is authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that the laws relative to cruelty to animals have been or are violated in any particular building or place, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer to search such building or place; but no such search shall be made after sunset, unless specially authorized by the magistrate upon satisfactory cause shown.

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§61-8-22. Search warrants relating to birds and animals kept for fighting.

If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that preparations are being made for an exhibition of the fighting of birds, dogs, or other animals, or that such exhibition is in progress, or that birds, dogs, or other animals are kept or trained for fighting at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable, or police officer, to search such place, building, or tenement at any hour of the day or night, and take possession of all such birds, dogs or other animals there found, and to arrest all persons there present at any such exhibition or where preparations for such an exhibition are being made, or where birds, dogs, or other animals are kept or trained for fighting.

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§61-8-23. Search without warrant where there is an exhibition of the fighting of birds or animals.

Any officer authorized to serve criminal process may, without warrant, enter any place, building, or tenement in which there is an exhibition of the fighting of birds, dogs, or other animals, or in which preparations are being made for such an exhibition and arrest all persons there present and take possession of and remove from the place of seizure the birds, dogs, or other animals engaged in fighting or there found and intended to be used or engaged in fighting, or kept or trained for fighting and hold the same in custody subject to the order of the court as hereinafter provided.

WV Legislature

§61-8-24.

Repealed

Acts, 1988 Reg. Sess., Ch. 42.

WV Legislature

§61-8-25. Requiring children to beg, sing or play musical instruments in streets; penalty.

Any person, having the care, custody, or control, lawful or unlawful, of any minor child under the age of eighteen years, who shall use such minor, or apprentice, give away, let out, hire or otherwise dispose of, such minor child to any person, for the purposes of singing, playing on musical instruments, begging, or for any mendicant business whatsoever in the streets, roads, or other highways of this state, and any person who shall take, receive, hire, employ, use or have in custody, any minor for the vocation, occupation, calling, service or purpose of singing, playing upon musical instruments, or begging upon the streets, roads or other highways of this state, or for any mendicant business whatever, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $5 nor more than $100.

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§61-8-26. Permitting children to sing, dance or act in dance house, etc.; penalty.

Any person, having the care, custody, or control of any minor child under the age of fifteen years, who shall in any manner sell, apprentice, give away or permit such child to sing, dance, act, or in any manner exhibit it in any dance house, concert saloon, theater or place of entertainment where wines or spirituous or malt liquors are sold or given away, or with which any place for the sale of wines or spirituous or malt liquors is directly or indirectly connected by any passageway or entrance, and any proprietor of any dance house whatever, or any such concert saloon, theater, or place of entertainment, so employing any such child, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $5 nor more than $100 for each offense.

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§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $200: *Provided*, That there is exemption from this prohibition for: (a) A private bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck, private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private college sports stadium or coliseum, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 *et seq*. of this code and in compliance with, §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D), §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), 60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G), §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H), §60-7-2(24)(H), §60-7-2(25)(H), §60-7-8c(b)(14), §60-7-8d, §60-7-8g(c)(15), and §60-8-32a of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required to provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer.

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§61-8-27a. Use of false identification, etc., by person under age; penalty.

Any person who exhibits or displays a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or who exhibits or displays any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment, from which he or she would otherwise be barred by reason of age, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than $25 nor more than $100, and, in the discretion of the court, may be imprisoned in the county jail not exceeding thirty days.

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

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

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

(2) “To visually portray” a person means to create a reproducible image of that person by means of:

(A) A photograph;

(B) A motion picture;

(C) A video tape;

(D) A digital recording; or

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

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

(b) It is unlawful for a person to knowingly visually portray another person without that other person's knowledge, while that other person is fully or partially nude and is in a place where a reasonable person would have an expectation of privacy. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than $5,000, or both.

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

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

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

(a) As used in this section:

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

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

(3) “Intimate parts” means a person’s genitalia, pubic area, anus, or female post-pubescent breasts.

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

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

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, a fabricated intimate image of another or an image of another which shows the intimate parts of the 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

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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.

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§61-8-29. Criminal loitering by persons on supervised release.

(a) Any person serving a period of supervised release of ten years or more pursuant to the provision of section twenty-six, article twelve, chapter sixty-two of this code who loiters within one thousand feet of the property line of the residence or workplace of a victim of a sexually violent offense for which the person was convicted shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days.

(b) Any person serving a period of supervised release of ten years or more pursuant to the provisions of section twenty-six, article twelve, chapter sixty-two of this code for an offense where the victim was a minor who loiters within one thousand feet of the property line of a facility or business the principal purpose of which is the education, entertainment or care of minor children, playground, athletic facility or school bus stop shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not more than thirty days.

(c) A person does not violate the provisions of subsection (a) or (b) of this section unless he or she has previously been asked to leave the proscribed location by an authorized person and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

(d) As used in this section:

(1) "Authorized person" means:

(A) A law-enforcement officer acting in his or her official capacity;

(B) A security officer employed by a business or facility to protect persons or property acting in his or her employment capacity;

(C) An owner, manager or employee of a facility or business having a principal purpose the caring for, education or entertainment of minors;

(D) A victim or parent, guardian or lawful temporary or permanent custodian thereof;

(E) An employee of a county Board of Education acting in his or her employment capacity.

(2) "Facility or business, the principal purpose of which is the education, entertainment or care of minor children" means:

(A) A pre-school, primary, intermediate, middle or high school, either public or private;

(B) A childcare facility;

(C) A park;

(D) An athletic facility used by minors;

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(E) A school bus stop.

(3) "Loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

(e) Nothing in this section shall be construed to prohibit or limit a person's presence within one thousand feet of a location or facility referenced in this section if the person is there present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present.

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§61-8-30. Photography of a corpse or person being provided medical care or assistance; prohibitions; exceptions; Jonathan's Law.

(a) As used in this section:

(1) "Disclose" means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, offer or otherwise

make available or make known to any third party.

(2) "First responder" means law-enforcement officers, firefighters, emergency medical

services personnel and other similar individuals authorized to respond to calls for public safety services or emergency medical assistance.

(b)(1) A first responder who is present at a motor vehicle accident or other emergency situation for the purpose of providing public safety services or medical care or assistance shall not photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or a person being provided medical care or assistance, except for a legitimate law-enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(2) A first responder shall not knowingly disclose any photograph, film, videotape, record or other reproduction of the image of a human corpse or a person being provided medical care or assistance at the scene of a motor vehicle accident or other emergency situation without prior written consent of the injured person, the person's next-of-kin if the injured person cannot provide consent, or personal representative under law of a deceased person, unless that disclosure is for a legitimate law enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(3) Any person who violates subdivision (1) or (2) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than $100 nor more than $750. For a third or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months and shall be fined not less than $1,000 nor more than $5,000.

(c) This section shall be known as "Jonathan's Law".

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§61-8-31. Therapeutic deception; penalties.

(a) In this section, unless a different meaning plainly is required:

(1) “Client” or “patient” means a person who is being treated clinically or medically by a psychotherapist for more than one session or initial visit.

(2) "Psychotherapist" means any of the following:

(A) A psychiatrist licensed pursuant to article three, chapter thirty of this code;

(B) A psychologist licensed pursuant to article twenty-one, chapter thirty of this code or a medical psychologist licensed pursuant to article three, chapter thirty of this code;

(C) A licensed clinical social worker licensed pursuant to article thirty, chapter thirty of this code; or

(D) A mental health counselor licensed pursuant to article thirty-one, chapter thirty of this code.

(3) "Sexual contact" has the same meaning as provided in article eight-b, chapter sixty-one of this code.

(4) "Sexual intercourse" has the same meaning as provided in article eight-b, chapter sixty-one of this code.

(5) "Therapeutic deception" means a representation by the psychotherapist to the patient or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or part of the treatment of the patient or client.

(b) It is unlawful for any psychotherapist, or any person who fraudulently represents himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a client or patient by means of therapeutic deception.

(c) For purposes of this section, consent of the patient or client is not a defense, regardless of the age of the patient or client.

(d) Any person who violates subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000.00 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

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§61-8-32. Soliciting, etc. a minor by means other than via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; definition of minor; penalties.

(a) Any person over the age of 18, who by means other than those prohibited by §61-3C-14b of this code, who knowingly solicits, entices, seduces, or lures, or attempts to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person, or a person he or she believes to be such a minor in order to engage in any illegal act proscribed by the provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code, or any felony offense under §60A-4-401 of this code is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both fined and imprisoned.

(b) Any person who violates the provisions of subsection (a) of this section while outside the physical presence of the minor or person he or she knows or has reason to believe is a minor, who engages in any overt act designed to bring himself or herself into the minor's physical presence with the intent to engage in any sexual activity or conduct with the minor that is prohibited by law, is guilty of a felony and shall be fined not more than $25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than thirty years, or both fined and imprisoned: *Provided*, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.

(c) For purposes of this section, "minor" means a person younger than 18 years of age or a person representing himself or herself to be a minor. Any prosecution, pursuant to this section, relating to a victim that is a person representing himself or herself to be a minor shall be limited to investigations being conducted or overseen by law enforcement officers.

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