WEST VIRGINIA CODE: §61-8C-3

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct or computer-generated child pornography prohibited; penalty.

(a) Any person who knowingly sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view or displays or transports any visual portrayal of a minor engaged in any sexually explicit conduct or computer-generated child pornography is guilty of a felony.

(b) It is sufficient for purposes of this section that the material visually portrays a minor, regardless of whether the subject's age is represented to be less than age 18 years old or whether the minor subject's actual identity can be ascertained.

(c) A visual portrayal created in whole or in part by digital manipulation, artificial intelligence, or any other means may satisfy the requirements of this section.

(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 was originally taken or captured when the subject was under the age of 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 at least 18 years of age at the time of his or her death.

(f) Any person who violates the provisions of subsection (a) of this section when the conduct involves 50 or fewer images shall, upon conviction, be imprisoned in a state correctional facility for not less than two years nor more than five years or fined not more than $5,000 or both.

(g) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than 50 but fewer than 300 images shall, upon conviction, be imprisoned in a state correctional facility for not less than three nor more than 15 years or fined not more than $10,000, or both.

(h) Notwithstanding the provisions of subsections (b) and (c) of this section, any person who violates the provisions of subsection (a) of this section when the conduct involves 300 or more images or depicts violence against a child or a child engaging in bestiality shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than 20 years or fined not more than $25,000, or both.

(i) For purposes of this section each video clip, movie, or similar recording of five minutes or

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less shall constitute 100 images. A video clip, movie or similar recording of a duration longer than five minutes constitutes 100 images for every two minutes in length it exceeds five minutes.

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