WEST VIRGINIA CODE CHAPTER 61 ARTICLE 8C

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§61-8C-1. Definitions.

(a) For the purposes of this article:

(1) “Minor” means any child under 18 years of age.

(2) “Knowledge” means knowing or having reasonable cause to know which warrants further inspection or inquiry.

(3) “Sexually explicit conduct” includes any of the following, whether actually performed or simulated:

(A) Genital to genital intercourse;

(B) Fellatio;

(C) Cunnilingus;

(D) Anal intercourse;

(E) Oral to anal intercourse;

(F) Bestiality;

(G) Masturbation;

(H) Sadomasochistic abuse, including, but not limited to, flagellation, torture, or bondage;

(I) Excretory functions in a sexual context; or

(J) Exhibition of the genitals, pubic, or rectal areas of any person in a sexual context.

(4) “Person” means an individual, partnership, firm, association, corporation, or other legal entity: *Provided*, That this term does not apply to 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.

(5) “Visual portrayal” means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording;

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(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices; or

(F) Any media listed in this subdivision which was created, generated, or otherwise produced, in whole or in part, by any manner of manipulation, including, but not limited to, artificial intelligence.

(6) "Computer-generated child pornography" means:

(A) Any visual portrayal of an identifiable minor that has been created, adapted, or modified to depict the minor as engaging in sexually explicit conduct; or

(B) Any visual portrayal that appears to depict a minor engaged in sexually explicit conduct if the visual portrayal is:

(i) Created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to create a visual portrayal; and

(ii) Indistinguishable from a minor.

(7) "Identifiable minor" means any visual portrayal that depicts a minor who is identifiable from the matter itself or from information displayed with or otherwise connected to the matter, and that was created or altered by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to depict the minor.

(8) "Indistinguishable" as used with respect to a visual portrayal, means virtually indistinguishable, in that the visual portrayal is such that an ordinary person viewing the visual portrayal would conclude that the visual portrayal is of an actual minor engaged in sexually explicit conduct. This definition does not apply to visual portrayals that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

(b) Nothing in this article shall be construed to include a visual portrayal of an actual and identifiable person who was not a minor at the time the visual portrayal was created.

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§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct is guilty of a felony when the act is being used to create a visual portrayal. Upon conviction thereof, such person shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 10 years, or both fined and imprisoned.

(b) Any person who creates a visual portrayal of a minor engaging in any sexually explicit conduct is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned in the penitentiary not more than 10 years, or both fined and imprisoned.

(c) Any parent, legal guardian, or person having custody and control of a minor, who creates a visual portrayal of such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor child to engage in or assist in any sexually explicit act is guilty of a felony when such act is used to create a visual portrayal. Upon conviction thereof, such person shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 10 years, or both fined and imprisoned.

(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 used was originally taken or captured when the subject was less than 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 18 years of age at the time of his or her death.

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§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 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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§61-8C-3a. Prohibiting child erotica; penalties.

(a) Any person age 18 or over who knowingly and intentionally produces, possesses, displays or distributes, in any form, any visual portrayals of minors who are partially clothed, where the visual portrayals are: (1) Unrelated to the sale of a commercially available legal product; and (2) used for purely prurient purposes, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year or fined not more than $1,000, or both confined and fined.

(b) As used in this section only:

(1) "Purely prurient purposes" means for the specific purpose of sexual gratification or sexual arousal from viewing the visual portrayals prohibited by this section; and

(2) "Commercially available" means for sale to the general public.

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§61-8C-3b. Prohibiting juveniles from manufacturing, possessing, and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates any computer-generated child pornography or a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

(b) As used in this section, "posing in an inappropriate sexual manner" means exhibition of a bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual gratification.

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual portrayal did neither solicit its receipt nor distribute, transmit, or present it to another person by any means.

(d) Notwithstanding the provisions of §15-12-1 *et seq*. of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of that article and chapter.

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§61-8C-3c. Confidentiality; exemption from prosecution.

(a) Nothing in this article shall be construed to prevent the lawful investigation and/or prosecution of the criminal offenses described in this article: *Provided*, That prohibited media or visual portrayal described in this article shall not be published to the public at any time.

(b) It does not constitute an offense of the crimes set forth in this article when the following persons possess or distribute prohibited media or material, or visual portrayal while acting in the performance of their official duties:

(1) Law enforcement officials, including those entities with specialized investigatory experience with whom law enforcement agencies regularly contract for the purpose of providing investigatory services and assistance;

(2) Prosecuting attorneys;

(3) Attorneys acting as officers of the court and while acting in the performance of their official duties;

(4) Judges and magistrates;

(5) Jurors hearing a case involving an alleged violation of offenses in this article;

(6) Support personnel for the persons listed in this section; and

(7) Any person acting in accordance and in compliance with a valid order issued by a circuit court of this state or the Supreme Court of Appeals.

(c) The Supreme Court of Appeals is hereby requested to promulgate such rules, protocols, and forms which are necessary to regulate access to, use, and handling of prohibited media and visual portrayals described in this article, giving due consideration to the privacy rights of victims and the due process rights of defendants in criminal proceedings.

(d)(1) Any person not listed in subsection (b) of this section who, in the course and scope of employment or business, views an image or images on a computer or electronic device that is or appears to be material visually portraying a minor engaged in any sexually explicit conduct shall immediately report the discovery of the image or images to a local or state law-enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report must include the name and address of the owner or person claiming a right to possession of the computer or electronic device, if known, and as permitted by federal law. For purposes of this subdivision, such reporting may include furnishing the law enforcement officer with any image, information, or data that the person reasonably believes to be evidence of material visually portraying a minor engaged in any sexually explicit conduct, transmission of material visually portraying a minor engaged in any sexually explicit conduct, or an image, information, or data that is harmful to minors.

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(2) Except in a case of willful or wanton misconduct, compliance with subdivision (1) of this subsection is an affirmative defense to an alleged violation of this section.

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§61-8C-4. Payments of treatment costs for minor.

In addition to any penalty provided under this article and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this article to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the minor resulting from the act or acts for which the person is convicted, whether or not the minor is considered to have sustained bodily injury.

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§61-8C-5. Limits on interviews of children eleven years old or less; evidence.

(a) In any prosecution under 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. The rule shall to the extent possible 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.

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§61-8C-6. Legislative findings.

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in article twelve, section five of the West Virginia Constitution and to the extent that such seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article twelve, section five of the West Virginia Constitution.

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§61-8C-7. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

(a) The following are subject to forfeiture:

(1) All visual depictions which have been manufactured, distributed, dispensed or possessed in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, processing, delivering, importing or exporting any visual depictions or any crimes against children in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(3) All books, records, research products and materials, including hard drives, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(4) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of articles eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter by any person in exchange for a visual depiction, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which are intended to be used, to facilitate any violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter: Provided, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(B) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter; and

(C) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the

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evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter.

(b) Property subject to forfeiture under this article may be seized by the State Police (hereinafter referred to as the "appropriate person" in this article).

(c) Visual depictions which are manufactured, possessed, transferred, sold or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Visual depictions which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the visual depictions.

(d) Notwithstanding any other provisions of this article to the contrary, any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years next preceding the sale been used in violation of this chapter.

(e) Notwithstanding any other provisions of this code to the contrary, any person who has an ownership interest in items of tangible personal property subject to forfeiture by this article shall be presumed to be an innocent owner. Unless the state establishes by clear and convincing proof that the innocent owner knew or should have known that the property subject to forfeiture had been used in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter and, if applicable, that the innocent owner did not do all that reasonably could be expected under the circumstances to terminate the illegal use of the property once he or she had knowledge of it, the court shall enter an order either: (1) Severing the property appropriately; (2) transferring the property to the state with a provision that the state shall compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or (3) permitting the innocent owner to retain the property subject to a lien in favor of the state to the extent of the forfeitable interest in the property. If the state meets the burden set forth in this section, then the court shall enter an order declaring the person with an ownership interest is not an innocent owner and allowing forfeiture proceedings to continue, pursuant to the requirements set forth in this article.

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§61-8C-8. Procedures for seizure of forfeitable property.

(a) Seizure of property made subject to forfeiture by the provisions of this article may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this article;

(3) The appropriate person has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The appropriate person has probable cause to believe that the property was used or intended for use in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:

(1) Place the property under seal;

(2) Remove the property to a place designated by him or her;

(3) Require the appropriate law-enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.

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§61-8C-9. Procedures for forfeiture.

(a)(1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor.

(2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court of the county wherein the seizure was made, the real property subject to forfeiture is situate or the circuit court of the county wherein any owner of the property subject to forfeiture may reside.

(3) Any civil trial stemming from a petition for forfeiture brought under this article at the demand of either party shall be by jury.

(4) A petition for forfeiture of the seized property shall be filed within ninety days after the seizure of the property in question. The petition shall be verified by oath or affirmation of a law-enforcement officer representing the law-enforcement agency responsible for the seizure or the prosecuting attorney and shall contain the following:

(A) A description of the property seized;

(B) A statement as to who is responsible for the seizure;

(C) A statement of the time and place of seizure;

(D) The identity of the owner or owners of the property, if known;

(E) The identity of the person or persons in possession of the property at the time seized, if known;

(F) A statement of facts upon which probable cause for belief that the seized property is subject to forfeiture pursuant to the provisions of this article is based;

(G) The identity of all persons or corporations having a perfected security interest or lien in the subject property, as well as the identity of all persons or corporations known to the affiant who may be holding a possessory or statutory lien against such property; and

(H) A prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state.

(b) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized property, as well as all holders of a perfected security interest or lien or of a possessory or statutory lien in the same class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of the petition for forfeiture shall be served upon any person who

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was in possession or alleged to be in possession of the property at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as follows: “To any claimant to the within described property: You have the right to file an answer to this petition setting forth your title in, and right to possession of, the property within thirty days from the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will be entered, and such order is not subject to appeal.”

If no owner or possessors, lien holders or holders of a security interest be found, then such service may be by Class II legal publication in accordance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county wherein such property was located at the time of seizure and the county wherein the petition for forfeiture is filed.

(c) In addition to the requirements of subsection (b) above, the prosecuting attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be responsible for the publication of a further notice. Such further notice that a petition for forfeiture has been filed shall be published by Class II legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county wherein the property was seized and the county wherein the petition for forfeiture is filed. The notice shall advise any claimant to the property of their right to file a claim on or before the date set forth in the notice, which date shall not be less than thirty days from the date of the first publication. The notice shall specify that any claim must clearly state the identity of the claimant and an address where legal process can be served upon that person. In addition such notice shall contain the following information:

(1) A description of the property seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the property, if known;

(5) The identity of the person or persons in possession of the property at the time of seizure, if known; and

(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall

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be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this chapter.

(f) Any order forfeiting property to the state and entered pursuant to this section perfects the state's right, title and interest in the forfeited property and relates back to the date of seizure: Provided, That in any proceeding under this article the circuit court shall in its final order make specific findings with respect to whether or not probable cause to seize such property existed at the time of such seizure.

(g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or holder of a bona fide security interest or other valid lien holder to transfer or attempt to transfer any ownership interest or security interest in seized property with the intent to defeat the purpose of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner or holder of a security interest or other lien holder from making such a transfer should one come to its attention. Any such transfer which is made in violation of the provisions of this subsection shall have no effect upon an order of the court forfeiting seized property to the state if a notice of lis pendens is filed prior to the recording of the instrument of transfer.

(h) The court may void any transfer of property made before or after a forfeiture proceeding has been commenced, which is subject to forfeiture, if the transfer was not to a bona fide purchaser without notice for value.

(i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought pursuant to this chapter must be filed within one hundred twenty days of the date of entry of the final appealable order. The appellant shall be required to give notice of intent to appeal within thirty days of the entry of such appealable order.

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§61-8C-10. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this article, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding;

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the Superintendent of the State Police or his or her designee.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:

(1) In the case of funds belonging to the State Police, the funds shall only be expended at the direction of the Superintendent of the State Police and in accordance with the provisions of article two, chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two, article two, chapter twelve of this code;

(2) In the case of funds belonging to the office of the prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections four and five, article five, chapter seven of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section twenty-two, article thirteen, chapter eight of this code.

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§61-8C-11. Disposition of other forfeited property; distribution of proceeds.

(a) When property other than that referred to in section ten of this article is forfeited under this article, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the Superintendent of the State Police or his or her designee, may direct that:

(1) Title to the forfeited property be vested in the law-enforcement agency so petitioning;

(2) The law-enforcement agency responsible for the seizure retain the property for official use; or

(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county where the public auction will be held.

(b) When a law-enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law-enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant to this section shall be paid and applied as follows: First, to the balance due on any security interest preserved by the court; second, to the costs incurred in the storage, maintenance and security of the property; and third, to the costs incurred in selling the property.

(d) Any proceeds of a public sale remaining after distribution pursuant to subsection (c) of this section shall be distributed as follows:

(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding.

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the Superintendent of the State Police or his or her designee and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the Superintendent of the State Police or his or her designee may deem appropriate; however, these funds may not be utilized for regular operating needs.

(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall equitably distribute the forfeited property among the law-enforcement agencies. In the event

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of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to subsection (a) of this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to subsection (a) of this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.

(g) Any funds expended pursuant to the provisions of this section shall only be expended in the manner provided in subsection (b), section ten of this article.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this article shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No county or municipality may use anticipated receipts of forfeited property in their budgetary process.

(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to subsection (a) of this section.

(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this article, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section seven, article four, chapter fifty-eight of this code.

WV Legislature

(l) The special law-enforcement investigative funds of each law-enforcement agency may be placed in an interest-bearing depository insured by the federal government.

WV Legislature