

**H. B. 2195**

(By Delegates Miley, Lawrence, P. Smith and Poore)  
[Introduced February 13, 2013; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §61-8C-1 and §61-8C-3 of the Code of West Virginia, 1931, as amended, all relating to crimes and their punishment; filming of sexually explicit conduct of minors; Legislative findings; including "lascivious" and "child erotica" in definitions; and criminal penalties. *Be it enacted by the Legislature of West Virginia:*

That §61-8C-1 and §61-8C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.****§61-8c-1. Definitions.**

For the purposes of this article:

(a) "Minor" means any child under eighteen years of age.

(b) "Knowledge" means knowing or having reasonable cause to know which warrants further inspection or inquiry.

(c) "Sexually explicit conduct" includes any of the following, whether actually performed or simulated:

- (1) Genital to genital intercourse;
  - (2) Fellatio;
  - (3) Cunnilingus;
  - (4) Anal intercourse;
  - (5) Oral to anal intercourse;
  - (6) Bestiality;
  - (7) Masturbation;
  - (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;
  - (9) Excretory functions in a sexual context; or
  - (10) Lascivious exhibition of the genitals, pubic or rectal areas of any person in a sexual context.
- (d) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

(e) "Child Erotica" means any material relating to minors that serves a sexual purpose for a given individual, to include nonnude or seminude photographs and videos of minors in sexually suggestive poses modeling a variety of clothing types such as dresses, bikinis, nightgowns or undergarments. Child erotica may also include, in addition to images, other materials that may cause sexual arousal, such as children's diaries, drawings, underwear, letters and other similar items.

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

Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility, ~~not more than two years~~ less than two years for each offense committed, and fined not more than \$2,000.

Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports any material visually portraying child erotica 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, or both fined and confined.

      NOTE: The purpose of this bill is to add the term "lascivious" to the sexually explicit conduct definitions under §61-8C-1 to more closely resemble the Federal Statute and to allow prosecution for child erotica images that serve a sexual purpose (See United States v Knox (1994)). A new definition of "Child Erotica" is also added. The criminal penalty is enhanced and a section was added to §61-8C- 3 providing for a misdemeanor offense relating to child erotica material.

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