

## West Virginia

### W. Va. Code

#### W. Va. Code § 61-8A-1. Definitions.

- When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:
  - (a)** "Adult" means a person eighteen years of age or older.
  - (b)** "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. As used in this article, computer includes file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any electronic data storage device or equipment. The term "computer" includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.
  - (c)** "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.
  - (d)** "Display" means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.
  - (e)** "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.
  - (f)** "Employee" means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his or her salary or wages.
  - (g)** "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.
  - (h)** "Knowledge of the character of the matter" means having awareness of or notice of the overall sexual content and character of matter as depicting, representing or describing obscene matter.
  - (i)** "Matter" means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two- or three- dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or

electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more.

**(j)** "Minor" means an unemancipated person under eighteen years of age.

**(k)** "Obscene matter" means matter that:

**(1)** An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

**(2)** An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

**(3)** A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

**(l)** "Parent" includes a biological or adoptive parent, legal guardian or legal custodian.

**(m)** "Person" means any adult, partnership, firm, association, corporation or other legal entity.

**(n)** "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

### **§ 61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses.**

- **(a)** Any adult, with knowledge of the character of the matter, who knowingly and intentionally distributes, offers to distribute, or displays to a minor any obscene matter, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both.
- **(b)** It is a defense to a prosecution under the provisions of this section that the obscene matter:
  - (1)** Was displayed in an area from which minors are physically excluded and the matter so located cannot be viewed by a minor from nonrestricted areas; or
  - (2)** Was covered by a device, commonly known as a "blinder rack," such that the lower two thirds of the cover of the material is not exposed to view; or
  - (3)** Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material was not exposed to view; or
  - (4)** Was displayed or distributed after taking reasonable steps to receive, obtain or check an adult identification card, such as a driver's license or other technically or reasonably feasible means of verification of age.
- **(c)** It is a defense to an alleged violation under this section that a parent had taken reasonable steps to limit the minor's access to the obscene matter.

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

- The criminal provisions of section two [§ 61-8A-2] of this article do not apply to:
  - (a)** A bona fide school, in the presentation of local or state approved

curriculum;

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

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

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

**(e)** A person who routinely distributes obscene matter by the use of telephone, computer network or the Internet and who distributes such matter to any minor under the age of eighteen years after the person has taken reasonable measures to prevent access by minors to the obscene matter; or

**(f)** A radio or television station, cable television service or other telecommunications service regulated by the Federal Communications Commission.

#### **§ 61-8A-4. Use of obscene matter with intent to seduce minor.**

Any adult, having knowledge of the character of the matter, who knows that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

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

Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable care in ascertaining the age of a minor, hires, employs or uses such minor to produce obscene matter or to do or assist in doing any sexually explicit conduct, is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

#### **§ 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) 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.

**§ 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 shall be guilty of a felony when such person has knowledge that any such act is being photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.
- (b) Any person who photographs or films such minor engaging in any sexually explicit conduct shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.
- (c) Any parent, legal guardian or person having custody and control of a minor, who photographs or films 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 shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such persons shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

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

Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses or 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 the penitentiary not more than two years, and fined not more than two thousand dollars.

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

- (a) Any person age eighteen 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.
  - (3)** A "minor" is a child under the age of sixteen years, or a person who is sixteen years of age or older but less than eighteen years old and who is mentally defective or mentally incapacitated.

#### **§ 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 [§§ 61-11A-1 et seq.] 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.

#### **§ 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.

#### **§ 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 [§§ 5-12-1 et seq.], 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.

#### **§ 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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 [§§ 61-8A-1 et seq.] or eight-c [§§ 61-8C-1 et seq.] of this chapter or section fourteen-b [§ 61-3C-14b], 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.

#### **§ 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.

### **§ 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 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 [§§ 59-3-1 et seq.], 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 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.

**§ 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 [§§ 11B-2-1 et seq.], chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two [§ 12-2-2], 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 [§ 7-5-4] and five [§ 7-5-5], 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 [§ 8-13-22], article thirteen, chapter eight of this code.

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

- **(a)** When property other than that referred to in section ten [§ 61-8C-10] 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 [~~§§ 59-3-1~~ et seq.], 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 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 [§ 58-4-7], article four, chapter fifty-eight of this code.
- **(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.

**§ 7-1-4. County commission authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.**

- **(a)** In addition to all other powers which county commissions now possess by law, county commissions may adopt the ordinance provided in subsection (b) of this section.
- A county commission when adopting this ordinance may delete therefrom such portions of paragraph (A), subdivision (4), subsection (b) of this section that it deems appropriate.
- **(b)** The ordinance which county commissions may adopt pursuant to the power granted them under subsection (a) of this section shall be:
  - Section 1. Definitions.
    - For purposes of this ordinance:
      - (1)** "Knowingly" means to have knowledge of or to be aware of the content or character of **obscene** matter.
      - (2)** "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
      - (3)** "Individual" means any human being regardless of age.

(4) "**Obscene**" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

- (A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
- (B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(6) "Prepare" means to produce, publish or print.

(7) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

- Section 1a. Injunctive relief.
- The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the prosecuting attorney or any citizen of the county who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.
- Section 2. Activities prohibited; penalties.
- Any person who knowingly sends or causes to be sent or causes to be brought into the county of (name of county) for sale or public display, or prepares, sells or makes a public display, or in the county of (name of county) offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any **obscene** matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned.
- Section 3. Prosecution by presentment or indictment.
- No person may be prosecuted for an offense under this ordinance except by indictment or information.
- Section 4. Employees acting within scope of employment shall not be prosecuted.
- No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of **obscene** matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such **obscene** matter or is a shareholder or officer of a corporation which has a proprietary interest in such **obscene** matter.
- Section 5. Exceptions.
- Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this State or of these United States.

**§ 8-12-5b. Municipal authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing**

## penalties for violations.

- **(a)** Notwithstanding the provisions of section one [§ 8-11-1], article eleven, chapter eight of this code, in addition to all other powers which municipalities now possess by law, every municipality and the governing body thereof may adopt the ordinance provided in subsection (b) of this section.
- A municipality when adopting this ordinance, may delete therefrom such portions of paragraph (A), subdivision (4), subsection (b) of this section that it deems appropriate.
- **(b)** The ordinance which municipalities may adopt pursuant to the power granted them under subsection (a) of this section shall be:
  - Section 1. Definitions.
    - For purposes of this ordinance:
      - (1)** "Knowingly" means to have knowledge of or to be aware of the content or character of **obscene** matter.
      - (2)** "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
      - (3)** "Individual" means any human being regardless of age.
      - (4)** "**Obscene**" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:
        - **(A)** Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
        - **(B)** Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.
      - (5)** "Person" means any individual, partnership, firm, association, corporation or other legal entity.
      - (6)** "Prepare" means to produce, publish or print.
      - (7)** "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.
  - Section 1a. Injunctive relief.
    - The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the attorney for the municipality or a representative thereof or any citizen of the municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.
  - Section 2. Activities prohibited; penalties.
    - Any person who knowingly sends or causes to be sent or causes to be brought into the municipality of (name of municipality) for sale or public display, or prepares, sells or makes a public display, or in the municipality of (name of municipality) offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any **obscene** matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more

than five hundred dollars or imprisoned not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned not more than six months or both fined and imprisoned.

- Section 3. Employees acting within scope of employment shall not be prosecuted.
- No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of **obscene** matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such **obscene** matter or is a shareholder or officer of a corporation which has a proprietary interest in such **obscene** matter.
- Section 4. Exceptions.
- Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this State or of these United States.

#### **§ 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 two hundred fifty dollars, 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 five hundred dollars 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 one thousand dollars 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 three thousand dollars and imprisoned in a state correctional facility for not less than one year nor more than five years.

#### **§ 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 five nor more than one hundred dollars for each offense.

**§ 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 eighteen years, unless accompanied by his or her parent or guardian, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

**§ 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 five thousand dollars, 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 five thousand dollars, 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 ten thousand dollars, or both.