

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 3190**

BY DELEGATE STEELE

[Passed March 11, 2023; in effect ninety days from passage.]



1 AN ACT to amend and reenact § 61-3C-14b of the Code of West Virginia, 1931, as amended, to  
2 further amend said code by adding thereto a new section, designated §61-8-32; to amend  
3 and reenact §61-8A-1; and to amend and reenact §61-14-1 of said code, all relating to  
4 criminal law generally; updating certain criminal code definitions; extending criminal  
5 liability to certain adults that use computers to solicit, entice, seduce, lure, or attempt to  
6 solicit, entice, seduce, or lure a minor, or a person representing himself or herself to be a  
7 minor, as a means to engage in specific enumerated illegal acts contained in the West  
8 Virginia Code; defining the term “minor”; expanding criminal liability to include adults who  
9 contact minors by means other than by computer and additionally engage in an overt act  
10 which is designed to put the adult in the physical presence of the minor, or a person  
11 representing himself or herself to be a minor and creating criminal penalties and fines  
12 therein.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; definition of minor; penalties.**

1 (a) Any person over the age of 18, who knowingly uses a computer to solicit, entice,  
2 seduce, or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at  
3 least four years younger than the person using the computer in order to engage in any illegal act  
4 proscribed by the provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1  
5 *et seq.* of this code, or any felony offense under §60A-4-401 of this code, is guilty of a felony and,  
6 upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional  
7 facility not less than two nor more than ten years, or both fined and imprisoned.

8 (b) Any person violating the provisions of subsection (a) of this section who engages in  
9 any overt act designed to bring himself or herself into the minor's, or a person believed to be a  
10 minor's physical presence with the intent to engage in any sexual activity or conduct with such a

11 minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000 or  
12 imprisoned in a state correctional facility for a determinate sentence of not less than five nor more  
13 than thirty years, or both fined and imprisoned : *Provided*, That subsection (a) of this section shall  
14 be deemed a lesser included offense to that created by this subsection.

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

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

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

1 (a) Any person over the age of 18, who by means other than those prohibited by §61-3C-  
2 14b of this code, who knowingly solicits, entices, seduces, or lures, or attempts to solicit, entice,  
3 seduce or lure, a minor known or believed to be at least four years younger than the person, or a  
4 person he or she believes to be such a minor in order to engage in any illegal act proscribed by  
5 the provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this  
6 code, or any felony offense under §60A-4-401 of this code is guilty of a felony and, upon conviction  
7 thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less  
8 than two nor more than ten years, or both fined and imprisoned.

9 (b) Any person who violates the provisions of subsection (a) of this section while outside  
10 the physical presence of the minor or person he or she knows or has reason to believe is a minor,  
11 who engages in any overt act designed to bring himself or herself into the minor's physical  
12 presence with the intent to engage in any sexual activity or conduct with the minor that is  
13 prohibited by law, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in  
14 a state correctional facility for a determinate sentence of not less than five nor more than thirty

15 years, or both fined and imprisoned: *Provided*, That subsection (a) of this section shall be deemed  
16 a lesser included offense to that created by this subsection.

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

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE  
MATTER TO MINORS.**

**§61-8A-1. Definitions.**

1 When used in this article, the following words, and any variations thereof required by the  
2 context, shall have the meaning ascribed to them in this section:

3 (a) "Adult" means a person eighteen years of age or older.

4 (b) "Computer" means an electronic, magnetic, optical, electrochemical or other high-  
5 speed data processing device performing logical, arithmetic or storage functions and includes any  
6 data storage facility or communication facility directly related to or operating in conjunction with  
7 such device. As used in this article, computer includes file servers, mainframe systems, desktop  
8 personal computers, laptop personal computers, tablet personal computers, cellular telephones,  
9 game consoles and any electronic data storage device or equipment. The term "computer"  
10 includes any connected or directly related device, equipment or facility which enables the  
11 computer to store, retrieve or communicate computer programs, computer data or the results of  
12 computer operations to or from a person, another computer or another device, but such term does  
13 not include an automated typewriter or typesetter, a portable hand-held calculator or other similar  
14 device.

15 (c) "Computer network" means the interconnection of hardware or wireless communication  
16 lines with a computer through remote terminals, or a complex consisting of two or more  
17 interconnected computers.

18 (d) "Display" means to show, exhibit or expose matter, in a manner visible to general or  
19 invited public, including minors. As used in this article, display shall include the placing or  
20 exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display  
21 rack, window, showcase, display case or similar public place.

22 (e) "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with  
23 or without consideration.

24 (f) "Employee" means any individual who renders personal services in the course of a  
25 business, who receives compensation and who has no financial interest in the ownership or  
26 operation of the business other than his or her salary or wages.

27 (g) "Internet" means the international computer network of both federal and nonfederal  
28 interoperable packet switched data networks.

29 (h) "Knowledge of the character of the matter" means having awareness of or notice of the  
30 overall sexual content and character of matter as depicting, representing or describing obscene  
31 matter.

32 (i) "Matter" means any visual, audio, or physical item, article, production transmission,  
33 publication, exhibition, or live performance, or reproduction thereof, including any two- or three-  
34 dimensional visual or written material, film, picture, drawing, video, graphic, or computer  
35 generated or reproduced image; or any book, magazine, newspaper or other visual or written  
36 material; or any motion picture or other pictorial representation; or any statue or other figure; or  
37 any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other  
38 articles, video laser disc, computer hardware and software, or computer generated images or  
39 message recording, transcription, or object, or any public or commercial live exhibition performed  
40 for consideration or before an audience of one or more.

41 (j) "Minor" means an person under eighteen years of age or a person representing himself  
42 or herself to be a minor. Any prosecution under this article relating to a victim who is representing  
43 himself or herself to be a minor shall be limited to investigations being conducted or overseen by  
44 law enforcement.

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

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

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

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

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

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

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

## **ARTICLE 14. HUMAN TRAFFICKING.**

### **§61-14-1. Definitions.**

1 When used in this article, the following words and terms shall have the meaning specified  
2 unless the context clearly indicates a different meaning:

3 (1) "Adult" means an individual 18 years of age or older.

4 (2) "Coercion" means:

5 (A) The use or threat of force against, abduction of, serious harm to, or physical restraint  
6 of an individual;

7 (B) The use of a plan, pattern, or statement with intent to cause an individual to believe  
8 that failure to perform an act will result in the use of force against, abduction of, serious harm to,  
9 physical restraint of, or deportation of an individual;

10 (C) The abuse or threatened abuse of law or legal process;

11 (D) The destruction or taking of, or the threatened destruction or taking of, an individual's  
12 identification document or other property; or

13 (E) The use of an individual's physical or mental impairment when the impairment has a  
14 substantial adverse effect on the individual's cognitive or volitional function.

15 As used in this article, "coercion" does not include statements or actions made by a duly  
16 authorized state or federal law-enforcement officer as part of a lawful law enforcement  
17 investigation or undercover action.

18 (3) "Commercial sexual activity" means sexual activity for which anything of value is given  
19 to, promised to, or received by a person.

20 (4) "Debt bondage" means inducing an individual to provide:

21 (A) Commercial sexual activity in payment toward or satisfaction of a real or purported  
22 debt; or

23 (B) Labor or services in payment toward or satisfaction of a real or purported debt if:

24 (i) The reasonable value of the labor or services is not applied toward the liquidation of  
25 the debt; or

26 (ii) The length of the labor or services is not limited, and the nature of the labor or services  
27 is not defined.

28 (5) "Forced labor" means labor or services that are performed or provided by another  
29 person and are obtained or maintained through the following:

30 (A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other  
31 action intended to cause a person to believe that, if the person did not perform or provide the



32 labor or services, that person or another person would suffer serious bodily harm, physical  
33 restraint, or deportation;

34 (B) Physically restraining or threatening to physically restrain a person;

35 (C) Abuse or threatened abuse of the legal process; or

36 (D) Destroying, concealing, removing, confiscating, or possessing any actual or purported  
37 passport or other immigration document, or any other actual or purported government  
38 identification document of another person: *Provided*, That "forced labor" does not mean labor or  
39 services required to be performed by a person in compliance with a court order or as a required  
40 condition of probation, parole, or imprisonment.

41 As applied in this article, forced labor shall not include labor, work, or services provided  
42 by a minor to the minor's parent, legal custodian, or legal guardian, so long as the legal  
43 guardianship or custody of the minor was not obtained for the purpose of compelling the minor to  
44 participate in commercial sex acts or sexually explicit performance, or perform forced labor or  
45 services; nor shall it include physical restraint of a minor, or the threat of physical restraint to a  
46 minor, by his or her parents, legal custodian or legal guardian if conducted in an otherwise lawful  
47 manner and for the purpose of discipline, supervision, or teaching.

48 (6) "Human trafficking", "trafficking", or "traffics" means knowingly recruiting, transporting,  
49 transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an  
50 individual to engage in debt bondage, forced labor, or sexual servitude.

51 (7) "Identification document" means a passport, driver's license, immigration document,  
52 travel document or other government-issued identification document, including a document  
53 issued by a foreign government.

54 (8) "Labor or services" means activity having economic value.

55 (9) "Minor" means a person younger than 18 years of age or a person representing himself  
56 or herself to be a minor. Any prosecution, pursuant to this article, relating to a person that is

57 representing himself or herself to be a minor shall be limited to investigations being conducted or  
58 overseen by law enforcement officers.

59 (10) "Patronize" means giving, agreeing to give, or offering to give anything of value to  
60 another person in exchange for commercial sexual activity.

61 (11) "Person" means an individual, estate, business or nonprofit entity, or other legal  
62 entity. The term does not include a public corporation or government or governmental subdivision,  
63 agency, or instrumentality.

64 (12) "Serious harm" means harm, whether physical or nonphysical, including  
65 psychological, economic or reputational, to an individual which would compel a reasonable  
66 individual of the same background and in the same circumstances to perform or continue to  
67 perform labor or services or sexual activity to avoid incurring the harm.

68 (13) "Sexual activity" means sexual contact, sexual intercourse, or sexual intrusion, as  
69 defined in §61-8b-1 of this code, or sexually explicit conduct, as defined in §61-8-1 of this code.

70 (14) "Sexual servitude" means:

71 (A) Maintaining or making available a minor for the purpose of engaging the minor in  
72 commercial sexual activity; or

73 (B) Using coercion to compel an adult to engage in commercial sexual activity.

74 (15) "Victim" means an individual who is subjected to human trafficking, regardless of  
75 whether a perpetrator is prosecuted or convicted.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2023.

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*Governor*