

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3190

By Delegate Steele

[Originating in the Committee on the Judiciary;

Reported on February 13, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, and to amend and reenact §61-
2 3C-14b, §61-8A-1, §61-14-1, relating to criminal liability to include adults that use
3 computers by which to solicit, entice, seduce, lure, or attempt to solicit, entice, seduce, or
4 lure a minor, or a person purported to be a minor, to engage in specific enumerated illegal
5 acts contained in the West Virginia Code and providing definition of “minor” therein; also
6 relating to expanding criminal liability to include adults who additionally engage in an overt
7 act which is designed to put the adult in the physical presence of the minor, or a person
8 purported to be a minor; also relating to amending §61-8A-1 to amend the definition of
9 “minor”; also relating to amending §61-14-1 to amend the definition of “minor”; and to
10 amend the Code of West Virginia, 1931, as amended by creating a new section, §61-
11 8-32, relating to imposing criminal liability to include adults who by any means, not
12 involving the use of computer, solicit, entice, seduce, lure, or attempt to solicit, entice,
13 seduce, or lure a minor, or a person purported to be a minor, to engage in specific
14 enumerated illegal acts contained in the West Virginia Code and also providing definition of
15 “minor” therein; also relating to expanding criminal liability to include adults who
16 additionally engage in an overt act which is designed to put the adult in the physical
17 presence of the minor.

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 eighteen, 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 least
3 four years younger than the person, using the computer or a person he or she believes to be such
4 a minor, or is purported to be such a minor, in order to engage in any illegal act proscribed by the
5 provisions of ~~article eight, eight-b, eight-c or eight-d of this chapter~~ §61-8-1 et seq., §61-8B-1 et

6 ~~seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this chapter, or any felony offense under section four~~
7 ~~hundred one, article four, chapter sixty-a~~ §60A-4-401 of this code, is guilty of a felony and, upon
8 conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility
9 not less than two nor more than ten years, or both.

10 (b) Any person over the age of eighteen who, uses a computer in the manner proscribed by
11 the provisions of subsection (a) of this section and who additionally engages in any overt act
12 designed to bring himself or herself into the minor's, purported minor's, or the person believed to
13 be a minor's, physical presence with the intent to engage in any sexual activity or conduct with
14 such a minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000
15 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor
16 more than thirty years, or both: *Provided*, That subsection (a) shall be deemed a lesser included
17 offense to that created by this subsection.

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-32. Soliciting, etc. a minor by any means; 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 eighteen, who knowingly, by any means, solicits, entices,
2 seduces, or lures, or attempts to solicit, entice, seduce or lure, a minor known or believed to be at
3 least four years younger than the person, or a person he or she believes to be such a minor, or is
4 purported to be such a minor, in order to engage in any illegal act proscribed by the provisions of
5 §61-8-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this chapter, or any
6 felony offense under §60A-4-401 is guilty of a felony and, upon conviction thereof, shall be fined
7 not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than

8 ten years, or both. *Provided*, That §61-3C-14b shall govern any prosecutions involving the use of
9 computers to solicit, entice, seduce or lure, a minor known or believed to be at least four years
10 younger than the person, using the computer or a person he or she believes to be such a minor, or
11 is purported to be such a minor, in order to engage in any illegal act proscribed by the provisions of
12 §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this chapter, or any
13 felony offense under §60A-4-401 of this code.

14 (b) Any person over the age of eighteen who, by any means in the manner proscribed by
15 the provisions of subsection (a) of this section and who additionally engages in any overt act
16 designed to bring himself or herself into the minor's, purported minor's, or the person believed to
17 be a minor's, physical presence with the intent to engage in any sexual activity or conduct with
18 such a minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000
19 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor
20 more than thirty years, or both: *Provided*, That subsection (a) shall be deemed a lesser included
21 offense to that created by this subsection.

22 (c) For purposes of this section, "minor" means a person less than or purported to be less
23 than 18 years of age. Any prosecution, pursuant to this article, relating to a victim that is a person
24 purported to be less than eighteen years of age shall be limited to investigations being conducted,
25 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 18 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 unemancipated~~ a person under less than or purported to be less than
42 18 years of age. Any prosecution, pursuant to this article, relating to a victim that is a person
43 purported to be less than eighteen years of age shall be limited to investigations being conducted,
44 or overseen, by law enforcement officers.

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 is
48 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 or
57 simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism
58 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 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 of
6 an individual;

7 (B) The use of a plan, pattern, or statement with intent to cause an individual to believe that
8 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 the
25 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 labor
32 or services, that person or another person would suffer serious bodily harm, physical restraint or
33 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 by a
42 minor to the minor's parent, legal custodian or legal guardian, so long as the legal guardianship or
43 custody of the minor was not obtained for the purpose of compelling the minor to participate in
44 commercial sex acts or sexually explicit performance, or perform forced labor or services; nor shall
45 it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her

46 parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the
47 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 issued
53 by a foreign government.

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

55 (9) "Minor" means ~~an individual~~ a person less than or purported to be less than 18 years of
56 age. Any prosecution, pursuant to this article, relating to a victim that is a person purported to be
57 less than eighteen years of age shall be limited to investigations being conducted, or overseen, by
58 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 entity.
62 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 section one, article eight-b of this chapter, or sexually explicit conduct, as defined in
70 section one, article eight-c of this chapter.

71 (14) "Sexual servitude" means:

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

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

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