

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3029**

4 (By Delegates L. Phillips, Frazier, Miley, Brown,  
5 Caputo, Longstreth, Moore, Skaff, Ellem,  
6 Hamilton and Sobonya)

7 (Originating in the Committee on the Judiciary.)

8 [February 7, 2011]

9  
10 A BILL to amend and reenact §61-3C-14a of the Code of West  
11 Virginia, 1931, as amended, and to amend and reenact §61-8-16  
12 of said code, all relating to crimes using computers,  
13 telephones and electronic communications devices; creating  
14 offenses for the unlawful transmission of obscene, anonymous,  
15 harassing and threatening communications and data by mobile  
16 phone, personal digital assistant or other electronic  
17 communications device; clarifying provisions pertaining to the  
18 unlawful obscene, anonymous, harassing and threatening  
19 communications by traditional voice communication by  
20 telephone; creating a felony offense for certain repeat  
21 offenses using a computer, mobile phone or other electronic  
22 communications device; and establishing criminal penalties.

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

24 That §61-3C-14a of the Code of West Virginia, 1931, as  
25 amended, be amended and reenacted; and §61-8-16 of said code be  
26 amended and reenacted, all to read as follows:

1 **ARTICLE 3C. WEST VIRGINIA COMPUTER AND MOBILE DEVICES CRIME AND**  
2 **ABUSE ACT.**

3 **§61-3C-14a. Obscene, anonymous, harassing and threatening**  
4 **communications by computer, cell phones and**  
5 **electronic communication devices; penalty.**

6 (a) It is unlawful for any person, with the intent to harass  
7 or abuse another person, to use a computer, mobile phone, personal  
8 digital assistant or other electronic communication device to:

9 (1) Make contact with another without disclosing his or her  
10 identity with the intent to harass or abuse;

11 (2) Make contact with a person after being requested by the  
12 person to desist from contacting them;

13 (3) Threaten to commit a crime against any person or property;  
14 or

15 (4) Cause obscene material to be delivered or transmitted to  
16 a specific person after being requested to desist from sending such  
17 material.

18 (b) (1) For purposes of this section, the "use of a computer,  
19 mobile phone, personal digital assistant or other electronic  
20 communication device" includes, but is not limited to, the  
21 transmission of text messages, electronic mail, photographs,  
22 videos, images or other nonvoice data by means of an electronic  
23 communication system, and includes the transmission of such data to  
24 another's computer, e-mail account, mobile phone, personal digital  
25 assistant or other electronic communication device.

1        (5) For purposes of this section, "obscene material" means  
2 material that:

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

7        (B) An average person, applying contemporary adult community  
8 standards, would find, depicts or describes, in a patently  
9 offensive way, sexually explicit conduct consisting of an ultimate  
10 sexual act, normal or perverted, actual or simulated, an excretory  
11 function, masturbation, lewd exhibition of the genitals, or  
12 sadomasochistic sexual abuse; and

13        (C) A reasonable person would find, taken as a whole, lacks  
14 literary, artistic, political or scientific value.

15        ~~(b)~~ (c) It is unlawful for any person to knowingly permit a  
16 computer, mobile phone or personal digital assistant or other  
17 electronic communication device under his or her control to be used  
18 for any purpose prohibited by this section.

19        ~~(c)~~ (d) Any offense committed under this section may be  
20 determined to have occurred at the place at which the contact  
21 originated or the place at which the contact was received or  
22 intended to be received.

23        ~~(d)~~ (e) Any person who violates a provision of this section is  
24 guilty of a misdemeanor and, upon conviction thereof, shall be  
25 fined not more than \$500 or confined in ~~a county or regional~~ jail  
26 not more than six months, or both fined and confined. For a second

1 ~~or subsequent~~ offense, the person is guilty of a misdemeanor and,  
2 upon conviction thereof, shall be fined not more than \$1,000 or  
3 confined in ~~a county or regional~~ jail for not more than one year,  
4 or both fined and confined. For a third or subsequent offense, the  
5 person is guilty of a felony and, upon conviction thereof, shall be  
6 imprisoned in a state correctional facility not less than one year  
7 nor more two years and fined not more than \$5,000.

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

9 **§61-8-16. Obscene, anonymous, harassing, repeated and threatening**  
10 **telephone calls; penalty.**

11 (a) It ~~shall be~~ is unlawful for any person with intent to  
12 harass or abuse another by means of telephone to:

13 (1) Make any comment, request, suggestion or proposal which is  
14 obscene; or

15 (2) Make a telephone call, whether or not conversation ensues,  
16 without disclosing his or her identity and with intent to harass  
17 any person at the called number; or

18 (3) Make or cause the telephone of another repeatedly or  
19 continuously to ring, with intent to harass any person at the  
20 called number; or

21 (4) Make repeated telephone calls, during which conversation  
22 ensues, with intent to harass any person at the called number; or

23 (5) Threaten to commit a crime against any person or property.

24 (b) It shall be unlawful for any person to knowingly permit  
25 any telephone under his or her control to be used for any purpose

1 prohibited by this section.

2 (c) Any offense committed under this section may be deemed to  
3 have occurred at the place at which the telephone call was made, or  
4 the place at which the telephone call was received.

5 (d) Any person who violates any provision of this section  
6 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,  
7 shall be fined not more than \$500, or ~~imprisoned~~ confined in ~~the~~  
8 ~~county~~ jail not more than six months, or both fined and ~~imprisoned~~  
9 confined.