

1 **H. B. 2565**

2
3 (By Delegates Frazier, Miley, Brown, Caputo,
4 Longstreth, Moore, Ellem, Hamilton
5 and Sobonya)

6 [Introduced January 19, 2011; referred to the
7 Committee on the Judiciary then Finance.]

**Interim
Bill**

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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 devices; creating offenses for the
14 unlawful transmission of obscene, anonymous, harassing and
15 threatening communications and data by mobile phone, personal
16 digital assistant or other mobile device; clarifying
17 provisions pertaining to the unlawful obscene, anonymous,
18 harassing and threatening communications by traditional voice
19 communication by telephone; creating a felony offense for
20 certain repeat offenses using a computer, mobile phone or
21 other mobile device; and establishing penalties.

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

23 That §61-3C-14a of the Code of West Virginia, 1931, as
24 amended, be amended and reenacted; and §61-8-16 of said code be
25 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 and mobile devices;**
5 **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 mobile 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 mobile device"
20 includes, but is not limited to, the transmission of text messages,
21 electronic mail, photographs, videos, images or other nonvoice data
22 by means of an electronic communication system, and includes the
23 transmission of such data to another's computer, e-mail account,
24 mobile phone, personal digital assistant or other mobile device.

1 (2) 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 mobile device under his or her control to be used for any purpose
18 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

1 fined not more than \$500 or confined in ~~a county or regional~~ jail
2 not more than six months, or both fined and confined. For a second
3 ~~or subsequent~~ offense, the person is guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined not more than \$1,000 or
5 confined in ~~a county or regional~~ jail for not more than one year,
6 or both fined and confined. For a third or subsequent offense, the
7 person is guilty of a felony and, upon conviction thereof, shall be
8 fined not more than \$5,000 or confined in a state correctional
9 facility for not more than two years, or both fined and confined.

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

11 **§61-8-16. Obscene, anonymous, harassing, repeated and threatening**
12 **telephone calls; penalty.**

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

15 (1) Make any comment, request, suggestion or proposal which is
16 obscene; or

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

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

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

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

2 (b) It shall be unlawful for any person to knowingly permit
3 any telephone under his or her control to be used for any purpose
4 prohibited by this section.

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

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

NOTE: The purpose of this bill is to address the issue of cyberbullying by amending and clarifying the applicable laws to create appropriate penalties for the misuse of computers and mobile phones, personal digital assistants and other electronic devices to harass, abuse or threaten other persons. It includes enhanced felony penalties for convictions of third or subsequent offenses.

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

The 2010 Joint Committee on the Judiciary Committee recommended this bill for introduction and passage during the 2011 Regular Session.