

1 amended and reenacted, all to read as follows:

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

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

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

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

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

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

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

19 (b) (1) For purposes of this section, the "use of a computer,
20 mobile phone, personal digital assistant or other electronic
21 communication device" includes, but is not limited to, the
22 transmission of text messages, electronic mail, photographs,
23 videos, images or other nonvoice data by means of an electronic

1 communication system, and includes the transmission of such data to
2 another's computer, e-mail account, mobile phone, personal digital
3 assistant or other electronic communication device.

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

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

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

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

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

22 ~~(c)~~ (d) Any offense committed under this section may be
23 determined to have occurred at the place at which the contact
24 originated or the place at which the contact was received or

1 intended to be received.

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

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

14 **§61-8-16. Obscene, anonymous, harassing, repeated and threatening**
 15 **telephone calls; penalty.**

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

18 (1) Make any comment, request, suggestion or proposal which is
 19 obscene; or

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

23 (3) Make or cause the telephone of another repeatedly or
 24 continuously to ring, with intent to harass any person at the

1 called number; or

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

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

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

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

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