

COMMITTEE SUBSTITUTE

FOR

H. B. 3029

(BY DELEGATES L. PHILLIPS, FRAZIER, MILEY, BROWN,
CAPUTO, LONGSTRETH, MOORE, SKAFF, ELLEM,
HAMILTON AND SOBONYA)

(Originating in the Committee on the Judiciary.)
[February 7, 2011]

A BILL to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended, and to amend and reenact §61-8-16 of said code, all relating to crimes using computers, telephones and electronic communications devices; creating offenses for the unlawful transmission of obscene, anonymous, harassing and threatening communications and data by mobile phone, personal digital assistant or other electronic

communications device; clarifying provisions pertaining to the unlawful obscene, anonymous, harassing and threatening communications by traditional voice communication by telephone; creating a felony offense for certain repeat offenses using a computer, mobile phone or other electronic communications device; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

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

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

- 1 (a) It is unlawful for any person, with the intent to harass
- 2 or abuse another person, to use a computer, mobile phone,
- 3 personal digital assistant or other electronic communication
- 4 device to:

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

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

9 (3) Threaten to commit a crime against any person or
10 property; or

11 (4) Cause obscene material to be delivered or transmitted
12 to a specific person after being requested to desist from
13 sending such material.

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

23 (5) For purposes of this section, “obscene material”
24 means material that:

25 (A) An average person, applying contemporary adult
26 community standards, would find, taken as a whole, appeals
27 to the prurient interest, is intended to appeal to the prurient
28 interest, or is pandered to a prurient interest;

29 (B) An average person, applying contemporary adult
30 community standards, would find, depicts or describes, in a
31 patently offensive way, sexually explicit conduct consisting
32 of an ultimate sexual act, normal or perverted, actual or
33 simulated, an excretory function, masturbation, lewd
34 exhibition of the genitals, or sadomasochistic sexual abuse;
35 and

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

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

42 ~~(c)~~ (d) Any offense committed under this section may be
43 determined to have occurred at the place at which the contact
44 originated or the place at which the contact was received or
45 intended to be received.

46 ~~(d)~~ (e) Any person who violates a provision of this
47 section is guilty of a misdemeanor and, upon conviction
48 thereof, shall be fined not more than \$500 or confined in a
49 ~~county or regional~~ jail not more than six months, or both
50 fined and confined. For a second ~~or subsequent~~ offense, the
51 person is guilty of a misdemeanor and, upon conviction
52 thereof, shall be fined not more than \$1,000 or confined in a
53 ~~county or regional~~ jail for not more than one year, or both
54 fined and confined. For a third or subsequent offense, the
55 person is guilty of a felony and, upon conviction thereof,
56 shall be imprisoned in a state correctional facility not less
57 than one year nor more two years and fined not more than
58 \$5,000.

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

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

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

3 (1) Make any comment, request, suggestion or proposal
4 which is obscene; or

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

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

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

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

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

19 (c) Any offense committed under this section may be
20 deemed to have occurred at the place at which the telephone
21 call was made, or the place at which the telephone call was
22 received.

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