

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 240

BY SENATORS FERNS, BOSO, WELD, CLINE AND RUCKER

[Introduced February 10, 2017; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §61-8G-1, §61-8G-2 and §61-8G-3, all relating to creating the crime of
 3 dissemination of sexual images; defining terms; setting forth elements of the crime; and
 4 providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §61-8G-1, §61-8G-2 and §61-8G-3, all to read as follows:

ARTICLE 8G. NONCONSENSUAL DISSEMINATION OF PRIVATE SEXUAL IMAGES.

§61-8G-1. Definitions.

1 When used in this article, the following words, terms and phrases have the meaning
 2 ascribed to them, except where the context indicates a different meaning:

3 “Electronic communication device” includes telephones, cell phones, computers, Internet
 4 web pages or sites, Internet phones, hybrid cellular/Internet wireless devices, personal digital
 5 assistants (PDA’s), video recorders, fax machines, or pagers.

6 “Image” or “images” include photography, film, video tape, recording, digital, or other
 7 reproduction.

8 “Knowledge”, “permission” or “consent” means when a person has consented to the
 9 disclosure of an image within the context of a confidential relationship and the person has reason
 10 to believe that the disclosure will not go beyond that relationship.

11 “Person” means an individual, partnership, firm, association, corporation or other legal
 12 entity.

13 “Send” or “distribute” means to transfer, publish, disclose or reproduce images as set forth
 14 in this article.

15 “Sexual activity” means:

16 (1) Sexual intercourse, vulvar penetration, cunnilingus, fellatio or anal intercourse between
 17 persons or any other intrusion, however slight, of any part of a person's body or of any object into

18 the genital or anal opening either by a person or upon the person's instruction. The emission of
19 semen is not required;

20 (2) Bestiality;

21 (3) Masturbation;

22 (4) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation,
23 torture or bondage; or

24 (5) Lewd exhibition of intimate parts.

§61-8G-2. Dissemination of images.

1 Any person who shall knowingly and willfully, send or cause to be sent by means of an
2 electronic communication device or who electronically distributes, publishes, emails, hyperlinks
3 or makes available for downloading electronically with the intent to view or transport any material
4 visually portraying nude images or sexual activities of another person along with personal
5 identifying information without their knowledge, permission or consent is guilty of a misdemeanor
6 and, punished pursuant to section three of this article.

§61-8G-3. Penalties.

1 (a) Any person who violates the provisions of this article is guilty of a misdemeanor and,
2 upon conviction, shall be incarcerated in the regional jail for not more than six months or fined not
3 more than \$1000, or both fined and confined.

4 (b) A second or subsequent conviction of this article, occurring within five years of a prior
5 conviction, is a felony punishable by incarceration in a state correctional facility for not less than
6 one year nor more than five years, or fined not less than \$3000 nor more than \$10,000, or both
7 fined and confined.

NOTE: The purpose of this bill is to create the crime of distribution of nude and sexually explicit images when the person depicted has an expectation of privacy.

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