

Senate Bill No. 213

(By Senators Foster, Kessler (Acting President), Chafin,
Jenkins, Laird, Minard, Palumbo, Snyder, Williams,
Hall, Unger, Browning, Wells, Stollings, Plymale, Prezioso,
Miller, Yost, Klempa and Beach)

**Interim
Bill**

[Introduced January 19, 2011; referred to the Committee on the
Judiciary.]

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

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

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

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

6 **§61-3C-14a. Obscene, anonymous, harassing and threatening**
7 **communications by computer and mobile devices;**
8 **penalty.**

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

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

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

16 (3) Threaten to commit a crime against any person or
17 property; or

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

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

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

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

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

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

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

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

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

1 originated or the place at which the contact was received or
2 intended to be received.

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

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

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

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

20 (1) Make any comment, request, suggestion or proposal which
21 is obscene; or

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

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

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

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

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

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

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