

1 **H. B. 4318**

2
3 (By Delegates Miley, Caputo, Lawrence, Poore
4 and Armstead)

5 [By Request of the State Police]

6 [Introduced January 26, 2012; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend and reenact §61-3C-3 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §61-8A-1 of said
12 code, all relating to updating the definition of computer in
13 the commission of certain crimes.

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

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

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

19 **§61-3C-3. Definitions.**

20 As used in this article, unless the context clearly indicates
21 otherwise:

22 (a) "Access" means to instruct, communicate with, store data
23 in, retrieve data from, intercept data from or otherwise make use
24 of any computer, computer network, computer program, computer
25 software, computer data or other computer resources.

26 (b) "Authorization" means the express or implied consent given
27 by a person to another to access or use said person's computer,

1 computer network, computer program, computer software, computer
2 system, password, identifying code or personal identification
3 number.

4 (c) "Computer" means an electronic, magnetic, optical,
5 electrochemical or other high speed data processing device
6 performing logical, arithmetic or storage functions and includes
7 any data storage facility or communication facility directly
8 related to or operating in conjunction with such device. The term
9 "computer" includes any connected or directly related device,
10 equipment or facility which enables the computer to store, retrieve
11 or communicate computer programs, computer data or the results of
12 computer operations to or from a person, another computer or
13 another device, file servers, mainframe systems, desktop personal
14 computers, laptop personal computers, tablet personal computers,
15 cellular telephones, game consoles and any other electronic data
16 storage device or equipment, but such term does not include an
17 automated typewriter or typesetter, a portable hand-held calculator
18 or other similar device.

19 (d) "Computer contaminant" means any set of computer
20 instructions that are designed to damage or destroy information
21 within a computer, computer system or computer network without the
22 consent or permission of the owner of the information. They
23 include, but are not limited to, a group of computer instructions
24 commonly called viruses or worms that are self-replicating or self-
25 propagating and are designed to contaminate other computer programs
26 or computer data, consume computer resources or damage or destroy

1 the normal operation of the computer.

2 (e) "Computer data" means any representation of knowledge,
3 facts, concepts, instruction or other information computed,
4 classified, processed, transmitted, received, retrieved,
5 originated, stored, manifested, measured, detected, recorded,
6 reproduced, handled or utilized by a computer, computer network,
7 computer program or computer software and may be in any medium,
8 including, but not limited to, computer print-outs, microfilm,
9 microfiche, magnetic storage media, optical storage media, punch
10 paper tape or punch cards, or it may be stored internally in read-
11 only memory or random access memory of a computer or any other
12 peripheral device.

13 (f) "Computer network" means a set of connected devices and
14 communication facilities, including more than one computer, with
15 the capability to transmit computer data among them through such
16 communication facilities.

17 (g) "Computer operations" means arithmetic, logical, storage,
18 display, monitoring or retrieval functions or any combination
19 thereof and includes, but is not limited to, communication with,
20 storage of data in or to, or retrieval of data from any device and
21 the human manual manipulation of electronic magnetic impulses. A
22 "computer operation" for a particular computer shall also mean any
23 function for which that computer was designed.

24 (h) "Computer program" means an ordered set of computer data
25 representing instructions or statements, in a form readable by a
26 computer, which controls, directs or otherwise influences the

1 functioning of a computer or computer network.

2 (i) "Computer software" means a set of computer programs,
3 procedures and associated documentation concerned with computer
4 data or with the operation of a computer, computer program or
5 computer network.

6 (j) "Computer services" means computer access time, computer
7 data processing or computer data storage and the computer data
8 processed or stored in connection therewith.

9 (k) "Computer supplies" means punch cards, paper tape,
10 magnetic tape, magnetic disks or diskettes, optical disks or
11 diskettes, disk or diskette packs, paper, microfilm and any other
12 tangible input, output or storage medium used in connection with a
13 computer, computer network, computer data, computer software or
14 computer program.

15 (l) "Computer resources" includes, but is not limited to,
16 information retrieval; computer data processing, transmission and
17 storage; and any other functions performed, in whole or in part, by
18 the use of a computer, computer network, computer software or
19 computer program.

20 (m) "Owner" means any person who owns or leases or is a
21 licensee of a computer, computer network, computer data, computer
22 program, computer software, computer resources or computer
23 supplies.

24 (n) "Person" means any natural person, general partnership,
25 limited partnership, trust, association, corporation, joint venture
26 or any state, county or municipal government and any subdivision,

1 branch, department or agency thereof.

2 (o) "Property" includes:

3 (1) Real property;

4 (2) Computers and computer networks;

5 (3) Financial instruments, computer data, computer programs,
6 computer software and all other personal property regardless of
7 whether they are:

8 (i) Tangible or intangible;

9 (ii) In a format readable by humans or by a computer;

10 (iii) In transit between computers or within a computer
11 network or between any devices which comprise a computer; or

12 (iv) Located on any paper or in any device on which it is
13 stored by a computer or by a human; and

14 (4) Computer services.

15 (p) "Value" means having any potential to provide any direct
16 or indirect gain or advantage to any person.

17 (q) "Financial instrument" includes, but is not limited to,
18 any check, draft, warrant, money order, note, certificate of
19 deposit, letter of credit, bill of exchange, credit or debit card,
20 transaction authorization mechanism, marketable security or any
21 computerized representation thereof.

22 (r) "Value of property or computer services" shall be: (1)
23 The market value of the property or computer services at the time
24 of a violation of this article; or (2) if the property or computer
25 services are unrecoverable, damaged or destroyed as a result of a
26 violation of section six or seven of this article, the cost of

1 reproducing or replacing the property or computer services at the
2 time of the violation.

3 **ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE**
4 **MATTER TO MINORS.**

5 **§61-8A-1. Definitions.**

6 When used in this article, the following words, and any
7 variations thereof required by the context, shall have the meaning
8 ascribed to them in this section:

9 (a) "Adult" means a person eighteen years of age or older.

10 (b) "Computer" means an electronic, magnetic, optical,
11 electrochemical or other high speed data processing device
12 performing logical, arithmetic or storage functions and includes
13 any data storage facility or communication facility directly
14 related to or operating in conjunction with such device. As used
15 in this article, computer includes file servers, mainframe systems,
16 desktop personal computers, laptop personal computers, tablet
17 personal computers, cellular telephones, game consoles and any
18 electronic data storage device or equipment. The term "computer"
19 includes any connected or directly related device, equipment or
20 facility which enables the computer to store, retrieve or
21 communicate computer programs, computer data or the results of
22 computer operations to or from a person, another computer or
23 another device, but such term does not include an automated
24 typewriter or typesetter, a portable hand-held calculator or other
25 similar device.

26 ~~(b)~~ (c) "Computer network" means the interconnection of

1 hardware or wireless communication lines with a computer through
2 remote terminals, or a complex consisting of two or more
3 interconnected computers.

4 ~~(c)~~ (d) "Display" means to show, exhibit or expose matter, in
5 a manner visible to general or invited public, including minors.
6 As used in this article, display shall include the placing or
7 exhibiting of matter on or in a billboard, viewing screen, theater,
8 marquee, newsstand, display rack, window, showcase, display case or
9 similar public place.

10 ~~(d)~~ (e) "Distribute" means to transfer possession, transport,
11 transmit, sell or rent, whether with or without consideration.

12 ~~(e)~~ (f) "Employee" means any individual who renders personal
13 services in the course of a business, who receives compensation and
14 who has no financial interest in the ownership or operation of the
15 business other than his or her salary or wages.

16 ~~(f)~~ (g) "Internet" means the international computer network of
17 both federal and nonfederal interoperable packet switched data
18 networks.

19 ~~(g)~~ (h) "Knowledge of the character of the matter" means
20 having awareness of or notice of the overall sexual content and
21 character of matter as depicting, representing, or describing
22 obscene matter.

23 ~~(h)~~ (i) "Matter" means any visual, audio, or physical item,
24 article, production transmission, publication, exhibition, or live
25 performance, or reproduction thereof, including any two or three
26 dimensional visual or written material, film, picture, drawing,

1 video, graphic, or computer generated or reproduced image; or any
2 book, magazine, newspaper or other visual or written material; or
3 any motion picture or other pictorial representation; or any statue
4 or other figure; or any recording, transcription, or mechanical,
5 chemical, or electrical reproduction; or any other articles, video
6 laser disc, computer hardware and software, or computer generated
7 images or message recording, transcription, or object, or any
8 public or commercial live exhibition performed for consideration or
9 before an audience of one or more.

10 ~~(i)~~ (j) "Minor" means an unemancipated person under eighteen
11 years of age.

12 ~~(j)~~ (k) "Obscene matter" means matter that:

13 (1) An average person, applying contemporary adult community
14 standards, would find, taken as a whole, appeals to the prurient
15 interest, is intended to appeal to the prurient interest, or is
16 pandered to a prurient interest;

17 (2) An average person, applying community standards, would
18 find depicts or describes, in a patently offensive way, sexually
19 explicit conduct; and

20 (3) A reasonable person would find, taken as a whole, lacks
21 serious literary, artistic, political or scientific value.

22 ~~(k)~~ (l) "Parent" includes a biological or adoptive parent,
23 legal guardian or legal custodian.

24 ~~(l)~~ (m) "Person" means any adult, partnership, firm,
25 association, corporation or other legal entity.

26 ~~(m)~~ (n) "Sexually explicit conduct" means an ultimate sexual

1 act, normal or perverted, actual or simulated, including sexual
2 intercourse, sodomy, oral copulation, sexual bestiality, sexual
3 sadism and masochism, masturbation, excretory functions and lewd
4 exhibition of the genitals.

NOTE: The purpose of this bill is to update and expand the definition of computer as it relates to certain crimes.

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