WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 213

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

[PASSED MARCH 11, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]
AN ACT 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; definitions; 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 that §61-8-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER AND ELECTRONIC COMMUNICATIONS DEVICE 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 or abuse another person, to use a computer, mobile phone, personal digital assistant or other electronic communication device to:

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

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

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

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

14 (b) For purposes of this section:

15 (1) "Electronic communication device" means and includes a telephone, wireless phone, computer, pager or any other electronic or wireless device which is capable of transmitting a document, image, voice, e-mail or text message using such device in an electronic, digital or analog form from one person or location so it may be viewed or received by another person or persons at other locations.
(2) "Use of a computer, mobile phone, personal digital assistant or other electronic communication device" includes, but is not limited to, the transmission of text messages, electronic mail, photographs, videos, images or other nonvoice data by means of an electronic communication system, and includes the transmission of such data, documents, messages and images to another's computer, e-mail account, mobile phone, personal digital assistant or other electronic communication device.

(3) "Obscene material" means material that:

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

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

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

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

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

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall
be fined not more than $500 or confined in jail not more than
six months, or both fined and confined. For a second or
subsequent offense, the person is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not more than
$1,000 or confined in jail for not more than one year, or both
fined and confined.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DE-
CENCY.

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

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

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

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

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

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

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

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

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

(d) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in jail not more than six months, or both fined and confined.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the 6th Day of April, 2011.

Governor