

COMMITTEE SUBSTITUTE

FOR

## **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)

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[Originating in the Committee on the Judiciary;  
reported January 27, 2011.]

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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 devices; creating offenses for the unlawful transmission of obscene, anonymous, harassing and threatening communications and data by mobile phone, personal digital assistant or similarly functioning devices; clarifying provisions pertaining to unlawful obscene, anonymous, harassing and threatening communications by voice communication by telephone; and establishing 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 MOBILE DEVICES  
CRIME AND ABUSE ACT.**

**§61-3C-14a. Obscene, anonymous, harassing and threatening  
communications by computer and mobile de-  
vices; 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 similarly functioning  
4 device to:

5 (1) Make contact with another without disclosing his or her  
6 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 computer,  
15 mobile phone, personal digital assistant or other similarly  
16 functioning device” includes, but is not limited to, the  
17 transmission of text messages, electronic mail, photographs,  
18 videos, images or other nonvoice data by means of an  
19 electronic communication system, and includes the transmis-  
20 sion of such data to another’s computer, e-mail account,  
21 mobile phone, personal digital assistant or other similarly  
22 functioning device.

23 (2) For purposes of this section, “obscene material” means  
24 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, lacks  
37 literary, artistic, political or scientific value.

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

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

46 ~~(d)~~ (e) Any person who violates a provision of this section  
47 is guilty of a misdemeanor and, upon conviction thereof,  
48 shall be fined not more than \$500 or confined in ~~a county or~~  
49 ~~regional~~ jail not more than six months, or both. For a second  
50 or subsequent offense, the person is guilty of a misdemeanor  
51 and, upon conviction thereof, shall be fined not more than  
52 \$1,000 or confined in ~~a county or regional~~ jail for not more  
53 than one year, or both.

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

**§61-8-16. Obscene, anonymous, harassing, repeated and threaten-  
ing 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 conversa-  
12 tion ensues, with intent to harass any person at the called  
13 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 permit  
17 any telephone under his or her control to be used for any  
18 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  
27 both ~~fined and imprisoned~~.