

ENROLLED

Senate Bill No. 385

(BY SENATORS UNGER, BEACH, KESSLER (MR. PRESIDENT), KLEMPA AND JENKINS)

[Passed March 2, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3C-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-1 of said code, all relating to updating the definition of “computer” in the commission of certain crimes.

Be it enacted by the Legislature of West Virginia:

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

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

§61-3C-3. Definitions.

1 As used in this article, unless the context clearly indi-
2 cates otherwise:

3 (a) “Access” means to instruct, communicate with, store
4 data in, retrieve data from, intercept data from or otherwise
5 make use of any computer, computer network, computer
6 program, computer software, computer data or other com-
7 puter resources.

8 (b) “Authorization” means the express or implied
9 consent given by a person to another to access or use said

10 person's computer, computer network, computer program,
11 computer software, computer system, password, identifying
12 code or personal identification number.

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

29 (d) "Computer contaminant" means any set of computer
30 instructions that are designed to damage or destroy informa-
31 tion within a computer, computer system or computer
32 network without the consent or permission of the owner of
33 the information. They include, but are not limited to, a group
34 of computer instructions commonly called viruses or worms
35 that are self-replicating or self-propagating and are designed
36 to contaminate other computer programs or computer data,
37 consume computer resources or damage or destroy the
38 normal operation of the computer.

39 (e) "Computer data" means any representation of
40 knowledge, facts, concepts, instruction or other information
41 computed, classified, processed, transmitted, received,
42 retrieved, originated, stored, manifested, measured, detected,
43 recorded, reproduced, handled or utilized by a computer,
44 computer network, computer program or computer software
45 and may be in any medium, including, but not limited to,
46 computer printouts, microfilm, microfiche, magnetic storage
47 media, optical storage media, punch paper tape or punch

48 cards, or it may be stored internally in read-only memory or
49 random access memory of a computer or any other peripheral
50 device.

51 (f) “Computer network” means a set of connected devices
52 and communication facilities, including more than one
53 computer, with the capability to transmit computer data
54 among them through such communication facilities.

55 (g) “Computer operations” means arithmetic, logical,
56 storage, display, monitoring or retrieval functions or any
57 combination thereof and includes, but is not limited to,
58 communication with, storage of data in or to, or retrieval of
59 data from any device and the human manual manipulation
60 of electronic magnetic impulses. A “computer operation” for
61 a particular computer shall also mean any function for which
62 that computer was designed.

63 (h) “Computer program” means an ordered set of com-
64 puter data representing instructions or statements, in a form
65 readable by a computer, which controls, directs or otherwise
66 influences the functioning of a computer or computer
67 network.

68 (i) “Computer software” means a set of computer pro-
69 grams, procedures and associated documentation concerned
70 with computer data or with the operation of a computer,
71 computer program or computer network.

72 (j) “Computer services” means computer access time,
73 computer data processing or computer data storage and the
74 computer data processed or stored in connection therewith.

75 (k) “Computer supplies” means punch cards, paper tape,
76 magnetic tape, magnetic disks or diskettes, optical disks or
77 diskettes, disk or diskette packs, paper, microfilm and any
78 other tangible input, output or storage medium used in
79 connection with a computer, computer network, computer
80 data, computer software or computer program.

81 (l) “Computer resources” includes, but is not limited to,
82 information retrieval; computer data processing, transmis-

83 sion and storage; and any other functions performed, in
84 whole or in part, by the use of a computer, computer net-
85 work, computer software or computer program.

86 (m) "Owner" means any person who owns or leases or is
87 a licensee of a computer, computer network, computer data,
88 computer program, computer software, computer resources
89 or computer supplies.

90 (n) "Person" means any natural person, general partner-
91 ship, limited partnership, trust, association, corporation,
92 joint venture or any state, county or municipal government
93 and any subdivision, branch, department or agency thereof.

94 (o) "Property" includes:

95 (1) Real property;

96 (2) Computers and computer networks;

97 (3) Financial instruments, computer data, computer
98 programs, computer software and all other personal property
99 regardless of whether they are:

100 (i) Tangible or intangible;

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

102 (iii) In transit between computers or within a computer
103 network or between any devices which comprise a computer;
104 or

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

107 (4) Computer services.

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

110 (q) "Financial instrument" includes, but is not limited to,
111 any check, draft, warrant, money order, note, certificate of
112 deposit, letter of credit, bill of exchange, credit or debit card,
113 transaction authorization mechanism, marketable security
114 or any computerized representation thereof.

115 (r) “Value of property or computer services” shall be: (1)
116 The market value of the property or computer services at the
117 time of a violation of this article; or (2) if the property or
118 computer services are unrecoverable, damaged or destroyed
119 as a result of a violation of section six or seven of this article,
120 the cost of reproducing or replacing the property or com-
121 puter services at the time of the violation.

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

§61-8A-1. Definitions.

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

4 (a) “Adult” means a person eighteen years of age or
5 older.

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

23 (c) “Computer network” means the interconnection of
24 hardware or wireless communication lines with a computer
25 through remote terminals, or a complex consisting of two or
26 more interconnected computers.

27 (d) "Display" means to show, exhibit or expose matter,
28 in a manner visible to general or invited public, including
29 minors. As used in this article, display shall include the
30 placing or exhibiting of matter on or in a billboard, viewing
31 screen, theater, marquee, newsstand, display rack, window,
32 showcase, display case or similar public place.

33 (e) "Distribute" means to transfer possession, transport,
34 transmit, sell or rent, whether with or without consideration.

35 (f) "Employee" means any individual who renders
36 personal services in the course of a business, who receives
37 compensation and who has no financial interest in the
38 ownership or operation of the business other than his or her
39 salary or wages.

40 (g) "Internet" means the international computer network
41 of both federal and nonfederal interoperable packet switched
42 data networks.

43 (h) "Knowledge of the character of the matter" means
44 having awareness of or notice of the overall sexual content
45 and character of matter as depicting, representing or
46 describing obscene matter.

47 (i) "Matter" means any visual, audio, or physical item,
48 article, production transmission, publication, exhibition, or
49 live performance, or reproduction thereof, including any
50 two- or three- dimensional visual or written material, film,
51 picture, drawing, video, graphic, or computer generated or
52 reproduced image; or any book, magazine, newspaper or
53 other visual or written material; or any motion picture or
54 other pictorial representation; or any statue or other figure;
55 or any recording, transcription, or mechanical, chemical, or
56 electrical reproduction; or any other articles, video laser
57 disc, computer hardware and software, or computer gener-
58 ated images or message recording, transcription, or object, or
59 any public or commercial live exhibition performed for
60 consideration or before an audience of one or more.

61 (j) "Minor" means an unemancipated person under
62 eighteen years of age.

63 (k) "Obscene matter" means matter that:

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

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

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

73 (l) "Parent" includes a biological or adoptive parent,
74 legal guardian or legal custodian.

75 (m) "Person" means any adult, partnership, firm, associ-
76 ation, corporation or other legal entity.

77 (n) "Sexually explicit conduct" means an ultimate sexual
78 act, normal or perverted, actual or simulated, including
79 sexual intercourse, sodomy, oral copulation, sexual bestial-
80 ity, sexual sadism and masochism, masturbation, excretory
81 functions and lewd exhibition of the genitals.