

# Senate Bill No. 385

(By Senators Unger, Beach, Kessler (Mr. President),  
Klempa and Jenkins)

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[Introduced January 23, 2012; referred to  
the Committee on the Judiciary.]

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A BILL 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       ~~(b)~~ (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       ~~(c)~~ (d) “Display” means to show, exhibit or expose  
28 matter, in a manner visible to general or invited public,  
29 including minors. As used in this article, display shall  
30 include the placing or exhibiting of matter on or in a bill-  
31 board, viewing screen, theater, marquee, newsstand, display  
32 rack, window, showcase, display case or similar public place.

33       ~~(d)~~ (e) “Distribute” means to transfer possession, trans-  
34 port, transmit, sell or rent, whether with or without consid-  
35 eration.



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

41       ~~(f)~~ (g) “Internet” means the international computer  
42   network of both federal and nonfederal interoperable packet  
43   switched data networks.

44       ~~(g)~~ (h) “Knowledge of the character of the matter” means  
45   having awareness of or notice of the overall sexual content  
46   and character of matter as depicting, representing or  
47   describing obscene matter.

48       ~~(h)~~ (i) “Matter” means any visual, audio, or physical item,  
49   article, production transmission, publication, exhibition, or  
50   live performance, or reproduction thereof, including any  
51   two- or three- dimensional visual or written material, film,  
52   picture, drawing, video, graphic, or computer generated or  
53   reproduced image; or any book, magazine, newspaper or  
54   other visual or written material; or any motion picture or  
55   other pictorial representation; or any statue or other figure;  
56   or any recording, transcription, or mechanical, chemical, or  
57   electrical reproduction; or any other articles, video laser

58 disc, computer hardware and software, or computer gener-  
59 ated images or message recording, transcription, or object, or  
60 any public or commercial live exhibition performed for  
61 consideration or before an audience of one or more.

62 ~~(f)~~ (j) “Minor” means an unemancipated person under  
63 eighteen years of age.

64 ~~(j)~~ (k) “Obscene matter” means matter that:

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

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

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

74 ~~(k)~~ (l) “Parent” includes a biological or adoptive parent,  
75 legal guardian or legal custodian.

76 ~~(l)~~ (m) “Person” means any adult, partnership, firm,  
77 association, corporation or other legal entity.

78 ~~(m)~~ (n) “Sexually explicit conduct” means an ultimate  
79 sexual act, normal or perverted, actual or simulated, includ-

80 ing sexual intercourse, sodomy, oral copulation, sexual  
81 bestiality, sexual sadism and masochism, masturbation,  
82 excretory functions and lewd exhibition of the genitals.

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(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.)