

ARTICLE 517
Indecency and Obscenity

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| <p>517.01 Operating a place for or permitting or engaging in prostitution, lewdness or assignation.</p> <p>517.02 Detention of person in place of prostitution.</p> <p>517.03 Pandering.</p> <p>517.04 Pimping.</p> <p>517.05 Profane swearing and drunkenness.</p> | <p>517.06 Obscene or harassing telephone calls.</p> <p>517.07 Indecent exposure.</p> <p>517.08 Invasion of privacy by looking.</p> <p>517.09 Preparation, distribution or exhibition of obscene matter to minors.</p> <p>517.10 Sale or display of obscene matter.</p> <p>517.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to prohibit distribution of obscene literature - see W. Va. Code 8-12-5(17)
 Authority to suppress houses of ill fame - see W. Va. Code 8-12-5(18)
 Authority to prevent indecent practices - see W. Va. Code 8-12-5(19)
 Equitable remedies - see W. Va. Code Art. 61-9

517.01 OPERATING A PLACE FOR OR PERMITTING OR ENGAGING IN PROSTITUTION, LEWDNESS OR ASSIGNATION.

(a) No person shall keep, set up, maintain or operate any house, place, building, hotel, tourist camp, other structure or part thereof, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or own any place, house, hotel, tourist camp, other structure or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness or assignation, or let, sublet or rent any such place, premises or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises or conveyance for prostitution, lewdness or assignation; or offer, or offer to secure another for the purpose of prostitution or for any other lewd or indecent act; or receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp or other structure, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain there for such purpose; or for another or others, direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or aid, abet or participate in the doing of any acts herein prohibited. Whoever violates this subsection (a) shall, for a first offense, be guilty of a misdemeanor.

(b) No person shall engage in prostitution, lewdness or assignation, or solicit, induce, entice or procure another to commit an act of prostitution, lewdness or assignation; or reside in, enter or remain in any house, place, building, hotel, tourist camp or other structure, or enter or remain in any vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or aid, abet or participate in the doing of any of the acts herein prohibited.

Whoever violates this subsection (b) shall, for a first or second offense, be guilty of a misdemeanor.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting or renting any house, place, building, hotel, tourist camp or other structure which is used for the purpose of prostitution, lewdness or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. "Tourist camp" includes any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp or other structure, and of the person or persons who reside in or frequent them, and of the defendant or defendants, shall be admissible in evidence in support of the charge.

(WVaC 61-8-5)

517.02 DETENTION OF PERSON IN PLACE OF PROSTITUTION.

(a) No person shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; shall, directly or indirectly, keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor if the person so kept, held, detained or restrained under this section is not a minor.

(WVaC 61-8-6)

517.03 PANDERING.

(a) No person shall procure an inmate for a house of prostitution, or by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person. No person shall, by promises, threats, violence or any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, to enter any place in which prostitution is encouraged or allowed within this Municipality, or to come into or leave this Municipality for the purpose of prostitution, or shall procure any person to become an inmate of a house of ill fame within this Municipality or to come into or leave this Municipality for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this Municipality, or to come into or leave this Municipality for the purpose of prostitution.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this Municipality, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in the municipality or county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor for the first offense unless the inmate referred to in this section is a minor.
(WVaC 61-8-7)

517.04 PIMPING.

(a) No person knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor unless the prostitute referred to in this section is a minor.
(WVaC 61-8-8)

517.05 PROFANE SWEARING AND DRUNKENNESS.

No person having arrived at the age of discretion shall profanely curse or swear or get drunk in public.
(WVaC 61-8-15)

517.06 OBSCENE OR HARASSING TELEPHONE CALLS.

- (a) No person with intent to harass or abuse another by means of telephone shall:
- (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 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 conversation ensues, with intent to harass any person at the called number; or
 - (5) Threaten to commit a crime against any person or property.

(b) No person shall knowingly permit any telephone under his 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.
(WVaC 61-8-16)

517.07 INDECENT EXPOSURE.

No person shall intentionally expose his or her sex organs or anus or the sex organs or anus of another person, or intentionally cause such exposure by another or engage in any overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm.
(WVaC 61-8-9)

517.08 INVASION OF PRIVACY BY LOOKING.

No person shall unlawfully enter upon the property of another or secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary.

517.09 PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

(a) Definitions of terms used in this section, and any variations thereof required by the context, shall have the meaning ascribed to them as follows:

- (1) "Distribute" means to transfer possession of, whether with or without consideration.
- (2) "Employee" means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than his salary or wages.
- (3) "Exhibit" means to display or offer for viewing, whether with or without consideration.
- (4) "Knowingly" means to display or offer for viewing, whether with or without consideration.
- (5) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or any statue or other figure, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (6) "Minor" means any individual under the age of eighteen years.
- (7) "Obscene matter" means to the average individual, applying contemporary State standards, matter which:
 - A. Considered as a whole, appeals to the prurient interests;
 - B. Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibition of the genitals; and
 - C. Considered as a whole, lacks serious literary, artistic, political or scientific value.
- (8) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (9) "Prepare" means to produce, publish or print.
- (10) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window showcase, display case or similar public place, so that the material within the meaning of "obscene matter" is easily visible from a public thoroughfare, from the property of others or from commercial or business premises generally open to minors at the time of such placing.

(b) No person shall knowingly send or cause to be sent or bring or cause to be brought into this Municipality any obscene matter for distribution, exhibition or public display to a minor, or in this Municipality prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or offer to prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or have in his possession with the intent to distribute, exhibit or make a public display of, any obscene matter to a minor.

(c) No employees shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher or when such employee distributes, prepares or exhibits obscene matter while acting within the scope of his employment.

(d) Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with knowledge of its content or character.

(e) No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.

(f) No person who, with knowledge that a person is a minor under eighteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under eighteen years of age, shall hire, employ or use such minor to do or assist in doing any of the acts described in subsection (a)(7)B. hereof.
(WVaC Art. 61-8A)

517.10 SALE OR DISPLAY OF OBSCENE MATTER.

(a) **Definitions.** For the purposes of this section:

- (1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.
- (2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (3) "Individual" means any human being regardless of age.
- (4) "Obscene" means matter which the average individual applying contemporary community standards would find
 - A. Taken as a whole, appeals to the prurient interest;
 - B. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and
 - C. The matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:
 1. Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
 2. Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.
- (5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

- (6) "Prepare" means to produce, publish or print.
- (7) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display sack, window, showcase, display case or similar public places so that material can be purchased or viewed by individuals.

(b) Individual Relief. The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by the attorney for the Municipality or a representative thereof or any citizen of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

(c) Activities Prohibited. No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of any obscene matter to any individual.

(d) Employees Not Prosecuted. No employee shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

(e) Exceptions. Nothing in this section shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States. (WVaC 8-12-5(b))

517.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 517.01(a), or 517.07 shall be fined not more than two hundred fifty dollars (\$250.00).
- (b) Whoever violates Section 517.01(b) shall be fined not more than one hundred dollars (\$100.00), and for a second offense shall be fined not more than two hundred fifty dollars (\$250.00).
- (c) Whoever violates Section 517.10 shall be fined not more than five hundred dollars (\$500.00), for a first offense. For a second or subsequent offense such person shall be fined not more than one thousand dollars (\$1,000).