1	COMMITTEE SUBSTITUTE
2	FOR
3	Н. В. 2357
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5 6	(By Delegates Poore, Marshall, Moore, Hamilton, Miley, Longstreth, Caputo, Manchin and Ellem)
7	(Originating in the Committee on the Judiciary)
8	(March 29, 2013)
9	

10 A BILL to amend the Code of West Virginia, 1931, as amended, by 11 adding thereto a new section, designated §49-5-13g, relating 12 to the development of an educational diversion program for minors engaged in delinguent offenses associated with sexting 13 14 and related offenses; delineation of sexting and associated 15 offenses; providing for the establishment of a specialized 16 diversion program by the West Virginia Supreme Court of 17 Appeals for sexting by minors and associated offenses; 18 suggested scope and topics to be included in such specialized 19 diversion program; providing for the participation in the 20 diversion program as a part of a pre-petition diversion and 21 informal resolution in advance of a filed petition, as part of a required counseling plan, or as part of an improvement 22 23 period requirement established in advance of adjudication; 24 successful completion of consideration of specialized 25 diversion program on first offense and subsequent offenses; 26 allowing for court discretion as to whether adjudicated 27 juvenile should be required to register as a sex offender as 28 a result of adjudication as status offender for sexting and

1 related offenses.

2 Be it enacted by the Legislature of West Virginia:

3 That the Code of West Virginia, 1931, as amended, be amended 4 by adding thereto a new section, designated §49-5-13g, to read as 5 follows:

6 ARTICLE 5. JUVENILE PROCEEDINGS.

7 §49-5-13g. Sexting educational diversion program.

8 (a) A minor who intentionally possesses, creates, produces, 9 distributes, presents, transmits, posts, exchanges or otherwise 10 disseminates a visual portrayal of another minor or who 11 distributes, presents, transmits, posts, exchanges or otherwise 12 disseminates a visual portrayal of himself or herself engaging in 13 sexually explicit conduct is engaging in an activity which is 14 equivalent to one or more felony offenses under the provisions of 15 eight-a and eight-c of this chapter and article fourteen-a, article 16 three-c of this chapter, if committed by an adult, and be 17 sufficient to support a juvenile delinquency petition filed 18 pursuant to the provisions of article five, chapter forty-nine of 19 this code.

20 (b) As used in this section, a "visual portrayal" means:

- 21 (1) A photograph;
- 22 (2) A motion picture;
- 23 (3) A digital image;
- 24 (4) A digital video recording; or
- 25 (5) Any other mechanical or electronic recording process or

26 device that can preserve, for later viewing, a visual image of a

27 person that includes, but is not limited to, computers, cellphones,

28 PDAs and other digital storage devices.

1 (c) Before a juvenile petition is filed for activity described 2 in subsection (a) of this section, or after probable cause has been 3 found to believe a juvenile is a status offender or a juvenile 4 delinquent, but before an adjudicatory hearing on the petition, 5 the court or a prosecuting attorney may direct or allow a minor who 6 engaged in such activity to participate in an educational diversion 7 program which meets the requirements of subsection (d) of this 8 section. The prosecutor or court may refer the minor to the 9 educational diversion program, as part of a pre-petition diversion 10 and informal resolution pursuant to the provisions of section two-a 11 of this article; as part of counseling provided pursuant to the 12 provisions of sections three or three-a of this article; or as part 13 of the requirements of an improvement period to be satisfied in advance of an adjudicatory hearing pursuant to the provisions of 14 15 section nine of this article.

16 (d) The West Virginia Supreme Court of Appeals may develop an 17 educational diversion program for minors who are accused of 18 activity described in subsection (a) of this section. As a part of 19 any specialized educational diversion program so developed, the 20 following issues and topics should be included:

21 (1) The legal consequences of and penalties for sharing 22 sexually suggestive or explicit materials, including applicable 23 federal and state statutes;

24 (2) The nonlegal consequences of sharing sexually suggestive
25 or explicit materials including, but not limited to, the effect on
26 relationships, loss of educational and employment opportunities,
27 and being barred or removed from school programs and
28 extracurricular activities;

1 <u>(3) How the unique characteristics of cyberspace and the</u> 2 <u>Internet, including searchability, replicability and an infinite</u> 3 <u>audience, can produce long-term and unforeseen consequences for</u> 4 <u>sharing sexually suggestive or explicit materials; and</u>

5 (4) The connection between bullying and cyber-bullying and 6 minors sharing sexually suggestive or explicit materials.

7 <u>(e) Once a specialized educational diversion program is</u> 8 <u>established by the West Virginia Supreme Court of Appeals</u> 9 <u>consistent with the provisions of this section, the minor's</u> 10 <u>successful completion of the educational diversion program shall be</u> 11 <u>duly considered by the prosecutor or the court in their respective</u> 12 <u>decisions to either abstain from filing the juvenile petition or to</u> 13 dismiss the juvenile petition, as follows:

(1) If the minor has not previously been found delinquent, and 14 15 the minor's activities represent a first offense for the activities described in subsection (a) of this section, the minor shall not be 16 subject to the requirements of this article and chapter, as long as 17 18 they successfully complete the educational diversion program; and 19 (2) If the minor's activities represent a second or subsequent 20 offense for the activities described in subsection (a) of this section, the minor's successfuly completion of the educational 21 diversion program may be considered as one of several factors to be 22 considered by the prosecutor and court in deciding to not file a 23 petition or to dismiss a petion, upon successful completion of an 24 25 improvement plan established by the court.

26 (f) Notwithstanding the provisions of article twelve, chapter
27 fifteen of this code, whether or not a minor adjudicated delinquent
28 for a second or subsequent violation or offense as set forth in

1 subsection (a) of this section shall be subject to the provisions
2 of article twelve, chapter fifteen shall remain in the discretion
3 of the circuit court.