

Senate Bill No. 205

(By Senators Palumbo, Fitzsimmons, Beach, Chafin, Wells and
Plymale)

[Introduced February 18, 2013; referred to the Committee on the
Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §49-5-13g, relating
to juvenile proceedings; proscribing juveniles from
manufacturing, possessing and distributing nude or partially
nude images of minors; declaring a violation to be an act of
juvenile delinquency; and providing for the punishment
thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

**§49-5-13g. Prohibiting juveniles from manufacturing, possessing,
and distributing nude or partially nude images of**

1 **minors; declaring a violation to be an act of**
2 **juvenile delinquency; and providing for the**
3 **punishment thereof.**

4 (a) For the purposes of this section, the words or terms
5 defined in this subsection have the meanings ascribed to them.
6 These definitions are applicable unless a different meaning clearly
7 appears from the context:

8 (1) A "minor fully or partially nude" means a male or female
9 under the age of eighteen years who is either clothed or unclothed
10 so that:

11 (A) All, or any part of, his or her genitals, pubic area or
12 buttocks is visible; or

13 (B) In the case of a female only, a part of a nipple of her
14 breast is visible and is without a fully opaque covering;

15 (2) To "visually portray" a person means to create a
16 reproducible image of that person or of oneself by means of:

17 (A) A photograph;

18 (B) A motion picture;

19 (C) A digital image;

20 (D) A digital video recording; or

21 (E) Any other mechanical or electronic recording process or
22 device that can preserve, for later viewing, a visual image of a
23 person that includes, but is not limited to, computers, cellphones,
24 PDA's, and other digital storage devices;

1 (3) A "minor engaged in a sexual act" means a male or female
2 under the age of eighteen years who is either clothed or unclothed
3 so that:

4 (A) In the case of a female only, the female minor is
5 simulating a sexual act by using any object to open and expose the
6 inner lining of the vagina or anus of themselves or another, or
7 simulates masturbation with any object on themselves or another, or
8 uses any object to penetrate the vagina or anus of themselves or
9 another, or performs oral sex on another; or

10 (B) In the case of a male only, the male minor is simulating
11 a sexual act by using any object to open and expose the inner
12 lining of the anus of themselves or another or the inner lining of
13 the vagina of another, or simulates masturbation with any object on
14 themselves or another, or uses any object to penetrate the vagina
15 of another or anus of themselves or another, or performs oral sex
16 on another.

17 (b) It is unlawful for a minor to manufacture a visual
18 portrayal of oneself or another minor fully or partially nude.

19 (c) It is unlawful for a minor to knowingly possess a visual
20 portrayal of another minor fully or partially nude.

21 (d) It is unlawful for a minor to knowingly display or
22 distribute to another a visual portrayal of oneself or another
23 minor fully or partially nude.

24 (e) It is unlawful for a minor to knowingly cause, use,

1 persuade, induce, entice or coerce another minor to violate or
2 assist in a violation of this section.

3 (f) It is unlawful for a minor, being fourteen years of age or
4 older, to commit a violation of subsection (b), (c), (d) or (e) of
5 this section, and in the commission thereof to knowingly involve
6 "another minor" as prohibited in said subsections, where the other
7 minor is less than twelve years of age, and where the violator knew
8 or had reason to know of the other minor's age.

9 (g) It is unlawful for a minor to commit a violation of
10 subsection (b), (c), (d) or (e) of this section, in which a sexual
11 act is visually portrayed as prohibited in said subsections.

12 (h) Notwithstanding the definitions in section four, article
13 one, chapter forty-nine of this code, a minor who violates the
14 provisions of this section shall be adjudged a juvenile delinquent,
15 and disposition may be made by the circuit court consistent with
16 the provisions of article five, chapter forty-nine of this code,
17 which may also include commitment to the custody of the Director of
18 the Division of Juvenile Services for a period of not more than six
19 months; *Provided*, That disposition for a violation of subsections
20 (f) and (g) of this section may also include commitment to the
21 custody of the Director of the Division of Juvenile Services for a
22 period of not more than one year.

23 (i) A minor who is adjudged a juvenile delinquent by virtue of
24 having committed a second or subsequent violation of this section,

1 in addition to the dispositions available in subsection (h) of this
2 section, may also be committed to the custody of the Director of
3 the Division of Juvenile Services for a period of not more than one
4 year.

NOTE: The purpose of this bill is to proscribe juveniles from manufacturing, possessing, and distributing nude or partially nude images of minors; declare a violation to be an act of juvenile delinquency; and provide for the punishment thereof.

This section is new; therefore, strike-throughs and underscoring have been omitted.