

COMMITTEE SUBSTITUTE

FOR

# **H. B. 2357**

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(BY DELEGATE(S) POORE, MARSHALL, MOORE, HAMILTON,  
MILEY, LONGSTRETH, CAPUTO, MANCHIN AND ELLEM)

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(Originating in the Committee on the Judiciary)

(March 29, 2013)

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13g, relating to the development of an educational diversion program for minors engaged in delinquent offenses associated with sexting and related offenses; delineation of sexting and associated offenses; providing for the establishment of a specialized diversion program by the West Virginia Supreme Court of Appeals for sexting by minors and associated offenses; suggested scope and topics to be included in such specialized diversion program; providing for the participation in the diversion program as a part of a pre-petition diversion and informal resolution in advance of a filed petition, as part of a

required counseling plan, or as part of an improvement period established requirement in advance of adjudication; consideration of successful completion of specialized diversion program on first offense and subsequent offenses; allowing for court discretion as to whether adjudicated juvenile should be required to register as a sex offender as a result of adjudication as status offender for sexting and related offenses.

*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. Sexting educational diversion program.**

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

13 (b) As used in this section, a “visual portrayal” means:

14 (1) A photograph;

15 (2) A motion picture;

16 (3) A digital image;

17 (4) A digital video recording; or

18 (5) Any other mechanical or electronic recording process or  
19 device that can preserve, for later viewing, a visual image of a  
20 person that includes, but is not limited to, computers, cellphones,  
21 PDAs and other digital storage devices.

22 (c) Before a juvenile petition is filed for activity described  
23 in subsection (a) of this section, or after probable cause has been  
24 found to believe a juvenile is a status offender or a juvenile  
25 delinquent, but before an adjudicatory hearing on the petition,  
26 the court or a prosecuting attorney may direct or allow a minor  
27 who engaged in such activity to participate in an educational  
28 diversion program which meets the requirements of subsection  
29 (d) of this section. The prosecutor or court may refer the minor  
30 to the educational diversion program, as part of a pre-petition  
31 diversion and informal resolution pursuant to the provisions of  
32 section two-a of this article; as part of counseling provided  
33 pursuant to the provisions of sections three or three-a of this  
34 article; or as part of the requirements of an improvement period  
35 to be satisfied in advance of an adjudicatory hearing pursuant to  
36 the provisions of section nine of this article.

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

42       (1) The legal consequences of and penalties for sharing  
43       sexually suggestive or explicit materials, including applicable  
44       federal and state statutes;

45       (2) The nonlegal consequences of sharing sexually sugges-  
46       tive or explicit materials including, but not limited to, the effect  
47       on relationships, loss of educational and employment opportuni-  
48       ties, and being barred or removed from school programs and  
49       extracurricular activities;

50       (3) How the unique characteristics of cyberspace and the  
51       Internet, including searchability, replicability and an infinite  
52       audience, can produce long-term and unforeseen consequences  
53       for sharing sexually suggestive or explicit materials; and

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

56       (e) Once a specialized educational diversion program is  
57       established by the West Virginia Supreme Court of Appeals  
58       consistent with the provisions of this section, the minor's  
59       successful completion of the educational diversion program shall

60 be duly considered by the prosecutor or the court in their  
61 respective decisions to either abstain from filing the juvenile  
62 petition or to dismiss the juvenile petition, as follows:

63 (1) If the minor has not previously been found delinquent,  
64 and the minor's activities represent a first offense for the  
65 activities described in subsection (a) of this section, the minor  
66 shall not be subject to the requirements of this article and  
67 chapter, as long as they successfully complete the educational  
68 diversion program; and

69 (2) If the minor's activities represent a second or subsequent  
70 offense for the activities described in subsection (a) of this  
71 section, the minor's successfully completion of the educational  
72 diversion program may be considered as one of several factors  
73 to be considered by the prosecutor and court in deciding to not  
74 file a petition or to dismiss a petition, upon successful completion  
75 of an improvement plan established by the court.

76 (f) Notwithstanding the provisions of article twelve, chapter  
77 fifteen of this code, whether or not a minor adjudicated delin-  
78 quent for a second or subsequent violation or offense as set forth  
79 in subsection (a) of this section shall be subject to the provisions  
80 of article twelve, chapter fifteen shall remain in the discretion of  
81 the circuit court.





