

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2357

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

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13g; and to amend said code by adding thereto a new section, designated §61-8C-3b, all relating to 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; authorizing 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 requirement established in advance of adjudication; consideration of successful completion of specialized diversion program on first offense and subsequent offenses; and 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; and that said code be amended by adding thereto a new section, designated §61-8C-3b, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

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

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

16 (b) The West Virginia Supreme Court of Appeals may
17 develop an educational diversion program for minors who are
18 accused of activity proscribed by the provisions of article eight-a
19 or eight-c, chapter sixty-one of this code. As a part of any

20 specialized educational diversion program so developed, the
21 following issues and topics should be included:

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

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

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

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

36 (c) Once a specialized educational diversion program is
37 established by the West Virginia Supreme Court of Appeals
38 consistent with the provisions of this section, the minor's
39 successful completion of the educational diversion program shall
40 be duly considered by the prosecutor or the court in their
41 respective decisions to either abstain from filing the juvenile
42 petition or to dismiss the juvenile petition, as follows:

43 (1) If the minor has not previously been judicially deter-
44 mined to be delinquent, and the minor's activities represent a
45 first offense for a violation of section three-b, article eight-c,
46 chapter sixty-one of this code, the minor shall not be subject to
47 the requirements of said section, as long as he or she success-
48 fully completes the educational diversion program; and

49 (2) If the minor commits a second or subsequent violation of
50 article eight-a or eight-c, chapter sixty-one of this code, the
51 minor's successful completion of the educational diversion
52 program may be considered as a factor to be considered by the
53 prosecutor and court in deciding to not file a petition or to
54 dismiss a petition, upon successful completion of an improve-
55 ment plan established by the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

1 (a) Any minor who intentionally possesses, creates, pro-
2 duces, distributes, presents, transmits, posts, exchanges, or
3 otherwise disseminates a visual portrayal of another minor
4 posing in an inappropriate sexual manner or who distributes,
5 presents, transmits, posts, exchanges or otherwise disseminates
6 a visual portrayal of himself or herself posing in an inappropriate
7 sexual manner shall be guilty of an act of delinquency and upon
8 adjudication disposition may be made by the circuit court
9 pursuant to the provisions of article five, chapter forty-nine of
10 this code.

11 (b) As used in this section:

12 (1) “Posing in an inappropriate sexual manner” means
13 exhibition of a bare female breast, female or male genitalia,
14 pubic or rectal areas of a minor for purposes of sexual titillation.

15 (2) “Visual portrayal” means:

16 (A) A photograph;

17 (B) A motion picture;

18 (C) A digital image;

19 (D) A digital video recording; or

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

25 (c) It shall be an affirmative defense to an alleged violation
26 of this section that a minor charged with possession of the

27 prohibited visual depiction did neither solicit its receipt nor
28 distribute, transmit or present it to another person by any means.

29 (d) Notwithstanding the provisions of article twelve, chapter
30 fifteen of this code, an adjudication of delinquency under the
31 provisions of this section shall not subject the minor to the
32 requirements of said article and chapter.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

