

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 PDA's 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
14 advance of an adjudicatory hearing pursuant to the provisions of
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 (3) How the unique characteristics of cyberspace and the
2 Internet, including searchability, replicability and an infinite
3 audience, can produce long-term and unforeseen consequences for
4 sharing sexually suggestive or explicit materials; and

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

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

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