

H. B. 2357

(By Delegates Poore, Marshall, Moore, Hamilton, Miley,  
Longstreth, Caputo, Manchin and Ellem)

[Introduced February 13, 2013; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §61-8A-6, relating to  
sexting by minors; requiring Attorney General to develop an  
educational diversion program; providing rule-making  
authority; providing criteria to be used by prosecuting  
attorney for admittance into program; requiring individual  
prosecuting attorneys to operate program; requiring the West  
Virginia Prosecuting Attorneys Institute to oversee the  
administrative procedures for the program; and creating the  
opportunity to avoid prosecution for completion of the  
educational diversion program.

*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 §61-8A-6, to read as  
follows:

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE**

1                   **MATTER TO MINORS; SEXTING BY MINORS.**

2 **§61-8A-6. Sexting educational diversion program.**

3           (a) A minor who uses telecommunications device to knowingly  
4 transmit or distribute to another minor a photograph, text message  
5 with a photo attachment, or other transmitted material of any kind  
6 depicting himself or herself, or another minor in a state of  
7 sexual activity or a state of sexually explicit nudity may not be  
8 prosecuted under the provisions of this article, if the minor  
9 successfully completes the program provided by this section.

10           (b) Instead of pursuing a conviction for a violation of this  
11 article for activity described in subsection (a) of this section,  
12 a prosecuting attorney shall allow an eligible minor to participate  
13 in the program developed by the Attorney General under this  
14 section.

15           (c) (1) The Attorney General, in consultation with the  
16 Administrative Office of the West Virginia Supreme Court of Appeals  
17 shall develop an educational diversion program for minors who may  
18 be accused of activity described in subsection (a) of this section.

19           (2) The program shall provide information concerning:

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

23           (B) The nonlegal consequences of sharing sexually suggestive  
24 or explicit materials including, but not limited to, the effect on

1 relationships, loss of educational and employment opportunities,  
2 and being barred or removed from school programs and  
3 extracurricular activities;

4 (C) How the unique characteristics of cyberspace and the  
5 Internet, including searchability, replicability and an infinite  
6 audience, can produce long-term and unforeseen consequences for  
7 sharing sexually suggestive or explicit materials; and

8 (D) The connection between bullying and cyber-bullying and  
9 minors sharing sexually suggestive or explicit materials.

10 (3) To effectuate the provisions of this subsection, the  
11 Attorney General may adopt procedural and interpretive rules, and  
12 propose legislative rules for legislative approval, all in  
13 accordance with the provisions of article three, chapter  
14 twenty-nine-a of this code.

15 (4) The operation of the program in a county is under the  
16 direct supervision and control of the prosecuting attorney. The  
17 prosecuting attorney may contract for services with a county or  
18 municipality in the circuit necessary in conducting the program.

19 (5) The West Virginia Prosecuting Attorneys Institute shall  
20 oversee the administrative procedures for the program required by  
21 this section.

22 (d) The prosecuting attorney shall determine whether a minor  
23 is admitted to the program. A minor is eligible to participate in  
24 the program if:

1       (1) The facts of the case involve the creation, exhibition or  
2 distribution without malicious intent of a photograph depicting  
3 nudity as defined in that section through the use of an interactive  
4 wireless communications device or a computer; and

5       (2) The creator and subject of the photograph are minors or  
6 were minors at the time of its making.

7       (e) Admission to the program is limited to eligible minors who  
8 the prosecuting attorney finds:

9       (1) Have not previously been adjudicated delinquent for or  
10 convicted of a criminal offense under this code, federal law or a  
11 law of another state;

12       (2) Were not aware that their actions could constitute and did  
13 not have the intent to commit a criminal offense;

14       (3) May be harmed by the imposition of criminal sanctions; and

15       (4) Would likely be deterred from engaging in similar conduct  
16 in the future by completing the program.

NOTE: The purpose of this bill is to require the Attorney General to develop an educational diversion program for minors accused of sexting. It provides criteria for admittance into a program by a prosecuting attorney and creates the opportunity for minors to avoid prosecution upon the completion of the educational diversion program.

This section is new; therefore, it has been completely underscored.