

Senate Bill No. 258

(By Senators Palumbo, Jenkins, Beach,
Cookman, Tucker and Fitzsimmons)

[Introduced January 8, 2014; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

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

18 *Be it enacted by the Legislature of West Virginia:*

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

22 **ARTICLE 5. JUVENILE PROCEEDINGS.**

23 **§49-5-13h. Prohibiting juveniles from manufacturing, possessing,**

1 **and distributing nude or partially nude images of**
2 **minors; declaring a violation to be an act of**
3 **juvenile delinquency; and providing for the**
4 **punishment thereof.**

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

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

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

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

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

18 (A) A photograph;

19 (B) A motion picture;

20 (C) A digital image;

21 (D) A digital video recording; or

22 (E) Any other mechanical or electronic recording process or
23 device that can preserve, for later viewing, a visual image of a

1 person that includes, but is not limited to, computers, cellphones,
2 PDA's, and other digital storage devices;

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

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

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

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

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

23 (d) It is unlawful for a minor to knowingly display or

1 distribute to another a visual portrayal of oneself or another
2 minor fully or partially nude.

3 (e) It is unlawful for a minor to knowingly cause, use,
4 persuade, induce, entice or coerce another minor to violate or
5 assist in a violation of this section.

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

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

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

1 custody of the Director of the Division of Juvenile Services for a
2 period of not more than one year.

3 (I) A minor who is adjudged a juvenile delinquent by virtue of
4 having committed a second or subsequent violation of this section,
5 in addition to the dispositions available in subsection (h) of this
6 section, may also be committed to the custody of the Director of
7 the Division of Juvenile Services for a period of not more than one
8 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.