

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.