

Self-Exploitation (Sexting)

Updated July 2011

Please note that this area of law is changing rapidly. We strongly recommend checking both case law and current legislation for possible modifications to the statutes listed below, especially the status of pending legislation.

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ALABAMA

No distinction

ALASKA

No distinction

ARIZONA

ARIZ. REV. STAT. § 8-309 (2011). UNLAWFUL USE OF AN ELECTRONIC COMMUNICATION DEVICE BY A MINOR; CLASSIFICATION; DEFINITIONS

A. It is unlawful for a juvenile to intentionally or knowingly use an electronic communication device to transmit or display a visual depiction of a minor that depicts explicit sexual material.

B. It is unlawful for a juvenile to intentionally or knowingly possess a visual depiction of a minor that depicts explicit sexual material and that was transmitted to the juvenile through the use of an electronic communication device.

C. It is not a violation of subsection B of this section if all of the following apply:

1. The juvenile did not solicit the visual depiction.
2. The juvenile took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the juvenile's parent, guardian, school official or law enforcement official.

D. A violation of subsection A of this section is a petty offense if the juvenile transmits or displays the visual depiction to one other person. A violation of subsection A of this section is a class 3 misdemeanor if the juvenile transmits or displays the visual depiction to more than one other person.

E. A violation of subsection B of this section is a petty offense.

F. Any violation of this section that occurs after adjudication for a prior violation of this section or after completion of a diversion program as a result of a referral or petition charging a violation of this section is a class 2 misdemeanor.

G. For the purposes of this section:

1. "Electronic communication device" has the same meaning prescribed in § 13-3560.
2. "Explicit sexual material" means material that depicts human genitalia or that depicts nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse as defined in § 13-3501.
3. "Visual depiction" has the same meaning prescribed in § 13-3551.

ARKANSAS

No distinction

CALIFORNIA

A. 321, 2011-12 LEG., REG. SESS. (CAL. 2011). AN ACT TO ADD SECTION 51207 TO THE EDUCATION CODE, AND TO ADD SECTION 729.14 TO THE WELFARE AND INSTITUTIONS CODE, RELATING TO JUVENILES

Bill Status: In Assembly Committee on Appropriations as of 05/27/2011

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) According to the CTIA Wireless Association, as of 2009, there are 285.6 million wireless subscribers in the United States. On average, each subscriber sends 152.7 text messages on a monthly basis.
- (b) Sexting, which is defined as the sending or receiving of sexually explicit pictures or video images via cellular phone or similar electronic device, is a growing problem among minors.

According to a 2008 survey conducted by the National Campaign to Prevent Teen and Unplanned Pregnancy, 20 percent of teens between 13 and 19 years of age have sent or posted nude or semi-nude pictures or videos of themselves.

- (c) While teens generally send these images to an intended recipient, more often than not, these images are shared with others.

Thirty-eight percent of teens report that they have received sexts that were meant for someone else but were shared with them.

- (d) The potential for these images to reach such a wide and unknown audience can cause the person ridicule and greatly compromise his or her future educational and career opportunities.

(e) United States Senator Robert Menendez of New Jersey introduced the SAFE Internet Act (S. 1047), which would allocate \$175 million to funding the program and authorize the Director of the Bureau of Justice Assistance to make grants available to schools, state agencies, and nonprofit organizations to assist in providing education programs for children about the dangers of sexting.

(f) In an incident of cyberbullying, photos of a sexual encounter can be recorded on a cell phone camera and posted on the Internet within an hour.

(g) According to the Pew Research Center, sexting has become a form of “relationship currency” that causes girls, in particular, to feel pressure to send sexually explicit images.

(h) Sexting extends beyond being a source of embarrassment, but can also prevent those pictured in the images from obtaining certain types of employment and even scholarships.

(i) Developments in technology and communication has allowed for widespread dissemination of these damaging images within moments. The nature of today's technology is such that these images may never be recovered or removed from the Internet.

SEC. 2. Section 51207 is added to the Education Code , to read: 51207. A school district may provide instruction regarding the potential risks and consequences of creating and sharing sexually suggestive or sexually explicit materials through cellular telephones, social networking Internet Web sites, computer networks, or other digital media.

~~SEC. 2.~~ **SEC. 3.** Section 729.14 is added to the Welfare and Institutions Code, to read:

729.14. If a minor is found to be a person described in Section 602 by reason of the commission of an offense described in Section 311.11 of the Penal Code, the court shall, in addition to any other fine, sentence, or as a condition of probation, order the minor to ~~pay a fine not exceeding one thousand dollars (\$1,000), and attend~~ **perform community service and attend** counseling at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents consistent with Section 730.7 to pay; however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

COLORADO

No distinction

CONNECTICUT

CONN. GEN. STAT. § 53A-196H (2011). POSSESSING OR TRANSMITTING CHILD PORNOGRAPHY BY MINOR: CLASS A MISDEMEANOR

(a) (1) No person who is thirteen years of age or older but under eighteen years of age may knowingly possess any visual depiction of child pornography that the subject of such visual depiction knowingly and voluntarily transmitted by means of an electronic communication device to such person and in which the subject of such visual depiction is a person thirteen years of age or older but under sixteen years of age.

(2) No person who is thirteen years of age or older but under sixteen years of age may knowingly and voluntarily transmit by means of an electronic communication device a visual depiction of child pornography in which such person is the subject of such visual depiction to another person who is thirteen years of age or older but under eighteen years of age.

(b) As used in this section, “child pornography” and “visual depiction” have the same meanings as provided in section 53a-193, and “electronic communication device” means any electronic device that is capable of transmitting a visual depiction, including a computer, computer network and computer system, as those terms are defined in section 53a-250, and a cellular or wireless telephone.

(c) Any person who violates the provisions of this section shall be guilty of a class A misdemeanor.

DELAWARE

No distinction

DISTRICT OF COLUMBIA

No distinction

FLORIDA

2011 FLA. LAWS CH. 2011-180 (H.R. 75). OFFENSE OF SEXTING (EFFECTIVE OCTOBER 1, 2011)

Bill Status: Enrolled – Effective 10/01/2011

Be It Enacted by the Legislature of the State of Florida:

Section 1. **Sexting; prohibited acts; penalties.--**

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), Florida Statutes, and is harmful to minors, as defined in s. 847.001(6), Florida Statutes.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, as defined in s. 847.001(9), Florida Statutes, and is harmful to minors, as defined in s. 847.001(6), Florida Statutes. A minor does not violate paragraph this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.

2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the photograph or video to a third party.

(2)(a) The transmission or distribution of multiple photographs or videos prohibited by paragraph (1)(a) is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.

(b) The possession of multiple photographs or videos that were transmitted or distributed by a minor prohibited by paragraph (1)(b) is a single offense if the photographs or videos were transmitted or distributed by a minor in the same 24-hour period.

(3) A minor who violates subsection (1):

(a) Commits a noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.

(b) Commits a misdemeanor of the first degree for a violation that occurs after being found to have committed a noncriminal violation for sexting, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(c) Commits a felony of the third degree for a violation that occurs after being found to have committed a misdemeanor of the first degree for sexting, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

(4) This section does not prohibit the prosecution of a minor for a violation of any law of this state if the photograph or video that depicts nudity also includes the

depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, Florida Statutes.

(5) As used in this section, the term “found to have committed” means a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.

Section 2. This act shall take effect October 1, 2011.

GEORGIA

No distinction

HAWAII

No distinction

H.R. 573, 26TH LEG., REG. SESS. (HAW. 2011). OBSCENITY; PROMOTING OR POSSESSING ELECTRONICALLY COMMUNICATED INDECENT MATERIAL BY A MINOR

Bill Status: In House Committee on Judiciary as of 01/24/2011

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§712- Promoting or possession of electronically communicated indecent material by a minor. (1) A minor commits the offense of promoting electronically communicated indecent material if the minor intentionally or knowingly transfers to another person, by use of a computer or electronic communication, a nude depiction of that minor's self.

(2) No person shall possess indecent material described under subsection (1). This subsection shall not apply to a person who involuntarily receives the indecent material and, as soon as possible takes reasonable steps, whether successful or not, to destroy or delete the indecent material.

(3) All records of arrest and adjudication of a minor under this section shall be expunged when the minor reaches eighteen years of age.

(4) As used in this section:

“Computer” shall have the same meaning as in section 708-890.

“Electronic communication” shall have the same meaning as in section 711-1111.

“Minor” means any person under eighteen years of age.

(5) A minor convicted under subsection (1) or (2) shall be adjudicated under chapter 571.

An adult convicted under subsection (2) shall be guilty of a class C felony.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

IDAHO

No distinction

ILLINOIS

705 ILL. COMP. STAT. 405/3-40 (2011). MINORS INVOLVED IN ELECTRONIC DISSEMINATION OF INDECENT VISUAL DEPICTIONS IN NEED OF SUPERVISION.

(a) For the purposes of this Section:

“Computer” has the meaning ascribed to it in Section 16D-2 of the Criminal Code of 1961.

“Electronic communication device” means an electronic device, including but not limited to a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures.

“Indecent visual depiction” means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person.

“Minor” means a person under 18 years of age.

(b) A minor shall not distribute or disseminate an indecent visual depiction of another minor through the use of a computer or electronic communication device.

(c) Adjudication. A minor who violates subsection (b) of this Section may be subject to a petition for adjudication and adjudged a minor in need of supervision.

(d) Kinds of dispositional orders. A minor found to be in need of supervision under this Section may be:

- (1) ordered to obtain counseling or other supportive services to address the acts that led to the need for supervision; or
- (2) ordered to perform community service.

(e) Nothing in this Section shall be construed to prohibit a prosecution for disorderly conduct, public indecency, child pornography, a violation of the Harassing and Obscene Communications Act, or any other applicable provision of law.

INDIANA

No distinction

H.R. 1042, 117TH GEN. ASSEM., 1ST REG. SESS. (IND. 2011). DISSEMINATION OF SEXUAL MATERIAL

Bill Status: Passed House – In Senate Committee on Corrections, Criminal, and Civil Matters as of 03/31/2011

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure. Be it enacted by the General Assembly of the State of Indiana: SOURCE: IC 20-26-5-33; (11)HB1042.1.1. -->

SECTION 1. IC 20-26-5-33 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Sec. 33. A school corporation may offer classes, instruction, or programs regarding the potential risks and consequences of creating and sharing sexually suggestive or explicit materials through cellular telephones, social networking web sites, computer networks, and other digital media. SOURCE: IC 20-33-8-13.5; (11)HB1042.1.2. -->

SECTION 2. IC 20-33-8-13.5, AS ADDED BY P.L.106-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Sec. 13.5. (a) Discipline rules adopted by the governing body of a school corporation under section 12 of this chapter must:

- (1) prohibit bullying; and
- (2) include provisions concerning education, parental involvement, reporting, investigation, and intervention.

(b) The discipline rules described in subsection (a) must apply when a student is: -----

- (1) on school grounds immediately before or during school hours, immediately after school hours, or at any other time when the school is being used by a school group;
- (2) off school grounds at a school activity, function, or event;
- (3) traveling to or from school or a school activity, function, or event; or
- (4) using property or equipment provided by the school.

(c) The discipline rules described in subsection (a) must prohibit bullying through the use of data or computer software that is accessed through a:

(1) computer;

(2) computer system; or

(3) computer network; of a school corporation.

(e) **(d)** This section may not be construed to give rise to a cause of action against a person or school corporation based on an allegation of noncompliance with this section. Noncompliance with this section may not be used as evidence against a school corporation in a cause of action. SOURCE: IC 35-42-4-4; (11)HB1042.1.3. -->

SECTION 3. IC 35-42-4-4, AS AMENDED BY P.L.216-2007, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Sec. 4. (a) As used in this section:

“Disseminate” means to transfer possession for free or for a consideration.

“Matter” has the same meaning as in IC 35-49-1-3.

“Performance” has the same meaning as in IC 35-49-1-7.

“Sexual conduct” means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

- (1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or -----

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age; commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape;

(8) a digitized image; or

(9) any pictorial representation; that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(e) Except as provided in subsection (f), it is a defense to a prosecution under subsections (b)(1), (b)(2) and (c) if all the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.

(2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.

(3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal

relationship. For purposes of this subdivision, the term “ongoing personal relationship” does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age. -----

(5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.

(f) The defense to a prosecution described in subsection (e) does not apply if the image is disseminated to a person other than the person:

(1) who sent the image; or

(2) who is depicted in the image. SOURCE: IC 35-49-3-4; (11)HB1042.1.4. -->

SECTION 4. IC 35-49-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Sec. 4. **(a)** It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

(1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;

(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of his **the employee's** employment;

(3) that he **the defendant** had reasonable cause to believe that the minor involved was eighteen (18) years old or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years old or older; or

(4) that he **the defendant** was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of his **the defendant's** employment and that he **the defendant** had no financial interest in the place where he **the defendant** was so employed. **(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all the following apply:**

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.

(2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.

(3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term “ongoing personal relationship” does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if the image is disseminated to a person other than the person:

(1) who sent the image; or

(2) who is depicted in the image.

IOWA

No distinction

L.D. 1251, 84TH GEN. ASSEM., 1ST. SESS. (IND. 2011). CHILD PORNOGRAPHY AND SEXTING

Bill Status: Draft Text Filed by Attorney General on 01/06/2011

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 728.1, subsection 3, Code 2011, is amended to read as follows:

3. “Material” means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, **or any live transmission**, or any other articles, equipment, machines or materials.

Sec. 2. Section 728.1, subsection 7, paragraphs e through g. Code 2011, are amended to read as follows:

e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the abuse.

f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the abuse.

g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the nude minor.

Sec. 3. Section 728.1, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 11. “Visual depiction” means but is not limited to any picture, slide, photograph, digital or electronic image, negative image, undeveloped film, motion picture, videotape, digital or electronic recording, live transmission, or other pictorial or three-dimensional representation.

Sec. 4. Section 728.12, subsection 1, Code 2011, is amended to read as follows:

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a ~~negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system~~ **visual depiction**. A person who commits a violation of this subsection commits a class “C” felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

Sec. 5. Section 728.12, subsection 3, unnumbered paragraph 1, Code 2011, is amended to read as follows:

It shall be unlawful to knowingly purchase or possess a ~~negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts~~ **visual depiction of** a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class “D” felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply:

Sec. 6. Section 728.14, Code 2011, is amended to read as follows:

728.14 Commercial film and photographic print processor reports of depictions of minors engaged in prohibited sexual acts.

1. A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a ~~film, photograph, video tape, negative, or slide which depicts~~ **visual depiction of** a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the **visual** depiction to the county attorney immediately or as soon as possible as

required in this section. The processor shall not report to the county attorney **visual** depictions involving mere nudity of the minor, but shall report **visual** depictions involving a prohibited sexual act. This section shall not be construed to require a processor to review all ~~films, photographs, video tapes, negatives, or slides~~ **visual depictions** delivered to the processor within the processor's professional capacity or employment.

2. For purposes of this section, “prohibited sexual act” means any of the following:

- a. A sex act as defined in section 702.17.
- b. An act of bestiality involving a minor.
- c. Fondling or touching the pubes or genitals of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the act.
- d. Fondling or touching the pubes or genitals of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the act.
- e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the abuse.
- f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the abuse.
- g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a **visual** depiction of the nude minor.

~~2.~~ **3.** A person who violates this section is guilty of a simple misdemeanor.

EXPLANATION

This bill relates to the possession, distribution, and reporting of obscene material.

The bill modifies the definition of “material” in Code chapter 728 to include live transmissions.

Under the bill, the modification of the definition of the term “material” results in changes to the elements of the following criminal offenses within Code chapter 728: dissemination of obscene material to minors (Code section 728.2), admitting minors to premises where obscene material is exhibited (Code section 728.3), rental or sale of hard-core pornography (Code section 728.4), sexual exploitation of a minor (Code section 728.12(2)), and telephone dissemination of obscene material (Code section 728.15).

The bill also defines the term “visual depiction” within Code chapter 728 to include any picture, slide, photograph, digital or electronic image, negative image, undeveloped film,

motion picture, videotape, digital or electronic recording, live transmission, or other pictorial or three-dimensional representation.

The bill modifies the elements of the criminal offense of sexual exploitation of a minor in Code section 728.12(1) and (3) by substituting references for a computer and other types of storage systems with the term “visual depiction” as defined by the bill. The bill also substitutes “visual depiction” for storage systems referenced in Code section 728.14 to conform with the sexual exploitation of a minor changes in Code section 728.12.

In addition, the word “visual” is added before the word “depiction” throughout Code chapter 728 to conform with the changes made by the bill.

The changes in the bill to the criminal offense of sexual exploitation of a minor in Code section 728.12(3) are in response to the *State v. Muhlenbruch*, 728 N.W.2d 212 (Iowa 2007).

KANSAS

No distinction

KENTUCKY

No distinction

H.R. 126, 2011 LEG., REG. SESS. (KY. 2011). AN ACT RELATING TO CRIMES AND PUNISHMENTS

Bill Status: Passed House – In Senate Committee on Judiciary as of 02/16/2011

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 531.010 is amended to read as follows:

(1) As used in this chapter:

(a)~~(1)~~ “Distribute” means to transfer possession of, whether with or without consideration;

(b)~~(2)~~ “Matter” means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials;

(c)~~(3)~~ “Obscene” means:

1.~~(a)~~ To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and

2.~~(b)~~ The matter depicts or describes the sexual conduct in a patently offensive way; and

3.~~(c)~~ The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value; **and**-

(d)~~(4)~~ "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification.

(2) As used in this chapter, where lack of consent is an element of an offense or consent is a defense, a person is deemed incapable of consent when he or she is:

(a) Less than eighteen (18) years old;

(b) A mentally retarded person or suffers from a mental illness as defined in KRS 510.010;

(c) Mentally incapacitated as defined in KRS 510.010; or

(d) Physically helpless as defined in KRS 510.010.

Section 2. KRS 531.090 is amended to read as follows:

(1) A person is guilty of voyeurism when:

(a) He or she intentionally:

1. Uses or causes the use of any camera, videotape, photooptical, photoelectric, **computer, cellular telephone,** or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or nipple of the female breast **of themselves or** of another person without that person's consent; or

2. Uses the unaided eye or any device designed to improve visual acuity for the purpose of observing or viewing the sexual conduct, genitals, or nipple of the female breast of another person without that person's consent; or

3. Enters or remains unlawfully in or upon the premises of another for the purpose of observing or viewing the sexual conduct, genitals, or nipple of the female breast of another person without the person's consent; and

(b) The other person is in a place where a reasonable person would believe that his or her sexual conduct, genitals, or nipple of the female breast will not be observed, viewed, photographed, filmed, or videotaped without his or her knowledge.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) A law enforcement officer during a lawful criminal investigation; or

(b) An employee of the Department of Corrections, the Department of Juvenile Justice, a private prison, a local jail, or a local correctional facility whose actions have been authorized for security or investigative purposes.

(3) Unless objected to by the victim or victims of voyeurism, the court on its own motion or on motion of the Commonwealth's attorney shall:

(a) Order the sealing of all photographs, film, videotapes, or other images that are introduced into evidence during a prosecution under this section or are in the possession of law enforcement, the prosecution, or the court as the result of a prosecution under this section; and

(b) At the conclusion of a prosecution under this section, unless required for additional prosecutions, order the destruction of all of the photographs, film, videotapes, or other images that are in possession of law enforcement, the prosecution, or the court.

(4) Voyeurism is a Class A misdemeanor **unless it is committed by a minor who has not previously been convicted of a violation of this section, in which case the minor shall be subject to subsection (7) of Section 5 of this Act.**

Section 3. KRS 531.100 is amended to read as follows:

(1) A person is guilty of video voyeurism when he or she intentionally:

(a) Uses or causes the use of any camera, videotape, photooptical, photoelectric, **computer, cellular telephone,** or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or nipple of the female breast of **one's self or** another person without that person's consent; and

(b) Uses or divulges any image so obtained for consideration; or

(c) Distributes any image so obtained by live or recorded visual medium, electronic mail, the Internet, or a commercial on-line service.

(2) **Except as provided in subsection (3) of this section,** video voyeurism is a Class D felony.

(3) The disposition shall be as provided in subsection (7) of Section 5 of this Act if:

(a) The defendant was a minor at the time of the commission of the offense; and

(b) This is a first violation of this section.

Section 4. KRS 531.340 is amended to read as follows:

(1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:

(a) Sends or causes to be sent into this state for sale or distribution; or

(b) Brings or causes to be brought into this state for sale or distribution; or

(c) In this state, he or she **for profit or gain**:

1. Exhibits ~~for profit or gain~~; or

2. Distributes; or

3. Offers to distribute; or

4. Has in his or her possession with intent to distribute, ~~exhibit for profit or gain~~ or offer to distribute,

any matter portraying a sexual performance by a minor.

(2) Any person who has in his or her possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have such material in his or her possession with the intent to distribute it.

(3) **Except as provided in subsection (4) of this section**, distribution of matter portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

(4) The disposition shall be as provided in subsection (7) of Section 5 of this Act if:

(a) The defendant was a minor at the time of the commission of the offense; and

(b) This is a first violation of this section.

Section 5. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing, may:

(1) Order the child or his **or her** parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

(2) Place the child under parental supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine, or place the child on probation under conditions that the court shall determine. At the time the child is placed on probation, the court shall explain to the child the sanctions which may be imposed if the court's conditions are violated, and shall include notice of those sanctions as part of its written order of probation. A child placed on probation shall be subject to the visitation and supervision of a probation officer or an employee of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation or parental supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation after the person reaches the age of seventeen (17) years and six (6) months, the probation shall be for a period not to exceed one (1) year; or

(3) Commit or recommit the child to the custody of the Department of Juvenile Justice, or grant guardianship to a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed or recommitted to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement as soon as possible but not to exceed thirty-five (35) days of the time of commitment or recommitment. The Department of Juvenile Justice shall pay for the cost of detention from the date of commitment or recommitment, on the current charge, until the child is removed from the detention facility and placed. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to KRS 635.070 and to the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

(4) If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed forty-five (45) days; or

(5) If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed ninety (90) days; or

(6) Any combination of the dispositions listed above except that, if a court probates or suspends a commitment in conjunction with any other dispositional alternative, that fact shall be explained to the juvenile and contained in a written order.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsection (4) or (5) of this section in accordance with the statewide detention plan and administrative regulations implementing the plan.

(7) For a person adjudicated guilty under subsection (4) of Section 2 of this Act, subsection (3) of Section 3 of this Act, or subsection (4) of Section 4 of this Act, a first offense shall be a violation, and the court shall impose a fine pursuant to KRS 635.085(1)(c). In addition to the fine imposed, the court shall require the child to participate in a community services work program as provided in KRS 635.080, except that the duration of the community services work program shall be set at forty (40) hours. No child sanctioned pursuant to this subsection shall be committed solely based upon this offense.

?SECTION 6. A NEW SECTION OF KRS CHAPTER 531 IS CREATED TO READ AS FOLLOWS:

Any other statute to the contrary notwithstanding, a minor who commits an offense which contains any of the elements specified in Section 2, 3, or 4 of this Act or who possesses an image of a child prohibited by those sections shall only be charged with a violation of Section 2, 3, or 4 of this Act for a first offense.

Section 7. KRS 216.302 is amended to read as follows:

(1) A person commits a Class C felony when the person knowingly by force or duress causes another person to commit or to attempt to commit suicide.

(2) A person commits a Class D felony when the person, with the purpose of assisting another person to commit or to attempt to commit suicide, knowingly and intentionally either:

(a) Provides the physical means by which another person commits or attempts to commit suicide; or

(b) Participates in a physical act by which another person commits or attempts to commit suicide.

(3) (a) A person commits a Class D felony when the person, regardless of the age of the defendant or the age of the victim, causes a person whose image is taken or transmitted in violation of Section 2, 3, or 4 of this Act or in violation of KRS Chapter 531 to commit suicide.

(b) A person may be convicted of a violation of this subsection and a violation of Section 2, 3, or 4 of this Act.

LOUISIANA

LA. REV. STAT. ANN. § 14:81.1.1 (2011). "SEXTING"; PROHIBITED ACTS; PENALTIES

A. (1) No person under the age of seventeen years shall knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself to another person.

(2) No person under the age of seventeen years shall knowingly possess or transmit an indecent visual depiction that was transmitted by another under the age of seventeen years in violation of the provisions of Paragraph (1) of this Subsection.

B. For purposes of this Section:

(1) "Indecent visual depiction" means any photograph, videotape, film, or other reproduction of a person under the age of seventeen years engaging in sexually explicit conduct, and includes data stored on any computer, telecommunication device, or other electronic storage media which is capable of conversion into a visual image.

(2) "Sexually explicit conduct" means masturbation or lewd exhibition of the genitals, pubic hair, anus, vulva, or female breast nipples of a person under the age of seventeen years.

(3) "Telecommunication device" means an analog or digital electronic device which processes data, telephonic, video, or sound transmission as part of any system involved in the sending or receiving of voice, sound, data, or video transmissions.

(4) "Transmit" means to give, distribute, transfer, transmute, circulate, or disseminate by use of a computer or telecommunication device.

C. (1) For a violation of the provisions of Paragraph (A)(1) of this Section, the offender's disposition shall be governed exclusively by the provisions of Title VII of the Louisiana Children's Code.

(2) (a) For a first offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than one hundred dollars nor more than two hundred fifty dollars, imprisoned for not more than ten days, or both. Imposition or execution of the sentence shall not be suspended unless the offender is placed on probation with a minimum condition that he perform two eight-hour days of court-approved community service.

(b) For a second offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, imprisoned for not less than ten days nor more than thirty days, or both. Imposition or execution of the sentence shall not be suspended unless the offender is placed on probation with a minimum condition that he perform five eight-hour days of court-approved community service.

(c) For a third or any subsequent offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than five hundred dollars nor more than seven hundred fifty dollars, imprisoned for not less than thirty days nor more than six months, or both. Imposition or execution of the sentence shall not be suspended unless the

offender is placed on probation with a minimum condition that he perform ten eight-hour days of court-approved community service.

MAINE

No distinction

MARYLAND

No distinction

MASSACHUSETTS

No distinction

MICHIGAN

No distinction

MINNESOTA

No distinction

MISSISSIPPI

No distinction

MISSOURI

No distinction

MONTANA

No distinction

NEBRASKA

NEB. REV. STAT. § 28-1463.03 (2010). VISUAL DEPICTION OF SEXUALLY EXPLICIT CONDUCT; PROHIBITED ACTS; AFFIRMATIVE DEFENSE

- (1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.
- (2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.
- (3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.
- (4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.
- (5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant.
- (6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.

**NEB. REV. STAT. § 28-813.01 (2010). SEXUALLY EXPLICIT CONDUCT;
VISUAL DEPICTION; UNLAWFUL; PENALTY; AFFIRMATIVE DEFENSE.**

(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.

(2) (a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(3) It shall be an affirmative defense to a charge made pursuant to this section that:

(a) The visual depiction portrays no person other than the defendant; or

(b) (i) The defendant was less than nineteen years of age;

(ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older;

(iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein;

(iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction;

(v) the visual depiction contains only one child;

(vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and

(vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

NEVADA

2011 NEV. STAT. CH. 245 (S. 277). REVISES PROVISIONS GOVERNING CERTAIN ACTS BY JUVENILES RELATING TO THE POSSESSION, TRANSMISSION AND DISTRIBUTION OF CERTAIN SEXUAL IMAGES. (EFFECTIVE 07/01/2011)

*

Section 1. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A minor shall not knowingly and willfully use an electronic communication device to transmit or distribute a sexual image of himself or herself to another person.

2. A minor shall not knowingly and willfully use an electronic communication device to transmit or distribute a sexual image of another minor who is older than, the same age as or not more than 4 years younger than the minor transmitting the sexual image.

3. A minor shall not knowingly and willfully possess a sexual image that was transmitted or distributed as described in subsection 1 or 2 if the minor who is the subject of the sexual image is older than, the same age as or not more than 4 years younger than the minor who possesses the sexual image. It is an affirmative defense to a violation charged pursuant to this subsection if the minor who possesses a sexual image:

(a) Did not knowingly purchase, procure, solicit or request the sexual image or take any other action to cause the sexual image to come into his or her possession; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency or a school official, to access any sexual image:

(1) Took reasonable steps to destroy each image; or

(2) Reported the matter to a law enforcement agency or a school official and gave the law enforcement agency or school official access to each image.

4. A minor who violates subsection 1:

(a) For the first violation:

(1) Is a child in need of supervision, as that term is used in title 5 of NRS, and is not a delinquent child; and

(2) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

(b) For the second or a subsequent violation:

(1) Commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult; and

(2) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

5. A minor who violates subsection 2:

(a) Commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult; and

(b) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

6. A minor who violates subsection 3:

(a) Is a child in need of supervision, as that term is used in title 5 of NRS, and is not a delinquent child; and

(b) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

7. As used in this section:

(a) “Electronic communication device” means any electronic device that is capable of transmitting or distributing a sexual image, including, without limitation, a cellular phone, personal digital assistant, computer, computer network and computer system.

(b) “Minor” means a person who is under 18 years of age.

(c) “School official” means a principal, vice principal, school counselor or school police officer.

(d) “Sexual conduct” has the meaning ascribed to it in NRS 200.700.

(e) “Sexual image” means any visual depiction, including, without limitation, any photograph or video, of a minor simulating or engaging in sexual conduct or of a minor as the subject of a sexual portrayal.

(f) “Sexual portrayal” has the meaning ascribed to it in NRS 200.700.

Sec. 2. NRS 200.740 is hereby amended to read as follows:

200.740 For the purposes of NRS 200.710 to 200.735, inclusive, **and section 1 of this act**, to determine whether a person was a minor, the court or jury may:

1. Inspect the person in question;
2. View the performance;
3. Consider the opinion of a witness to the performance regarding the person's age;
4. Consider the opinion of a medical expert who viewed the performance; or
5. Use any other method authorized by the rules of evidence at common law.

Sec. 3. NRS 62B.320 is hereby amended to read as follows:

62B.320 1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is alleged or adjudicated to be in need of supervision because the child:

- (a) Is subject to compulsory school attendance and is a habitual truant from school;
- (b) Habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable; ~~or~~
- (c) Deserts, abandons or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation ~~or~~ **;** or

(d) Uses an electronic communication device to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual image in violation of section 1 of this act.

2. A child who is subject to the jurisdiction of the juvenile court pursuant to this section must not be considered a delinquent child.

3. As used in this section:

(a) "Electronic communication device" has the meaning ascribed to it in section 1 of this act.

(b) "Sexual image" has the meaning ascribed to it in section 1 of this act.

Sec. 4. NRS 388.123 is hereby amended to read as follows:

388.123 "Cyber-bullying" means bullying through the use of electronic communication. **The term includes the use of electronic communication to transmit or distribute a**

sexual image of a minor. As used in this section, “sexual image” has the meaning ascribed to it in section 1 of this act.

Sec. 5. This act becomes effective on July 1, 2011.

NEW HAMPSHIRE

No distinction

NEW JERSEY

No distinction

A. 1561, 214TH LEG., 2D SESS., (N.J. 2011). CREATES DIVERSIONARY PROGRAM FOR JUVENILES WHO ARE CRIMINALLY CHARGED FOR “SEXTING” OR POSTING SEXUAL IMAGES

Bill Status: Passed both Houses 06/29/2011

An Act creating a diversionary program for certain juveniles¹, **amending P.L.1982, c.81**¹ and supplementing Title 2A of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

11. Section 2 of P.L.1982, c.81 (C.2A:4A-71) is amended to read as follows:

2. Review and processing of complaints. a. The jurisdiction of the court in any complaint filed pursuant to section 11 of P.L.1982, c.77 (C. 2A:4A-30) shall extend to the juvenile who is the subject of the complaint and his parents or guardian.

b. Every complaint shall be reviewed by court intake services for recommendation as to whether the complaint should be dismissed, diverted, or referred for court action. Where the complaint alleges a crime which, if committed by an adult, would be a crime of the first, second, third or fourth degree, or alleges a repetitive disorderly persons offense or any disorderly persons offense defined in chapter 35 or chapter 36 of Title 2C, the complaint shall be referred for court action, unless the prosecutor otherwise consents to diversion. Court intake services shall consider the following factors in determining whether to recommend diversion:

(1) The seriousness of the alleged offense or conduct and the circumstances in which it occurred;

(2) The age and maturity of the juvenile;

- (3) The risk that the juvenile presents as a substantial danger to others;
- (4) The family circumstances, including any history of drugs, alcohol abuse or child abuse on the part of the juvenile, his parents or guardian;
- (5) The nature and number of contacts with court intake services and the court that the juvenile or his family have had;
- (6) The outcome of those contacts, including the services to which the juvenile or family have been referred and the results of those referrals;
- (7) The availability of appropriate services outside referral to the court;
- (8) Any recommendations expressed by the victim or complainant, or arresting officer, as to how the case should be resolved; [and]
- (9) Any recommendation expressed by the county prosecutor; **and**

(10) The offense alleged is an eligible offense pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) and the juvenile is eligible to participate in the educational reform program set forth section 3 of P.L. ,c. (C.) (pending before the Legislature as this bill).¹

(cf: P.L. 1988, c.44, s.17)

12. (New section) Where a complaint against a juvenile pursuant to section 11 of P.L.1982, c.77 (C.2A:4A-30) alleges that the juvenile has committed an eligible offense satisfying the criteria set forth in subsection c. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) and the court has approved diversion of the complaint pursuant to section 4 of P.L.1982, c.81 (C.2A:4A-73) the resolution of the complaint shall include participation in an educational program set forth in 3 of P.L. , c. (C.) (pending before the Legislature as this bill).¹

1[1.] **3. (New section).**¹ a. As used in P.L. , c. (C.) (pending before the Legislature as this bill), “eligible offense” means an offense 1[under N.J.S.2C:24-4]1 in which:

(1) the facts of the case involve the creation, exhibition or distribution 1[without malicious intent]1 of a photograph depicting nudity as defined in 1[that section] **N.J.S.2C:24-4**1 through the use of 1**an electronic communication device.**1 an interactive wireless communications device or a computer; and

(2) the creator and subject of the photograph are juveniles or were juveniles at the time of its making.

b. The Attorney General, in consultation with the Administrative Director of the Administrative Office of the Courts, shall develop an educational program for juveniles who have committed an eligible offense as defined under the provisions of subsection a. of this section. 1[The county prosecutor shall determine whether a juvenile shall be

admitted to the program.]¹ A juvenile who successfully completes the program shall have the opportunity to avoid prosecution for the eligible offense.

c. Admission to the program shall be limited to ¹[juveniles who] **cases where**¹:

(1) ¹[have] **the juvenile has**¹ not previously been adjudicated delinquent for or convicted of a ¹[criminal offense under Title 2C of the New Jersey Statutes or the laws of the United States] **crime or offense which, if committed by an adult, would constitute aggravated sexual assault; sexual assault; aggravated assault; aggravated criminal sexual contact; endangering the welfare of a child pursuant to N.J.S.2C:24-4; luring or enticing a child pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); luring or enticing an adult pursuant to section 1 of P.L.2005, c.1 (C.2C:13-7) or an attempt to commit any of the enumerated offenses** ¹;

(2) ¹[were] **the juvenile was**¹ not aware that ¹[their] **his**¹ actions could constitute and did not have the intent to commit a criminal offense;

(3) ¹[may be harmed by the imposition of criminal sanctions] **there is a likelihood that the juvenile's offense is related to a condition or situation that would be conducive to change through his participation in the educational program**¹; and

(4) ¹[would likely be deterred from engaging in similar conduct in the future by completing the program] **the benefits to society in admitting the juvenile into this educational program outweigh the harm done to society by abandoning criminal prosecution**¹.

d. The educational program shall provide information concerning:

(1) the legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and State statutes;

(2) the non-legal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

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

(4) the ¹**possible**¹ connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials.

e. The Attorney General may promulgate guidelines to effectuate the provisions of this act.

¹[2.] **4.1** This act shall take effect on the first day of the seventh month after enactment.

NEW MEXICO

No distinction

NEW YORK

No distinction

A. 8170, 234TH SESS. (N.Y. 2011). THE CYBERCRIME YOUTH RESCUE ACT

Bill Status: Passed Senate. Returned to Assembly for final passage on 06/21/2011

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as “the cybercrime youth rescue act”.

§ 2. Article 6 of the social services law is amended by adding a new title 11 to read as follows:

TITLE 11 EDUCATION REFORM PROGRAM

Section 458-l. Education reform program.

§ 458-l. Education reform program. 1. As used in this section:

(a) “eligible person” means an individual who is the subject of a pending petition in family court alleging he or she has committed an eligible offense or a person who has been charged, in criminal court, with an eligible offense as that term is defined in paragraph (b) of this subdivision.

(b) “eligible offense” means a crime or offense committed by an eligible person that involved cyberbullying or the sending or receipt of obscenity, as defined in subdivision one of section 235.00 of the penal law, or nudity, as defined in subdivision two of section 235.20 of the penal law, when the sender and the receiver thereof were both under the age of twenty at the time of such communication, but not more than five years apart in age.

(c) “program” means the education reform program developed pursuant to subdivision two of this section.

2. The office of children and family services, hereinafter the “office,” shall develop and implement, in consultation with the division of criminal justice services and the

state education department, an education reform program for eligible persons who have been required to complete such program pursuant to article three or seven of the family court act or section 60.37 of the penal law.

3. The program shall be available in every judicial district in the state; provided that if the office determines that there is not a sufficient number of eligible offenses in a judicial district to mandate the implementation of a program, provisions shall be made for the residents of such judicial district to participate in a program in another judicial district where a program exists if practicable with regard to travel and cost, or to complete the education course online.

4. The program shall involve up to eight hours of instruction and shall provide, at a minimum, information concerning:

(a) the legal consequences of and potential penalties for sharing sexually suggestive materials, explicit materials or abusive materials, including sanctions imposed under applicable federal and state statutes;

(b) the non-legal consequences of sharing sexually suggestive materials, explicit materials or abusive materials, including, but not limited to, the possible effect on relationships, loss of educational and employment opportunities, and the potential for being barred or removed from school programs and extracurricular activities;

(c) how the unique characteristics of cyberspace and the internet, including the potential ability of an infinite audience to utilize the internet to search for and replicate materials, can produce long-term and unforeseen consequences for sharing sexually suggestive materials, explicit materials or abusive materials; and

(d) the potential connection between bullying and cyber-bullying and juveniles sharing sexually suggestive materials, explicit materials or abusive materials.

5. Upon receipt of the court order, pursuant to the family court act or section 60.37 of the penal law, directing an eligible person to attend the program, the office, after consultation with the eligible person and the attorney for such person, shall schedule the eligible person to attend the next available session of the program and shall send written notice of the scheduling, along with the date, time and location of the session or sessions, to the eligible person, the attorney for such person and the clerk of the referring court.

6. Within twenty days of the date upon which the eligible person completes the program, the office shall provide such person with a certification that he or she has successfully completed the program.

§ 3. Subdivision 1 of section 315.3 of the family court act, as amended by chapter 237 of the laws of 1991, is amended to read as follows:

1. Except where the petition alleges that the respondent has committed a designated felony act, the court may at any time prior to the entering of a finding under section 352.1

and with the consent of the respondent order that the proceeding be “adjourned in contemplation of dismissal”.

An adjournment in contemplation of dismissal is an adjournment of the proceeding, for a period not to exceed six months, with a view to ultimate dismissal of the petition in furtherance of justice. Upon issuing such an order, providing such terms and conditions as the court deems appropriate, the court must release the respondent. The court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the consumption of alcohol may have been a contributing factor, require the respondent to attend and complete an alcohol awareness program established pursuant to ~~paragraph six-a~~ of subdivision (a) of section 19.07 of the mental hygiene law.

The court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the respondent is an eligible person as defined in section four hundred fifty-eight-1 of the social services law and has allegedly committed an eligible offense as defined in such section, direct the respondent to attend and complete an education reform program established pursuant to section four hundred fifty-eight-1 of the social services law. Upon ex parte motion by the presentment agency, or upon the court's own motion, made at the time the order is issued or at any time during its duration, the court may restore the matter to the calendar. If the proceeding is not restored, the petition is, at the expiration of the order, deemed to have been dismissed by the court in furtherance of justice.

§ 4. Subdivision 1 of section 353.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

1. The court may conditionally discharge the respondent if the court, having regard for the nature and circumstances of the crime and for the history, character and condition of the respondent, is of the opinion that consistent with subdivision two of section 352.2, neither the public interest nor the ends of justice would be served by a placement and that probation supervision is not appropriate. **The court may, as a condition of a conditional discharge, in cases where the record indicates the respondent qualifies as an eligible person and has been adjudicated for an eligible offense as defined in section four hundred fifty-eight-1 of the social services law, require the respondent to attend and complete an education reform program established pursuant to section four hundred fifty-eight-1 of the social services law.**

§ 5. Paragraph (i) of subdivision (d) of section 735 of the family court act, as added by section 7 of part E of chapter 57 of the laws of 2005, is amended to read as follows:

(i) providing, at the first contact, information on the availability of or a referral to services in the geographic area where the youth and his or her family are located that may be of benefit in avoiding the need to file a petition under this article; including the availability, for up to twenty-one days, of a residential respite program, if the youth and his or her parent or other person legally responsible for his or her care agree, and the availability of other non-residential crisis intervention programs such as family crisis

counseling or alternative dispute resolution programs **or an educational program as defined in section four hundred fifty-eight-1 of the social services law.**

§ 6. The penal law is amended by adding a new section 60.37 to read as follows:

§ 60.37 Authorized disposition; certain offenses.

When a person has been charged with an offense and the elements of such offense meet the criteria of an “eligible offense” and such person qualifies as an “eligible person” as such terms are defined in section four hundred fifty-eight-1 of the social services law, the court may, as a condition of probation or a conditional discharge, direct that the defendant participate in an education reform program pursuant to subdi-vision two of section four hundred fifty-eight-1 of the social services law.

§ 7. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that, effective immediately, the commissioner of the office of children and family services shall promulgate any rules and regulations and take all other actions necessary to implement the provisions of this act on or before such effective date.

S. 3439, 234TH SESS. (N.Y. 2011). AN ACT TO AMEND THE EXECUTIVE LAW AND THE PENAL LAW, IN RELATION TO EDUCATING CHILDREN ON THE ELECTRONIC SENDING AND POSTING OF CERTAIN IMAGES

Bill Status: In Senate Committee on Finance as of 05/02/2011

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 16 of section 501 of the executive law, as renumbered by chapter 170 of the laws of 1994, is renumbered subdivision 17 and a new subdivision 16 is added to read as follows:

16. To establish an educational outreach program for text message, email and internet posting awareness by providing for an ongoing public information and educational campaign about the harm that may arise from adolescents sending, receiving or posting on the internet messages that may include, but are not limited to, provocative or nude images and photographs of themselves.

(a) Such program shall be designed to promote (i) increased awareness of the potential long-term harm to privacy interests associated with the sending, receiving or posting of such images and photographs; and (ii) coordination of public and private efforts, including but not limited to efforts of educators, community organizations and other groups, to provide educational outreach programs to adolescents and their parents and caregivers, emphasizing such potential long-term harm.

(b) The following strategies, among others, may be used to promote awareness of the potential long-term harm to adolescents' privacy interests by the sending, receiving

or posting of such images and photo-graphs: (i) outreach campaigns by means of print, radio and television public service announcements, advertisements, posters, internet postings and other materials; (ii) community informational forums; and (iii) distribution of information through educators, mentors, and community members.

§ 2. The penal law is amended by adding a new section 40.20 to read as follows:

§ 40.20 Certain acts by a young person.

In any prosecution pursuant to section 235.21 or 235.22 or section 263.10, 263.11, 263.15 or 263.16 of this chapter, it is an affirmative defense that the defendant was less than eighteen years old, and that there is a less than four years age difference between the defendant and the recipient at the time of the act, and the depiction or description was not obtained in violation of section 250.45 or 250.50 of this chapter, and both the defendant and the recipient expressly or impliedly acquiesced in the conduct, and the defendant did not intend to or profit from such conduct. The affirmative defense shall not be available for any subsequent transfer of the depiction or description, and shall only apply to the original single transfer to a single recipient.

§ 3. This act shall take effect immediately; provided, however, that section one of this act shall take effect on the ninetieth day after it shall have become a law.

NORTH CAROLINA

No distinction

NORTH DAKOTA

No distinction

OHIO

No distinction

H.R. 53, 129TH GEN. ASSEM., 2011-12 REG. SESS. (OHIO 2011). TO PROHIBIT A MINOR, BY USE OF A TELECOMMUNICATIONS DEVICE OR OTHER MEANS, FROM KNOWINGLY CREATING, RECEIVING, EXCHANGING, SENDING,

OR POSSESSING A PHOTOGRAPH OR OTHER MATERIAL SHOWING A MINOR IN A STATE OF NUDITY

Bill Status: In House Committee on Criminal Justice as of 02/01/2011

A BILL

To amend sections 2151.022 and 2152.02 and to enact section 2907.324 of the Revised Code to prohibit a minor, by use of a telecommunications device or other means, from knowingly creating, receiving, exchanging, sending, or possessing a photograph or other material showing a minor in a state of nudity.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2151.022 and 2152.02 be amended and section 2907.324 of the Revised Code be enacted to read as follows:

Sec. 2151.022. As used in this chapter, “unruly child” includes any of the following:

- (A) Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
- (B) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;
- (C) Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others;
- (D) Any child who violates a **section 2907.324 of the Revised Code for the first time or who violates any other** law, other than division (C) of section 2907.39, division (A) of section 2923.211, division (C)(1) or (D) of section 2925.55, or section 2151.87 of the Revised Code, that is applicable only to a child.

Sec. 2152.02. As used in this chapter:

- (A) “Act charged” means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.
- (B) “Admitted to a department of youth services facility” includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.
- (C)(1) “Child” means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (7) of this section.
- (2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a “child” irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a “child” until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the places at which the person may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.

(7) Any person who, while eighteen years of age, violates division (A)(1) or (2) of section 2919.27 of the Revised Code by violating a protection order issued or consent agreement approved under section 2151.34 or 3113.31 of the Revised Code shall be considered a child for the purposes of that violation of section 2919.27 of the Revised Code.

(D) “Chronic truant” means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) “Community corrections facility,” “public safety beds,” “release authority,” and “supervised release” have the same meanings as in section 5139.01 of the Revised Code.

(F) “Delinquent child” includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates **section 2907.324 of the Revised Code on a second or subsequent offense or who violates** division (C) of section 2907.39, division (A) of section 2923.211, or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) “Discretionary serious youthful offender” means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) “Discretionary SYO” means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under section 2152.13 of the Revised Code.

(I) “Discretionary transfer” means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of section 2152.12 of the Revised Code.

(J) “Drug abuse offense,” “felony drug abuse offense,” and “minor drug possession offense” have the same meanings as in section 2925.01 of the Revised Code.

(K) “Electronic monitoring” and “electronic monitoring device” have the same meanings as in section 2929.01 of the Revised Code.

(L) “Economic loss” means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.

(M) “Firearm” has the same meaning as in section 2923.11 of the Revised Code.

(N) “Juvenile traffic offender” means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(O) A “legitimate excuse for absence from the public school the child is supposed to attend” has the same meaning as in section 2151.011 of the Revised Code.

(P) “Mandatory serious youthful offender” means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(Q) “Mandatory SYO” means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under section 2152.13 of the Revised Code.

(R) “Mandatory transfer” means that a case is required to be transferred for criminal prosecution under division (A) of section 2152.12 of the Revised Code.

(S) “Mental illness” has the same meaning as in section 5122.01 of the Revised Code.

(T) “Mentally retarded person” has the same meaning as in section 5123.01 of the Revised Code.

(U) “Monitored time” and “repeat violent offender” have the same meanings as in section 2929.01 of the Revised Code.

(V) “Of compulsory school age” has the same meaning as in section 3321.01 of the Revised Code.

(W) “Public record” has the same meaning as in section 149.43 of the Revised Code.

(X) “Serious youthful offender” means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.

(Y) “Sexually oriented offense,” “juvenile offender registrant,” “child-victim oriented offense,” “tier I sex offender/child-victim offender,” “tier II sex offender/child-victim offender,” “tier III sex offender/child-victim offender,” and “public registry-qualified juvenile offender registrant” have the same meanings as in section 2950.01 of the Revised Code.

(Z) “Traditional juvenile” means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code, and that is not eligible for a disposition under section 2152.13 of the Revised Code.

(AA) “Transfer” means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) “Category one offense” means any of the following:

(1) A violation of section 2903.01 or 2903.02 of the Revised Code;

(2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.

(CC) “Category two offense” means any of the following:

(1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;

(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;

(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.

(DD) “Non-economic loss” means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

Sec. 2907.324. (A) No minor, by use of a telecommunications device or other means, shall knowingly create, receive, exchange, send, or possess a photograph, video, or other material that shows a minor, who is not the actor's child or ward, in a state of nudity.

(B) This section does not apply under any of the following circumstances:

(1) The photograph, video, or other material is or is to be created, received, exchanged, sent, or possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies for research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the photograph, video, or other material.

(2) The photograph, video, or other material depicts or appears to depict a minor less than thirteen years of age.

(3) The photograph, video, or other material depicts a minor engaged in sexual activity.

(4) The photograph, video, or other material depicts sado-masochistic abuse or violent conduct.

(5) The minor sends the photograph, video, or other material for pecuniary gain or in exchange for a thing of value or for the promise of pecuniary gain or a thing of value.

(6) The minor who possesses or receives the photograph, video, or other material paid money or exchanged a thing of value for the photograph, video, or other material or promised to pay money or exchange a thing of value for the photograph, video, or other material.

(7) The minor sends ten or more different photographs, videos, or other materials in violation of this section.

(8) The minor sends photographs, videos, or other materials in violation of this section to ten or more different telecommunication devices.

(9) The minor previously has been adjudicated two or more times to be in violation of this section.

(C) It is no defense to a charge under this section that the minor creates, receives, exchanges, sends, or possesses a photograph, video, or other material that shows themselves in a state of nudity.

(D) Whoever violates this section is guilty of illegal use of a telecommunications device involving a minor in a state of nudity. A minor shall be adjudged an unruly child on the first offense, with any disposition of the case that is appropriate under Chapter 2151. of the Revised Code. A second or subsequent offense is a delinquent act that would be a misdemeanor of the first degree if it could be committed as an adult.

(E) This section does not preclude a county prosecuting attorney from pursuing any felony charge against a minor who has used a telecommunications device or other means to knowingly create, receive, exchange, send, or possess a photograph, video, or other material that shows a minor in a state of nudity.

(F) A violation of this section does not make a minor subject to the registration and notification requirements of Chapter 2950. of the Revised Code.

(G) As used in this section, “state of nudity” means a lewd depiction, exhibition, representation, or showing of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state, or involving a graphic focus on human male or female genitals.

Section 2. That existing sections 2151.022 and 2152.02 of the Revised Code are hereby repealed.

Section 3. Section 2151.022 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 53 and Am. Sub. H.B. 23 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably

capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

H.R. 80, 129TH GEN. ASSEM., 2011-12 REG. SESS. (OHIO 2011). TO PROHIBIT A MINOR, BY USE OF A TELECOMMUNICATIONS DEVICE, FROM KNOWINGLY SHARING, EXCHANGING, SENDING, OR POSTING A PHOTOGRAPH, VIDEO, OR OTHER MATERIAL THAT SHOWS A MINOR IN A STATE OF NUDITY

Bill Status: In House Committee on Criminal Justice as of 02/02/2011

A BILL

To amend sections 2151.022, 2152.02, and 2907.323 and to enact section 2907.324 of the Revised Code to prohibit a minor, by use of a telecommunications device, from knowingly sharing, exchanging, sending, or posting a photograph, video, or other material that shows a minor in a state of nudity and to define a state of nudity for purposes of this prohibition, to limit the offense of “illegal use of a minor in a nudity-oriented material or performance” to acts committed by persons 18 years of age or older, and to prohibit a minor from committing by means other than a telecommunications device delinquent acts that would be the offense of “illegal use of a minor in a nudity-oriented material or performance” if committed by an adult.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2151.022, 2152.02, and 2907.323 be amended and section 2907.324 of the Revised Code be enacted to read as follows:

Sec. 2151.022. As used in this chapter, “unruly child” includes any of the following:

- (A) Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
- (B) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;
- (C) Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others;
- (D) Any child who violates a law, other than division **(A)(1)(b), (B)(2), (C), or (D)(2) of section 2907.324, division** (C) of section 2907.39, division (A) of section 2923.211, division (C)(1) or (D) of section 2925.55, or section 2151.87 of the Revised Code, that is applicable only to a child.

Sec. 2152.02. As used in this chapter:

(A) “Act charged” means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) “Admitted to a department of youth services facility” includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this state by another state or the United States.

(C)(1) “Child” means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (7) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a “child” irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a “child” until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the places at which the person may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.

(7) Any person who, while eighteen years of age, violates division (A)(1) or (2) of section 2919.27 of the Revised Code by violating a protection order issued or consent

agreement approved under section 2151.34 or 3113.31 of the Revised Code shall be considered a child for the purposes of that violation of section 2919.27 of the Revised Code.

(D) “Chronic truant” means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) “Community corrections facility,” “public safety beds,” “release authority,” and “supervised release” have the same meanings as in section 5139.01 of the Revised Code.

(F) “Delinquent child” includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates division **(A)(1)(b), (B)(2), (C), or (D)(2) of section 2907.324, division** (C) of section 2907.39, division (A) of section 2923.211, or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) “Discretionary serious youthful offender” means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) “Discretionary SYO” means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under section 2152.13 of the Revised Code.

(I) “Discretionary transfer” means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of section 2152.12 of the Revised Code.

(J) “Drug abuse offense,” “felony drug abuse offense,” and “minor drug possession offense” have the same meanings as in section 2925.01 of the Revised Code.

(K) “Electronic monitoring” and “electronic monitoring device” have the same meanings as in section 2929.01 of the Revised Code.

(L) “Economic loss” means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.

(M) “Firearm” has the same meaning as in section 2923.11 of the Revised Code.

(N) “Juvenile traffic offender” means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(O) A “legitimate excuse for absence from the public school the child is supposed to attend” has the same meaning as in section 2151.011 of the Revised Code.

(P) “Mandatory serious youthful offender” means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(Q) “Mandatory SYO” means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under section 2152.13 of the Revised Code.

(R) “Mandatory transfer” means that a case is required to be transferred for criminal prosecution under division (A) of section 2152.12 of the Revised Code.

(S) “Mental illness” has the same meaning as in section 5122.01 of the Revised Code.

(T) “Mentally retarded person” has the same meaning as in section 5123.01 of the Revised Code.

(U) “Monitored time” and “repeat violent offender” have the same meanings as in section 2929.01 of the Revised Code.

(V) “Of compulsory school age” has the same meaning as in section 3321.01 of the Revised Code.

(W) “Public record” has the same meaning as in section 149.43 of the Revised Code.

(X) “Serious youthful offender” means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.

(Y) “Sexually oriented offense,” “juvenile offender registrant,” “child-victim oriented offense,” “tier I sex offender/child-victim offender,” “tier II sex offender/child-victim

offender,” “tier III sex offender/child-victim offender,” and “public registry-qualified juvenile offender registrant” have the same meanings as in section 2950.01 of the Revised Code.

(Z) “Traditional juvenile” means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code, and that is not eligible for a disposition under section 2152.13 of the Revised Code.

(AA) “Transfer” means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) “Category one offense” means any of the following:

(1) A violation of section 2903.01 or 2903.02 of the Revised Code;

(2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.

(CC) “Category two offense” means any of the following:

(1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;

(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;

(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.

(DD) “Non-economic loss” means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

Sec. 2907.323. (A) No person **who is eighteen years of age or older** shall do any of the following:

(1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person

pursuing bona fide studies or research, librarian, member of the clergy, **attorney**, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consent to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, **attorney**, prosecutor, judge, or other person having a proper interest in the material or performance;

(3) Possess or view any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies:

(a) The material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, **attorney**, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

(B) Whoever violates this section is guilty of illegal use of a minor in a nudity-oriented material or performance. Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the second degree. Except as otherwise provided in this division, whoever violates division (A)(3) of this section is guilty of a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 or 2907.322 of the Revised Code, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(3) of this section is a felony of the fourth degree. If the offender who violates division (A)(1) or (2) of this section also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (D)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

Sec. 2907.324. (A)(1) No minor, by use of a telecommunications device, shall do either of the following:

(a) Knowingly send, post, exchange, or share a photograph, video, or other material that shows the minor in a state of nudity;

(b) Knowingly send, post, exchange, or share a photograph, video, or other material that shows another minor in a state of nudity.

(2) Division (A)(1) of this section does not apply to a minor who sends, posts, exchanges, or shares a photograph, video, or other material that shows the minor or another minor in a state of nudity in connection with a criminal investigation or prosecution, civil action, or other proper purpose.

(B)(1) No minor, by means other than the use of a telecommunications device, shall knowingly photograph the minor in a state of nudity or knowingly create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity.

(2) No minor, by means other than the use of a telecommunications device, shall knowingly photograph another minor who is not the minor's child or ward in a state of nudity or knowingly create, direct, produce, or transfer any material or performance that shows another minor who is not the minor's child or ward in a state of nudity.

(3) Divisions (B)(1) and (2) of this section do not apply if both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, shared, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, attorney, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(C) No minor shall knowingly consent to the photographing of the minor's minor child or ward, or photograph the minor's child or ward, in a state of nudity or knowingly consent to the use of the minor's child or ward in a state of nudity in any material or performance, or knowingly use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, shared, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist,

scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, attorney, prosecutor, judge, or other person having a proper interest in the material or performance.

(D)(1) No minor shall knowingly share or view, by means other than a telecommunications device, any material or performance that shows the minor in a state of nudity.

(2) No minor shall knowingly share or view, by means other than a telecommunications device, any material or performance that shows another minor who is not the minor's child or ward in a state of nudity.

(3) Divisions (D)(1) and (2) of this section do not apply if either of the following applies:

(a) The material or performance is sold, disseminated, displayed, shared, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, attorney, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The minor knows that the minor's or other minor's parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

(E) Whoever violates division (A)(1) of this section is guilty of sexting. A minor who violates division (A)(1)(a) of this section shall be adjudged an unruly child, with such disposition of the case as may be appropriate under Chapter 2151. of the Revised Code. A violation of division (A)(1)(b) of this section is a delinquent act that would be a misdemeanor of the third degree on the first offense and a misdemeanor of the first degree on each subsequent offense if it could be committed by an adult. Whoever violates division (B), (C), or (D) of this section is guilty of delinquent use of a minor in a nudity-oriented material or performance. A minor who violates division (B)(1) of this section shall be adjudged an unruly child, with such disposition of the case as may be appropriate under Chapter 2151. of the Revised Code. A violation of division (B)(2) of this section is a delinquent act that would be a misdemeanor of the third degree on the first offense and a misdemeanor of the first degree on each subsequent offense if it could be committed by an adult. A violation of division (C) of this section is a delinquent act that would be a misdemeanor of the third degree if it could be committed by an adult. A minor who violates division (D)(1) of this section shall be adjudged an unruly child, with such disposition of the case as may be appropriate under Chapter 2151. of the Revised Code. A violation of division (D)(2) of this section is a delinquent act that would be a misdemeanor of the first degree if it could be committed by an adult.

(F) As used in this section:

(1) “State of nudity” means a state of nudity that involves a lewd exhibition or graphic focus on the genitals.

(2) “Telecommunications device” has the same meaning as in section 2913.01 of the Revised Code.

Section 2. That existing sections 2151.022, 2152.02, and 2907.323 of the Revised Code are hereby repealed.

Section 3. Section 2151.022 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 23 and Am. Sub. S.B. 53 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

OKLAHOMA

No distinction

H.R. 2006, 53RD LEG., 1ST REG. SESS. (2011). CRIMES AND PUNISHMENTS; INCLUDING DESCRIPTION OF TEXT MESSAGES WITH CERTAIN SEXUAL CONTENT; EMERGENCY

Bill Status: In House Committee on Rules as of 02/08/2011

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1040.13a, as last amended by Section 14, Chapter 261 , O.S.L. 20 07 (21 O.S. Supp. 2010, Section 1040.13a), is amended to read as follows:

Section 1040.13a A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection, “by use of any technology” means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message,

photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device. **For purposes of this section, text messaging shall include, but is not limited to, the transmission of a text message that has sexual content, that includes nude, semi nude, or erotic images or video or both the text messages containing sexual content and nude, semi nude, or erotic images or video.**

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

D. Any **Except as otherwise provided for in subsection E of this section, any** violation of the provisions of this section shall be a felony, punishable by a fine in an amount not to exceed Ten Thousand Dollars (\$10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years, or by both such fine and imprisonment. For purposes of this section, each communication shall constitute a separate offense. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

E. **1. The penalty provided for in subsection D of this section shall not apply to consensual text messages between the following persons:**

a. when one of the persons is eighteen (18) years of age

or older, is currently in a courtship, dating or

engagement relationship with the other person and the

other person is not under the age of fourteen (14), or

b. when both persons are not under the age of fourteen

(14) but are less than the age of eighteen (18).

2. Any person as described in paragraph 1 of this subsection who violates the provisions of this section by transmitting, distributing, publishing, printing or reproducing a consensual text message shall be guilty of a misdemeanor punishable by incarceration in the county jail for a term not to exceed six (6) months, or a fine not to exceed Five Hundred Dollars (\$500.00), or by both the fine and incarceration. A second violation shall be a misdemeanor punishable by incarceration in the county jail for a term not to exceed one (1) year, or a fine not to exceed One Thousand Dollars (\$1,000.00), or by both the fine and incarceration. A third and subsequent violation shall be a felony, punishable by incarceration in the county jail for a term not to exceed eighteen (18) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or by both the fine and incarceration. A person sentenced pursuant to this subsection shall not be required to register pursuant to the provisions of the Sex Offenders Registration Act.

3. Any person not described in paragraph 1 of this subsection who violates the provisions of this section by transmitting, distributing, publishing, printing or reproducing a consensual text message shall be punished as provided for in subsection D of this section.

F. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of this state by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in this state, regardless of the actual jurisdiction where the violator resides.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

OREGON

No distinction

S. 677, 76TH LEGIS. ASSEM., REG. SESS. (OR. 2011). RELATING TO CRIME; DECLARING AN EMERGENCY; PROVIDING FOR CRIMINAL SENTENCE REDUCTION THAT REQUIRES APPROVAL BY A TWO-THIRDS MAJORITY

Bill Status: In Senate Committee on Judiciary - Work Session Scheduled on 04/20/2011

A BILL FOR AN ACT Relating to crime; declaring an emergency; and providing for criminal sentence reduction that requires approval by a two-thirds majority. Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Except as otherwise provided in subsection (3) of this section, in any prosecution under ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693, it is an affirmative defense that:

(a) The defendant was under 18 years of age at the time of the offense; or

(b) The defendant was less than three years older than the victim at the time of the offense.

(2) Except as otherwise provided in subsection (3) of this section, the affirmative defenses described in subsection (1) of this section constitute mitigating circumstances reducing what otherwise would be a violation of ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693 to the offense of inappropriate use of a sexual image as defined in section 2 of this 2011 Act.

(3) The affirmative defense described in:

(a) Subsection (1) of this section does not apply if:

(A) The state proves beyond a reasonable doubt that, at the time the offense was committed, the victim was under 12 years of age; or

(B) The defendant has a previous conviction or finding of juvenile court jurisdiction for inappropriate use of a sexual image as defined in section 2 of this 2011 Act.

(b) Subsection (1)(b) of this section does not apply if the state proves beyond a reasonable doubt that:

(A) The defendant transferred the visual recording or visual depiction, or authorized another person to observe or record the sexually explicit conduct, for consideration; or

(B) The defendant used the visual recording or visual depiction, or the victim's participation or engagement in sexually explicit conduct, to commit coercion as defined in ORS 163.275 or theft by extortion as defined in ORS 164.075.

(4) As used in this section:

(a) 'Previous conviction or finding of juvenile court jurisdiction' means a conviction or finding of juvenile court jurisdiction that was entered prior to the commission of the current offense.

(b) 'Victim' means the child who is the subject of the visual recording or visual depiction or, in the case of a prosecution under ORS 163.670, the child who participates or engages in sexually explicit conduct.

SECTION 2. (1) A person commits the offense of inappropriate use of a sexual image if the person violates ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693 under the mitigating circumstances described in section 1 of this 2011 Act.

(2) The state:

(a) May charge the offense of inappropriate use of a sexual image by alleging the elements of ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693;

(b) Need not prove the existence of an affirmative defense described in section 1 of this 2011 Act as a precondition to a conviction or finding of juvenile court jurisdiction; and

(c) Notwithstanding that the circumstances described in section 1 (3) of this 2011 Act exist, may allege a violation of this section by a person described in section 1 (1) of this 2011 Act. In a prosecution described in this paragraph, nothing in section 1 (3) of this 2011 Act prohibits a court from entering a judgment of conviction or a finding of juvenile court jurisdiction for a violation of this section.

(3) Inappropriate use of a sexual image is a Class A misdemeanor.

SECTION 3. Sections 1 and 2 of this 2011 Act are added to and made a part of ORS 163.670 to 163.693.

SECTION 4. Sections 1 and 2 of this 2011 Act apply only to conduct occurring on or after the effective date of this 2011 Act.

SECTION 5. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

S. 678, 76TH LEGIS. ASSEM., REG. SESS. (OR. 2011). RELATING TO CRIME; DECLARING AN EMERGENCY; PROVIDING FOR CRIMINAL SENTENCE REDUCTION THAT REQUIRES APPROVAL BY A TWO-THIRDS MAJORITY

Bill Status: In Senate Committee on Rules as of 04/28/2011

A BILL FOR AN ACT Relating to crime; declaring an emergency; and providing for criminal sentence reduction that requires approval by a two-thirds majority. Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Except as otherwise provided in subsection (3) of this section, in any prosecution under ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693, it is an affirmative defense that:

(a) The defendant was under 18 years of age at the time of the offense; or

(b) The defendant was less than three years older than the victim at the time of the offense.

(2) Except as otherwise provided in section 3 of this 2011 Act or subsection (3) of this section, the affirmative defenses described in subsection (1) of this section constitute mitigating circumstances reducing what otherwise would be a violation of ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693 to the offense of inappropriate use of a sexual image as defined in section 2 of this 2011 Act.

(3) The affirmative defense described in:

(a) Subsection (1) of this section does not apply if:

(A) The state proves beyond a reasonable doubt that, at the time the offense was committed, the victim was under 12 years of age; or

(B) The defendant has a previous conviction or finding of juvenile court jurisdiction for inappropriate use of a sexual image as defined in section 2 of this 2011 Act.

(b) Subsection (1)(b) of this section does not apply if the state proves beyond a reasonable doubt that:

(A) The defendant transferred the visual recording or visual depiction, or authorized another person to observe or record the sexually explicit conduct, for consideration; or

(B) The defendant used the visual recording or visual depiction, or the victim's participation or engagement in sexually explicit conduct, to commit coercion as defined in ORS 163.275 or theft by extortion as defined in ORS 164.075.

(4) As used in this section:

(a) 'Previous conviction or finding of juvenile court jurisdiction' means a conviction or finding of juvenile court jurisdiction that was entered prior to the commission of the current offense.

(b) 'Victim' means the child who is the subject of the visual recording or visual depiction or, in the case of a prosecution under ORS 163.670, the child who participates or engages in sexually explicit conduct.

SECTION 2. (1) A person commits the offense of inappropriate use of a sexual image if the person violates ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693 under the mitigating circumstances described in section 1 of this 2011 Act.

(2) The state:

(a) May charge the offense of inappropriate use of a sexual image by alleging the elements of ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693;

(b) Need not prove the existence of an affirmative defense described in section 1 of this 2011 Act as a precondition to a conviction or finding of juvenile court jurisdiction; and

(c) Notwithstanding that the circumstances described in section 1 (3) of this 2011 Act exist, may allege a violation of this section by a person described in section 1 (1) of this 2011 Act. In a prosecution described in this paragraph, nothing in section 1 (3) of this 2011 Act prohibits a court from entering a judgment of conviction or a finding of juvenile court jurisdiction for a violation of this section.

(3) Inappropriate use of a sexual image is a Class A misdemeanor.

SECTION 3. (1) Notwithstanding any other provision of law, when a person is convicted of an offense described in subsection (3) of this section the court may impose a sentence of probation or a term of imprisonment that does not exceed any otherwise applicable mandatory minimum or presumptive sentence for the offense, whichever is longer, if:

(a) At the time the offense was committed, the defendant was under 18 years of age;

(b) At the time the offense was committed, the victim was under 12 years of age; and

(c) No other circumstance described in section 1 (3) of this 2011 Act exists.

(2) In making the sentencing determination described in this section, the court shall consider, in addition to any other factor the court considers appropriate:

(a) The age of the defendant and the age of the victim, at the time the offense was committed;

(b) The nature of the sexually explicit conduct involved in the offense; and

(c) Any criminal history of the defendant.

(3) This section applies to:

(a) Using a child in a display of sexually explicit conduct as defined in ORS 163.670.

(b) Encouraging child sexual abuse in the first degree as defined in ORS 163.684.

(c) Encouraging child sexual abuse in the second degree as defined in ORS 163.686.

(d) Possession of materials depicting sexually explicit conduct of a child in the first degree as defined in ORS 163.688.

(e) Possession of materials depicting sexually explicit conduct of a child in the second degree as defined in ORS 163.689.

SECTION 4. Sections 1 and 2 of this 2011 Act are added to and made a part of ORS 163.670 to 163.693.

SECTION 5. Sections 1 to 3 of this 2011 Act apply only to conduct occurring on or after the effective date of this 2011 Act.

SECTION 6. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

PENNSYLVANIA

No distinction

H.R. 815, 195TH GEN. ASSEM., REG. SESS. (PA. 2011). AN ACT AMENDING TITLE 18 (CRIMES AND OFFENSES) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, FURTHER PROVIDING FOR THE OFFENSE OF SEXUAL ABUSE OF CHILDREN; AND DEFINING THE OFFENSE OF SEXTING BY MINORS

Bill Status: Passed House – in Senate Committee on Judiciary as of 06/03/2011

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 6312(f) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 6312. Sexual abuse of children. * * * (f) Exceptions.--This section does not apply to any **of the following:**

(1) Any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented, for a bona fide educational, scientific, governmental or judicial purpose.

(2) Conduct prohibited under section 6321 (relating to sexting by minors).

(3) An individual under 18 years of age who knowingly photographs, videotapes, depicts on a computer or films or possesses or intentionally views a visual depiction as defined in section 6321 of himself or herself alone in a state of simple nudity as defined in section 6321. * * *

Section 2. Title 18 is amended by adding a section to read:

§ 6321. Sexting by minors.

(a) Offense defined.--A minor who knowingly transmits an electronic communication or disseminates a depiction of himself or herself or another minor,

or possesses a depiction of another minor, engaging in sexually explicit conduct commits a misdemeanor of the second degree.

(b) Applicability.--This section shall not apply to the following:

(1) Electronic communications that depict either sexual intercourse or deviate sexual intercourse or the penetration, however slight, of the genitals or anus of a minor with any part of a person's body, masturbation, sadism or masochism. The transmission of an electronic communication depicting any of these acts shall be subject to prosecution under other provisions of this title, including section 6312 (relating to sexual abuse of children).

(2) A visual depiction of a minor which depicts the minor engaging in sexually explicit conduct if the photograph, videotape, film or depiction was taken, made, produced, used or intended to be used for or in furtherance of a commercial purpose. The photographing, videotaping, filming or depicting on a computer of a visual depiction which depicts the minor engaging in sexually explicit conduct

for or in furtherance of a commercial purpose shall be subject to prosecution under other provisions of this title, including section 6312.

(c) Adjudication alternatives.--As appropriate to the circumstances, if a minor is accused of violating this section, consideration shall be given to:

(1) Diversionary alternatives available prior to a law enforcement officer's submission of a written allegation of delinquency to the juvenile probation office.

(2) Adjudicatory alternatives available subsequent to the submission of a written allegation of delinquency, including the opportunity for disposition through informal adjustment as set forth in 42 Pa.C.S. § 6323 (relating to informal adjustment) or entry into a consent decree pursuant to 42 Pa.C.S. § 6340 (relating to consent decree).

(d) Expungement.--For juveniles who fulfill the conditions of a diversionary alternative pursuant to subsection (c)(1) or informal adjustment pursuant to 42 Pa.C.S. § 6323, the record, including any fingerprints or photographs taken under 42 Pa.C.S. § 6308(c) (relating to law enforcement records), shall be expunged pursuant to section 9123(a)(1) (relating to juvenile records). For juveniles who have successfully fulfilled the conditions of a consent decree pursuant to 42 Pa.C.S. § 6340, the record, including any fingerprints or photographs taken pursuant to 42 Pa.C.S. § 6308(c), shall be expunged pursuant to section 9123(a)(2).

(e) No secure detention or placement authorized.--A minor alleged to be delinquent solely on the basis of an offense committed under subsection (a) may not be detained in a secure placement facility under 42 Pa.C.S. § 6327 (relating to place of

detention). A minor adjudicated delinquent where the offense under subsection (a) is the only offense substantiated under 42 Pa.C.S. § 6341 (relating to adjudication)

shall not be subject to commitment to a secure facility pursuant to a disposition ordered by the court under 42 Pa.C.S. § 6352 (relating to disposition of delinquent child).

(f) Seizure and forfeiture of electronic device.--An electronic device used in violation of this section may be seized and forfeited to the Commonwealth.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Electronic communication.” As defined in section 5702 (relating to definitions).

“Minor.” A person 13 years of age or older and under 18 years of age.

“Nudity.” As defined in section 5903(e) (relating to obscene and other sexual materials and performances).

“Sexual intercourse.” As defined in section 3101 (relating to definitions).

“Sexually explicit conduct.” A lewd or lascivious exhibition of the minor's genitals, pubic area, breasts or buttocks or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction. The term does not include simple nudity.

Section 3. This act shall take effect in 60 days.

S. 850, 195TH GEN. ASSEM., REG. SESS. (PA. 2011). AN ACT AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, IN MINORS, PROVIDING FOR THE OFFENSE OF CYBERBULLYING AND SEXTING BY MINORS; IN CRIMINAL HISTORY RECORD INFORMATION

Bill Status: In Senate Committee on Appropriations as of 05/04/2011

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in minors, providing for the offense of cyberbullying and sexting by minors; in criminal history record information, further providing for expungement and for juvenile records; and, in relation to summary offenses, further providing for short title and purpose of chapter, for the scope of the Juvenile Act, for inspection of court files and records, for conduct of hearings and for right to counsel. The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 6321. Cyberbullying and sexting by minors.

(a) Offense defined.--A minor commits a misdemeanor of the second third degree if:

(1) the minor knowingly transmits or disseminates any electronic message, including a visual depiction of himself or any other person in a state of nudity, to another minor with the knowledge or intent that the message would coerce,

intimidate, torment, harass or otherwise cause emotional distress to the other minor; or

(2) the minor does any of the following involving another minor:

(i) photographs, videotapes, depicts on a computer or films the other minor in a state of nudity without the person's knowledge or consent; or

(ii) transmits, distributes, publishes or disseminates a visual depiction of the other minor in a state of nudity where the minor depicted has not given consent or has withdrawn consent for the dissemination.

(b) Seizure and forfeiture of electronic device.--An electronic device used in violation of this section may be seized by and forfeited to the Commonwealth.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Disseminate.” To cause or make an electronic communication from one person, place or electronic communication device to two or more persons, places or electronic communication devices. The term does not include the posting on or transfer to an Internet page or website to which the public has or might gain access.

“Minor.” An individual under 18 years of age.

“Nudity.” The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

“Transmit.” To cause or make an electronic communication

from one person, place or electronic communication device to only one other person, place or electronic communication device. The term shall not include the posting on or transfer to an Internet page or website to which the public has or might gain access.

“Visual depiction.” A photograph, videotape, film or depiction on a computer. The term shall not include a photograph, videotape, film or depiction on a computer, taken, taped, filmed, made, produced, used or intended to be used, for or in furtherance of a commercial purpose or to the transmission or dissemination of such a visual depiction.

Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title 18 are amended to read:

§ 9122. Expungement.

(a) Specific proceedings.--Criminal history record information shall be expunged in a specific criminal proceeding when: * * * (3) a person 21 years of age or older who has been convicted of a violation of section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), **which occurred on or after the day the person attained 18 years of age**, petitions the court of common pleas in the county where the conviction occurred seeking expungement and the person has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges imposed pursuant to section 6310.4 (relating to restriction of operating privileges). Upon review of the petition, the court shall order the expungement of all criminal history record

information and all administrative records of the Department of Transportation relating to said conviction. * * * (d) Notice of expungement.--Notice of expungement shall promptly be submitted to the central repository **repository** which shall notify all criminal justice agencies which have received the criminal history record information to be expunged. * * * § 9123. Juvenile records.

(a) Expungement of juvenile records.--Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases **and cases involving summary offenses committed while the individual was under 18 years of age**, wherever kept or retained shall occur after 30 days' notice to the district attorney, whenever the court upon its **own** motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court; **(1.1) a written allegation is filed which was not approved for prosecution; (1.2) the individual successfully completed an informal adjustment and no proceeding seeking adjudication or conviction is pending;**

(2) six months have elapsed since the final discharge of the person from supervision under a consent decree **or diversion program, including a program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program)** and no proceeding seeking adjudication or conviction is pending;

(2.1) the individual is 18 years of age or older and the individual has satisfied all terms and conditions of the sentence imposed following a conviction for a summary

offense, with the exception of a violation of section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), committed while the individual was under 18 years of age and the individual has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending to seek such conviction and adjudication; (2.2) the individual is 18 years of age or older and has been convicted of a violation of section 6308 which occurred while the individual was under 18 years of age and the individual has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges imposed under section 6310.4 (relating to restriction of operating privileges). Expungement shall include all criminal history record information and all administrative records of the Department of Transportation relating to the conviction;

(3) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(4) ~~the individual [is 18 years of age or older~~ **petitions the court for an expungement**,] the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the

following factors:

(i) the type of offense;

(ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;

(iii) adverse consequences that the individual may suffer if the records are not expunged; and

(iv) whether retention of the record is required for purposes of protection of the public safety. * * *

Section 3. Section 6301(b) of Title 42 is amended to read:

§ 6301. Short title and purposes of chapter. * * * (b) Purposes.--This chapter shall be interpreted and construed as to effectuate the following purposes:

(1) To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained. (1.1) To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter.

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of

accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from

parents only when necessary for his welfare, safety or health or in the interests of public safety.

(4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

(5) To use the least restrictive p-~~unitive~~ sanctions consistent with the protection of the community and the r-~~ehabilitative~~ rehabilitation needs of

the a delinquent child; and to use confinement as a last resort and to impose it for the minimum amount of time that is consistent with the protection of the public and the r-~~ehabilitative~~ rehabilitation needs of t-~~he~~ a delinquent child.

(6) To employ whenever possible evidence-based practices, with fidelity, at every stage of the juvenile justice process.

Section 4. Sections 6303, 6307 and 6336 of Title 42 are amended by adding subsections to read:

§ 6303. Scope of chapter. * * * **(c) Summary offenses generally.--In addition to the provisions of subsection (a)(5) and notwithstanding the exclusion of summary offenses generally from the definition of “delinquent act” under section 6302, the provisions of sections 6307 (relating to inspection of court files and records) and 6336(d) (relating to conduct of hearings), insofar as section 6336(d) relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary.**

§ 6307. Inspection of court files and records. * * * **(c) Summary offenses.--The provisions of this section shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary.** § 6336. Conduct of hearings. * * * **(g) Summary offenses.--The provisions of subsection (d), insofar as it relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary.**

(h) Adjudication alternative.--The magisterial district judge may refer a child charged with a summary offense to an adjudication alternative program under section 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure.

Section 5. Section 6337 of Title 42 is amended to read:

§ 6337. Right to counsel.

(a) Presumption of indigency.-- (1) Except as provided in section 6311 (relating to guardian ad litem for child in court proceedings), a party is entitled to representation by legal counsel at all stages of any proceedings under this chapter and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him.

(2) All children are presumed indigent for the purposes of any proceedings under this chapter. The presumption may be rebutted if the court ascertains that the child has the

financial resources to retain counsel of his choice at his own expense. The court shall not consider the financial resources of the child's parent, guardian or custodian when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense.

(3) If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable. The court may continue the proceeding to enable a party to obtain counsel.

(b) Waiver.--Counsel must be provided for a child unless his parent, guardian, or custodian is present in court and affirmatively ~~waive~~ **waives** it. However, the parent, guardian, or custodian may not waive counsel for a child when their interest may be in conflict with the interest or interests of the child. If the interests of two or more parties may conflict, separate counsel shall be provided for each of them.

Section 6. This act shall take effect in 60 days.

RHODE ISLAND

2011 R.I. PUB. LAWS CH. 11-270 (H.R. 5094). AN ACT RELATING TO CRIMINAL OFFENSES - CHILDREN. (EFFECTIVE)

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 11-9 of the General Laws entitled "Children" is hereby amended by adding thereto the following section:

11-9-1.4. Minor electronically disseminating indecent material to another person. – "Sexting" Prohibited. - (a) Definitions as used in this section:

(1) "Minor" means any person not having reached eighteen (18) years of age;

(2) "Computer" has the meaning given to that term in section 11-52-1;

(3) "Telecommunication device" means an analog or digital electronic device which processes data, telephony, video, or sound transmission as part of any system involved in the

sending and/or receiving at a distance of voice, sound, data, and/or video transmissions;

(4) "Indecent visual depiction" means any digital image or digital video of the minor engaging in sexually explicit conduct, and includes data stored or any computer, telecommunication device, or other electronic storage media which is capable of conversion into a visual image;

(5) "Sexually explicit conduct" means actual masturbation or graphic focus on or lascivious exhibition of the nude genitals or pubic area of the minor.

(b) No minor shall knowingly and voluntarily and without threat or coercion use a computer or telecommunication device to transmit an indecent visual depiction of himself or herself to another person.

(c) A violation of this section shall be a status offense and referred to the family court.

(d) The conduct prohibited under subsection (b) shall not be deemed a violation of section 11-9-1.3 and, further, shall not subject the minor to sex offender registration requirements

set forth in section 11-37.1-1 et seq., entitled "Sexual Offender Registration and Community Notification."

SECTION 2. This act shall take effect upon passage.

SOUTH CAROLINA

No distinction

H.R. 3130/S. 296, 119TH GEN. ASSEM., 1ST REG. SESS. (S.C. 2011). TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63-19-2470 SO AS TO CREATE THE OFFENSE OF SEXTING

Bill Status: In House and Senate Committees on Judiciary as of 01/11/2011

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63-19-2470 SO AS TO CREATE THE OFFENSE OF SEXTING, TO PROVIDE FOR A CIVIL FINE AND THE CREATION OF AN EDUCATIONAL PROGRAM FOR A PERSON WHO COMMITS THE OFFENSE, TO PROVIDE FOR THE RESTRICTION OF A MINOR'S DRIVING PRIVILEGES UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE CERTAIN SAFEGUARDS FOR MINORS WHO COMMIT THE OFFENSE, AND TO PROVIDE FOR THE USE OF THE UNIFORM TRAFFIC TICKET FOR THE OFFENSE AND FOR JURISDICTION OVER THE OFFENSE IN THE MUNICIPAL OR MAGISTRATES COURT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 23, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63-19-2470. (A) Notwithstanding another provision of law, it is unlawful for a minor who is at least twelve years of age but less than the age of eighteen years to use a telecommunications device to knowingly transmit or distribute to another person a photograph, text message with a photo attachment, or other transmitted material of any kind depicting himself or another person who is less than eighteen years of age in a state of sexual activity or a state of sexually explicit nudity. A minor who violates the provisions of this section is guilty of the civil offense of sexting and is subject to a civil fine of not more than one hundred dollars and may be ordered to complete an educational program as provided in subsection (C). The civil fine is subject to all applicable court costs, assessments, and surcharges.

(B) If a minor convicted pursuant to this section fails to pay the civil fine or to successfully complete the education program as provided in subsection (C) as ordered by the court, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver's license or permit, the court may delay the issuance of the person's driver's license or permit for a period of ninety days beginning on the date the person applies for a driver's license or permit. Upon restricting or delaying the issuance of the minor's driver's license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver's license or permit to the court or to the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate in the minor's driving record that the restriction or delayed issuance of the minor's driver's license or permit is not a traffic violation of a driver's license suspension. The Department of Motor Vehicles must notify the minor's parent, guardian, or custodian of the restriction or delayed issuance of the minor's driver's license or permit. At the completion of the ninety-day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor's license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor's driver's license or permit after the ninety-day period. The restriction or delayed issuance of the minor's driver's license or permit must not be considered by an insurance company for automobile insurance purposes or result in an automobile insurance penalty, including a penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(C) Each circuit solicitor has the prosecutorial discretion as defined in Chapter 22, Title 17 and shall establish, as a matter of prosecutorial discretion, an educational program for minors who violate the provisions of this section. The educational program must include, but is not limited to, the:

(1) legal consequences of and penalties for sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity, including applicable federal and state statutes;

(2) nonlegal consequences of sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity including, but not limited to, the:

(a) effect on relationships;

(b) loss of educational and employment opportunities; and

(c) removal from certain school programs and extracurricular activities.

(3) unique characteristics of cyberspace and the Internet, including searching and replicating material, and the long-term consequences of sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity with an infinite audience; and

(4) connection between bullying and cyberbullying and minors sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity.

(D) The educational program required by the provisions of this section must be under the direct supervision and control of the circuit solicitor; however, the solicitor may contract for services with a county or municipality in the circuit.

(E) The South Carolina Commission on Prosecution Coordination shall oversee the administrative procedures for the educational programs required by this section.

(F) A violation of the provisions of this section is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this section or for failure to pay a fine or successfully complete the educational program provided in subsection (C).

(G) A violation of this section is not grounds for denying, suspending, or revoking a person's participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need-based grant.

(H) The uniform traffic ticket, established pursuant to Section 56-7-10, may be used by law enforcement officers for a violation of this section. The law enforcement officer must notify the minor's parent, guardian, or custodian of the minor's offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

(I) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing concerning a violation of this section must be placed on the court's appropriate docket for traffic violations and not on the court's docket for civil matters.”

SECTION 2. This act takes effect upon approval by the Governor.

SOUTH DAKOTA

No distinction

S. 179, 86TH LEGIS. ASSEM., REG. SESS. (S.D. 2011). DEFINE AND PROHIBIT THE OFFENSES OF JUVENILE SEXTING AND AGGRAVATED JUVENILE SEXTING AND TO PROVIDE FOR CERTAIN SANCTIONS AND REMEDIES

Bill Status: Senate Committee on Judiciary Deferred Hearing to the 41st legislative day on 02/22/2011

FOR AN ACT ENTITLED, An Act to define and prohibit the offenses of juvenile sexting and aggravated juvenile sexting and to provide for certain sanctions and remedies. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. No minor may, by any electronic or computerized device, intentionally and knowingly, create, produce, distribute, present, transmit, post, exchange, or possess any visual depiction of a minor involved in any sexually explicit conduct or any lewd exhibition of nudity. Any violation of this section constitutes the offense of juvenile sexting.

Section 2. Possession alone of a visual depiction is an affirmative defense to section 1 of this Act, if a minor has not solicited the visual depiction, if the minor does not subsequently distribute, present, transmit, post, or exchange the visual depiction, and if the minor subsequently deletes or destroys the visual depiction, either volitionally or at the request of any person in authority or in loco parentis.

Section 3. No minor may be adjudicated as a child in need of supervision, pursuant to chapter 26-8B, or as a delinquent child, pursuant to chapter 26-8C, solely because of committing the offense of juvenile sexting. Such minor may, however, at the discretion of the court, be referred to teen court, remedial educational programs, community service programs, or other juvenile diversion programs.

Section 4. Any violation of section 1 of this Act constitutes the offense of aggravated juvenile sexting if any of the following aggravating factors apply:

- (1) The offending minor committed the offense for commercial or financial gain;
- (2) The offending minor created or produced the visual depiction without the knowledge and consent of any depicted minor;
- (3) The visual depiction was subsequently distributed, presented, transmitted, or posted, by the offending minor, to more than five other persons, whether adult or minor; or
- (4) The offending minor has been previously referred for juvenile sexting pursuant to section 3 of this Act.

Section 5. Any minor, who has committed the offense of aggravated juvenile sexting may, at the discretion of the court, be adjudicated as a child in need of supervision, pursuant to chapter 26-8B, or as a delinquent child, pursuant to chapter 26-8C. Such minor may also, at the discretion of the court, be referred to teen court, remedial education programs, community service programs, or other juvenile diversion programs.

Section 6. No minor may be compelled to register as a sex offender, pursuant to chapter 22-24B, solely for committing the offense of juvenile sexting or aggravated juvenile sexting.

Section 7. It is not a defense to a violation of section 1 of this Act that the minor's visual depiction is of himself or herself alone.

Section 8. For the purposes of this Act, a minor is any child less than eighteen years old, but at least twelve years old.

TENNESSEE

No distinction

TEXAS

No distinction

2011 TEX. SESS. LAW SERV. CH. 1322 (S. 407). RELATING TO THE CREATION OF THE OFFENSE OF ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING A MINOR AND TO CERTAIN EDUCATIONAL PROGRAMS CONCERNING THE PREVENTION AND AWARENESS OF THAT OFFENSE

Status: Effective 09/01/2011

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 37.09, Penal Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3)(B) of that section.

SECTION 2. Section 43.26, Penal Code, is amended by adding Subsection (h) to read as follows:

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.261 to read as follows:

Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR.

(a) In this section:

(1) “Dating relationship” has the meaning assigned by Section 71.0021, Family Code.

(2) “Minor” means a person younger than 18 years of age.

(3) “Produce” with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.

(4) “Promote” has the meaning assigned by Section 43.25.

(5) “Sexual conduct” has the meaning assigned by Section 43.25.

(6) “Visual material” has the meaning assigned by Section 43.26.

(b) A person who is a minor commits an offense if the person intentionally or knowingly:

(1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or

(2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.

(c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor:

(A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or

(B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:

(A) convicted one or more times of an offense punishable under Subdivision (1)(A); or

(B) convicted two or more times of any offense under this section.

(d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.

(e) It is an affirmative defense to prosecution under this section that the visual material:

(1) depicted only the actor or another minor:

(A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or

(B) who was the spouse of the actor at the time of the offense; and

(2) was promoted or received only to or from the actor and the other minor.

(f) It is a defense to prosecution under Subsection (b)(2) that the actor:

(1) did not produce or solicit the visual material;

(2) possessed the visual material only after receiving the material from another minor; and

(3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.

(g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.

(h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections (c) and (d).

SECTION 4. Subsection (b), Section 51.03, Family Code, is amended to read as follows:

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;

(3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; ~~or~~ (6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305; **or**

(7) conduct that violates Section 43.261, Penal Code.

SECTION 5. The heading to Chapter 6, Code of Criminal Procedure, is amended to read as follows:

CHAPTER SIX. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS; **EDUCATION CONCERNING CONSEQUENCES OF CERTAIN OFFENSES**

SECTION 6. Chapter 6, Code of Criminal Procedure, is amended by adding Article 6.09 to read as follows:

Art. 6.09. EDUCATIONAL PROGRAMS CONCERNING CERTAIN OFFENSES COMMITTED BY MINORS; MANDATORY COURT ATTENDANCE.

(a) In this article, “parent” means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.

(b) This article applies to a defendant who has not had the disabilities of minority removed and has been charged with an offense under Section 43.261, Penal Code.

(c) The judge of a county court:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

(d) If a county court finds that a defendant has committed an offense under Section 43.261, Penal Code, the court may enter an order requiring the defendant to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(e) A court that enters an order under Subsection (d) shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (d) if the court determines that the defendant or the defendant's parent is financially able to make payment.

SECTION 7. The heading to Article 38.45, Code of Criminal Procedure, is amended to read as follows:

Art. 38.45. EVIDENCE **DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY** [~~THAT CONSTITUTES~~] CHILD **OR MINOR** [~~-PORNOGRAPHY~~].

SECTION 8. Subsection (a), Article 38.45, Code of Criminal Procedure, is amended to read as follows:

(a) During the course of a criminal hearing or proceeding, the court may not make available or allow to be made available for copying or dissemination to the public property or material:

(1) that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code;

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3) that is described by Section 2 or 5, Article 38.071, of this code.

SECTION 9. The heading to Article 39.15, Code of Criminal Procedure, is amended to read as follows:

Art. 39.15. DISCOVERY OF EVIDENCE **DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY** [~~THAT CONSTITUTES~~] CHILD **OR MINOR** [~~PORNOGRAPHY~~].

SECTION 10. Subsection (a), Article 39.15, Code of Criminal Procedure, is amended to read as follows:

(a) In the manner provided by this article, a court shall allow discovery under Article 39.14 of property or material:

(1) that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code;

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3) that is described by Section 2 or 5, Article 38.071, of this code.

SECTION 11. Article 42.12, Code of Criminal Procedure, is amended by adding Section 13H to read as follows:

Sec. 13H. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL.

(a) In this section, "parent" means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.

(b) If a judge grants community supervision to a defendant who is convicted of or charged with an offense under Section 43.261, Penal Code, the judge may require as a condition of community supervision that the defendant attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(c) The court shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to make payment.

SECTION 12. Article 45.0215, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) **This article applies to** [~~H~~] a defendant **who has not had the disabilities of minority removed and has been:**

(1) charged with an offense other than an offense under Section 43.261, Penal Code, if the defendant is younger than 17 years of age; **or**

(2) charged with an offense under Section 43.261, Penal Code, if the defendant is younger than 18 years of age.

(a-1) The [and has not had the disabilities of minority removed, the] judge or justice:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

SECTION 13. The heading to Article 45.0216, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS [~~OF CHILDREN~~].

SECTION 14. Article 45.0216, Code of Criminal Procedure, is amended by amending Subsections (b), (d), and (f) and adding Subsection (f-1) to read as follows:

(b) A person **may** [~~convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child may, on or after the person's 17th birthday,~~] apply to the court in which the **person** [~~child~~] was convicted to have the conviction expunged as provided by this article **on or after the person's 17th birthday if:**

(1) the person was convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; or

(2) the person was convicted only once of an offense under Section 43.261, Penal Code.

(d) The request must contain the person's statement that the person was not convicted [~~while the person was a child~~] of any **additional** offense **or found to have engaged in conduct indicating a need for supervision as** described by **Subsection (f)(1) or (2), as applicable** [Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged].

(f) **The** [~~If the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, the~~] court shall order the conviction, together with all complaints, verdicts, sentences, and

prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record **if the court finds that:**

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7), Family Code, while the person was a child.

(f-1) After entry of **an** [the] order **under Subsection (f)**, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

SECTION 15. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.061 to read as follows:

Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR.

(a) In this article, “parent” means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.

(b) If a justice or municipal court finds that a defendant has committed an offense under Section 43.261, Penal Code, the court may enter an order requiring the defendant to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(c) A court that enters an order under Subsection (b) shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to make payment.

SECTION 16. Subsections (b) and (d), Section 51.08, Family Code, are amended to read as follows:

(b) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense:

(1) except as provided by Subsection (d), shall waive its original jurisdiction and refer the child to juvenile court if:

(A) the complaint pending against the child alleges a violation of a misdemeanor offense under Section 43.261, Penal Code, that is punishable by fine only; or

(B) the child has previously been convicted of:

(i) ~~(A)~~ two or more misdemeanors punishable by fine only other than a traffic offense;

(ii) ~~(B)~~ two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or

(iii) ~~(C)~~ one or more of each of the types of misdemeanors described in **Subparagraph (i) or (ii)** ~~Paragraph (A) or (B)~~; and

(2) may waive its original jurisdiction and refer the child to juvenile court if the child:

(A) has not previously been convicted of a misdemeanor punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense; or

(B) has previously been convicted of fewer than two misdemeanors punishable by fine only other than a traffic offense or two violations of a penal ordinance of a political subdivision other than a traffic offense.

(d) A court that has implemented a juvenile case manager program under Article 45.056, Code of Criminal Procedure, may, but is not required to, waive its original jurisdiction under Subsection **(b)(1)(B)** ~~(b)(1)~~.

SECTION 17. Section 51.13, Family Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by **Subsections (d) and (e)** ~~Subsection (d)~~, an order of adjudication or disposition in a proceeding under this title is not a conviction of crime. Except as provided by Chapter 841, Health and Safety Code, an order of adjudication or disposition does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(e) A finding that a child engaged in conduct indicating a need for supervision as described by Section 51.03(b)(7) is a conviction only for the purposes of Sections 43.261(c) and (d), Penal Code.

SECTION 18. Chapter 54, Family Code, is amended by adding Section 54.0404 to read as follows:

Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS.

(a) If a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7), the juvenile court may enter an order requiring

the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(b) A juvenile court that enters an order under Subsection (a) shall require the child or the child's parent or other person responsible for the child's support to pay the cost of attending an educational program under Subsection (a) if the court determines that the child, parent, or other person is financially able to make payment.

SECTION 19. Section 58.003, Family Code, is amended by adding Subsections (c-3) and (c-4) and amending Subsection (d) to read as follows:

(c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, or taken into custody to determine whether the child engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, if the child attends and successfully completes an educational program described by Section 37.218, Education Code, or another equivalent educational program. The court may:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-4) A prosecuting attorney or juvenile probation department may maintain until a child's 17th birthday a separate record of the child's name and date of birth and the date on which the child successfully completed the educational program, if the child's records are sealed under Subsection (c-3). The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

(d) The court may grant the relief authorized in Subsection (a), ~~[(c-1)]~~, **or (c-3)** at any time after final discharge of the person or after the last official action in the case if there was no adjudication, subject, **if applicable**, to Subsection (e). If the child is referred to the juvenile court for conduct constituting any offense and at the adjudication hearing the child is found to be not guilty of each offense alleged, the court shall immediately and without any additional hearing order the sealing of all files and records relating to the case.

SECTION 20. Subsection (a), Section 59.004, Family Code, is amended to read as follows:

(a) For a child at sanction level one, the juvenile court or probation department may:

(1) require counseling for the child regarding the child's conduct;

- (2) inform the child of the progressive sanctions that may be imposed on the child if the child continues to engage in delinquent conduct or conduct indicating a need for supervision;
- (3) inform the child's parents or guardians of the parents' or guardians' responsibility to impose reasonable restrictions on the child to prevent the conduct from recurring;
- (4) provide information or other assistance to the child or the child's parents or guardians in securing needed social services;
- (5) require the child or the child's parents or guardians to participate in a program for services under Section 264.302, if a program under Section 264.302 is available to the child or the child's parents or guardians;
- (6) refer the child to a community-based citizen intervention program approved by the juvenile court; ~~and~~ (7) release the child to the child's parents or guardians; **and**
- (8) require the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.**

SECTION 21. Subsection (a), Section 61.002, Family Code, is amended to read as follows:

- (a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:
 - (1) for payment of probation fees under Section 54.061;
 - (2) for restitution under Sections 54.041(b) and 54.048;
 - (3) for payment of graffiti eradication fees under Section 54.0461;
 - (4) for community service under Section 54.044(b);
 - (5) for payment of costs of court under Section 54.0411 or other provisions of law;
 - (6) requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);
 - (7) enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);
 - (8) ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);
 - (9) requiring a parent or guardian of a child found to be truant to participate in an available program addressing truancy under Section 54.041(f);

- (10) requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);
- (11) requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);
- (12) requiring payment of deferred prosecution supervision fees under Section 53.03(d);
- (13) requiring a parent or other eligible person to attend a court hearing under Section 51.115;
- (14) requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r);
- (15) requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title; [Ø] (16) for payment of fees under Section 54.0462; **or**
- (17) for payment of the cost of attending an educational program under Section 54.0404.**

SECTION 22. Subchapter G, Chapter 37, Education Code, is amended by adding Section 37.218 to read as follows:

Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL MATERIAL DEPICTING MINOR ENGAGED IN SEXUAL CONDUCT.

(a) In this section:

(1) “Bullying” has the meaning assigned by Section 25.0342.

(2) “Cyberbullying” means the use of any electronic communication device to engage in bullying or intimidation.

(3) “Harassment” has the meaning assigned by Section 37.001.

(4) “Sexual conduct” has the meaning assigned by Section 43.25, Penal Code.

(b) The center, in consultation with the office of the attorney general, shall develop programs for use by school districts that address:

(1) the possible legal consequences, including criminal penalties, of sharing visual material depicting a minor engaged in sexual conduct;

(2) other possible consequences of sharing visual material depicting a minor engaged in sexual conduct, including:

(A) negative effects on relationships;

(B) loss of educational and employment opportunities; and

(C) possible removal, if applicable, from certain school programs or extracurricular activities;

(3) the unique characteristics of the Internet and other communications networks that could affect visual material depicting a minor engaged in sexual conduct, including:

(A) search and replication capabilities; and

(B) a potentially worldwide audience;

(4) the prevention of, identification of, responses to, and reporting of incidents of bullying; and

(5) the connection between bullying, cyberbullying, harassment, and a minor sharing visual material depicting a minor engaged in sexual conduct.

(c) Each school district shall annually provide or make available information on the programs developed under Subsection (b) to parents and students in a grade level the district considers appropriate. Each district shall provide or make available the information by any means the district considers appropriate.

SECTION 23.

(a) Not later than January 1, 2012, the Texas School Safety Center shall develop the program required under Subsection (b), Section 37.218, Education Code, as added by this Act.

(b) Subsection (c), Section 37.218, Education Code, as added by this Act, applies beginning with the 2012-2013 school year.

SECTION 24. The change in law made by this Act to Section 43.26, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 25. This Act takes effect September 1, 2011.

UTAH

No distinction

VERMONT

VT. STAT. ANN. tit. 13, § 2802B (2011). MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33, and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (b)(1) of this section or prosecuted in district court under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age.

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than \$300.00 or imprisoned for not more than six

months or both.

(d) This section shall not be construed to prohibit a prosecution under section 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or any other applicable provision of law.

VIRGINIA

No distinction

WASHINGTON

No distinction

WEST VIRGINIA

No distinction

WISCONSIN

No distinction

WYOMING

No distinction

FEDERAL LEGISLATION

No distinction

U.S. TERRITORIES:

AMERICAN SAMOA

No distinction

GUAM

GUAM PUB. L. NO. 31-09 (2011). AN ACT TO AMEND §§ 19.69, 19.70, AND 61.20 OF TITLE 9, GUAM CODE ANNOTATED; TO ADD NEW §§ 61.20.1, 28.90, 29.100, AND 28.101 TO TITLE 17, GUAM CODE ANNOTATED; RELATIVE TO BULLYING, CYBERBULLYING, AND SEXTING

Signed by Governor on 03/09/2011 - Effective

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan* finds that there is both a concern and alarm among families, parents, children, and our community about the growing contemporary problem of not only actual physical assault but also emotional harassment, intimidation, and mistreatment of weaker or vulnerable children or minors by others. This bullying is reported to be on the rise and, in this electronic, digital, or computer age is occurring more commonly and frequently on the Internet and transmitted onto cellular phones and computers, which is now called "cyberbullying." *I Liheslaturan Guahan* finds that bullying and cyberbullying as forms of harassment and stalking can be addressed by updating and amending our current related criminal laws.

I Liheslaturan Guahan also finds that "sexting" has become a more evident problem within our juvenile community as a result of the easy accessibility of electronic devices among our youth community. The teenage practices of sexting and posting sexual images online are nationwide problems that have perplexed parents, school administrators, and law enforcement officials. Prosecutors in several states have charged teenagers who have engaged in these behaviors with criminal offenses, including distribution of child pornography. Sexting, which is a new term of art, refers to "the use of a cell phone to send sexually suggestive texts or emails with nude or nearly nude photos." Sexting has been on the increase in our community, and has not only resulted in problems of itself, but it has been linked to other problems and crimes within our youth community like bullying, cyberbullying, assault, harassment, and even criminal sexual conduct. Like the rest of the nation, Guam has had to charge juveniles with other more serious criminal offenses like distribution of child pornography. The *National Campaign to Prevent Teen and Unplanned Pregnancy* conducted research that shows the following statistics with respect to sexting: 39 percent of all teens have sent sexually suggestive texts; 48 percent of teens say they have received such messages; 71 percent of teen girls and 67 percent of teen boys who have sent or posted sexually suggestive content say they have sent or posted this content to a boyfriend/girlfriend; 21 percent of teen girls and 39 percent of teen boys say they have sent such content to someone they wanted to date or

"hook up" with; 38 percent of teens say they have had sexually suggestive text messages, originally meant for someone else, shared with them; and 25 percent of teen girls and 33 percent of teen boys say they have had semi- nude or nude images, originally meant for someone else, shared with them. In an attempt to battle this growing problem, *I Liheslaturan Guahan* enacts this legislation addressing two different forms of sexting among our youth: Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor.

I Liheslaturan Guahan further finds that there is a need to create a diversionary program for first-time offending juveniles who can be charged for sexting or posting of sexual images via electronic devices as a preventive measure and means to educate juveniles about the severity of this type of behavior, and the possible consequences for such a crime. *I Liheslaturan Guahan* wishes to establish an educational program that is intended to be an alternative to prosecution for juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, usually on the Internet. The educational program would include juveniles who engage in the behavior commonly known as Sexting, in which sexually suggestive or explicit pictures are transmitted via cell phones.

The bill would require the Office of the Attorney General, Family Division, or whichever designated division of the Office of the Attorney General that addresses matters involving juveniles in the community of Guam, to incorporate such a diversionary program under its current services. Such diversionary program would be similar to or incorporated under the current Pre-Adjudicatory Diversionary Program that the Office of the Attorney General currently utilizes. The program would require that the Office of the Attorney General develop an educational program for juveniles who commit an eligible offense as defined in this Act. The Office of the Attorney General shall then consult with the Judiciary of Guam, Juvenile Probation Division, to discuss and implement such educational program, to include the same or similar conditions as the current Pre-Adjudicatory Diversionary Program between the Office of the Attorney General and Judiciary of Guam, Juvenile Probation Division. The Office of the Attorney General shall be the sole agency responsible for the determination as to whether a minor may be admitted into the diversionary program. A juvenile who successfully completes the program would have the opportunity to avoid prosecution, and any records relating to such an offense, upon completion of the program, would be dismissed and expunged.

Admission to the program would be limited to juveniles who: (1) have not previously been adjudicated delinquent for or convicted of a criminal offense; (2) were not aware that their actions could constitute and did not have the intent to commit a criminal offense; (3) may be harmed by the imposition of criminal sanctions; and (4) would likely be deterred from engaging in similar conduct in the future by completing the program.

I Liheslaturan Guahan finds that such educational program will be beneficial to the community of Guam, and more so, in the best interests of the youth in our community as such program is designed to provide information concerning: the legal consequences of and penalties for sexting or posting sexual pictures online, including the applicable local and federal statutes; the non-legal consequences of sexting or posting such pictures, including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and

extracurricular activities; how the unique characteristics of cyberspace and the Internet can produce long-term and unforeseen consequences for sexting and posting such photographs; and the connection between bullying and cyber-bullying and juveniles sexting or posting sexual images.

I Liheslaturan Guahan further finds that the need to impose upon retail stores which sell cellular telephone equipment or cellular telephone equipment service contracts, the responsibility of providing informational brochures about sexting to customers who purchase such equipment or contracts, is vital in the prevention and education of sexting. The need for active participation from these particular retail stores in providing such informational brochures will ensure that purchasers of these devices are educated up front about the illegal use of these devices and the consequences of such illegal actions. This bill supplements Guam's consumer fraud act making it an unlawful practice for any retail mercantile establishment to sell cellular telephone equipment or to sell or renew cellular telephone service contracts, unless the store encloses an informational brochure with such equipment or contracts, that describes the dangers of sexting, the criminal penalties that may be associated with sexting, and the names, addresses, and telephone numbers of qualified organizations that can provide information to the customer concerning responsible cellular telephone usage.

The bill directs the Office of the Attorney General, Consumer Protection Division, to notify stores which sell cellular telephone equipment and cellular telephone equipment service contracts, about the bill's requirements by advertising it in Guam local newspapers. In addition, the bill requires that *I Liheslaturan Guahan* provide funding to the Office of the Attorney General to advertise such information on a yearly basis, as well as adequate funding for the Office of the Attorney General to prepare and distribute information brochures about sexting to stores throughout Guam for distribution to customers who purchase such equipment or contracts from the stores.

Section 2. Section 19.69 of Title 9, Guam Code Annotated, is hereby *amended* to read:

§ 19.69. Definitions.

Unless otherwise indicated, as used in § 19.70:

(a) *Harasses* or *harassment* means a knowing and willful course of conduct, whether physical, verbal, written, electronic, telephonic, ~~written~~, via or by use of a computer, computer network, computer system, telephone network, data network, text message, instant message, or otherwise, directed at a specific person which alarms, annoys, or distresses the person, and which serves no legitimate purpose. Such course of conduct must be of a nature to cause a reasonable person to suffer substantial emotional distress, and must cause substantial emotional distress.

(b) *Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Constitutionally and statutorily protected activity, including but not limited to picketing as a result of a labor dispute, is not included in this definition.

(c) *Credible threat* means any threat, physical or verbal, overtly or subtly manifested, constituting a threat with the intent and apparent ability to carry out the threat with the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. Such threatening advance must be against the

life of, or a threat to cause bodily injury to, the person threatened or to a member of his or her immediate family.

(d) Computer means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes, all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(e) Computer network means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) Computer system means a set of interconnected computer equipment intended to operate as a cohesive system."

Section 3. Section 19.70 of Title 9, Guam Code Annotated, is hereby *amended* to read:

"§ 19.70. Stalking.

(a) A person is guilty of simple stalking if he or she willfully, maliciously, and repeatedly, follows or ~~harasses~~ **harasses** another person or who makes a credible threat with intent to place that person or a member of his or her immediate family in fear of death or bodily injury.

(b) A person is guilty of advanced stalking if he or she violates subsection (a) of this section when there is a temporary restraining order or an injunction or both or any other court order in effect prohibiting the behavior described in that subsection against the same party.

(c) A person is guilty of advanced stalking if he or she violates subsection (a) of this section a second or subsequent time against the same victim, within seven (7) years of a prior conviction under that subsection, and involving an harassment or a credible threat of violence, as defined in this§ 19.69 of this Chapter.

(d) Simply stalking is a felony of the third degree.

(e) Advanced stalking is a felony of the second degree.

(f) This section shall not apply to conduct which occurs during labor picketing."

Section 4. Section 61.20 of Title 9, Guam Code Annotated, is hereby *amended* to read:

"§ 61.20 Harassment; Defined & Punished.

A person commits a petty misdemeanor if, with intent to harass another, he:

(a) makes, or causes to be made, a communication anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

(b) subjects another to striking, kicking, shoving or other offensive touching, or threatens to do so; or

(c) engages in any other course of alarming conduct or of repeatedly committed acts which alarm or seriously annoy such other person serving no legitimate purpose of the defendant.

(d) Every person who with intent to annoy, telephones, ~~or~~ telefaxes, or communicates by use of any telephone network, data network, text message, instant

message, computer, computer network, or computer system with another person and addresses to or about such other person any obscene language is guilty of a misdemeanor.

(e) Every person who makes a telephone call, ~~or~~ telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system with intent to annoy and without disclosing his true identity to the person answering the telephone or receiving the telefax transmission or transmission received from any telephone network, data network, text message, instant message, computer, computer network, or computer system, whether or not conversation or return transmission ensues from making the telephone call or the transmission, is guilty of a misdemeanor.

(f) Any offense committed by use of a telephone, ~~or~~ telefax machine, or any telephone network, data network, text message, instant message, computer, computer network, or computer system as set out in this section may be deemed to have been committed at either the place at which the telephone calls, ~~or~~ telefax transmissions, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system were made or received. In the event that a customer of a telephone service provider, wireless service provider, or an internet service provider receives harassing telephone calls or transmissions received via or by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system, such customer may file an injunction complaint under the name of John Doe, although the telephone service provider may release the name, address, and telephone number of the plaintiff to the Superior Court of Guam. The telephone service provider, wireless service provider, or an internet service provider shall disconnect all telephone services or computer or wireless services to any subscriber who has violated the provisions of this section more than one (1) time.

(g) Subsections (d) or (e) of this section are violated when the person acting with intent to annoy makes a telephone call, ~~or~~ telefax transmission, or any transmission by use of a telephone network, data network, text message, instant message, computer, computer network, or computer system requesting a return call or return transmission and performs the acts prohibited under such subsections upon receiving the return call or transmission."

Section 5. A new Section 61.20.1 is hereby *added* to Chapter 61 of Title 9, Guam Code Annotated to read as follows:

"§ 61.20.1 Definitions.

Unless otherwise indicated, as used in § 61.20:

(a) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes, all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter or typesetter, a portable hand-held calculator, *or* other similar device.

(b) *Computer network* means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(c) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system."

Section 6. A new Section 28.90 is hereby added to Article 2, Chapter 28 of Title 9, Guam Code Annotated, to read as follows:

"§ 28.90. Obscene, anonymous, harassing and threatening communications by computer; Defined & Punished.

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer to:

(1) Make contact via the internet with another without disclosing his or her identity with the intent to harass or abuse;

(2) Make contact via the internet with a person after being requested by the person to desist from contacting them;

(3) Threaten via the internet to commit a crime against any person or property; or Cause obscene material to be delivered or transmitted via the internet to a specific person after being requested to desist from sending such material.

(4) Publish via the internet a webpage or posting on a newsgroup untrue statements about another person which are false and designed to entice or encourage other people to ridicule or perpetuate the untruth about that person.

For purposes of this Article and sections therein, "obscene material" means material that:

(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals or sadomasochistic sexual abuse; and

(C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.

(b) It is unlawful for any person to knowingly permit a computer under his or her control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both."

Section 7. A new Section 28.100 is hereby *added* to Article 2, Chapter 28 of Title 9, Guam Code Annotated, to read as follows:

"§28.100. Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor- Sexting; Crime Defined and Punished.

(a) A minor is guilty of an offense of Illegal Use of a Computer Telecommunications Device Involving a Minor, otherwise known as Sexting, if the minor, by use of a computer or any telecommunications device, recklessly or knowingly

creates, receives, exchanges, sends, disseminates, transmits or possesses a photograph, video, depiction or other material that shows himself or herself, or of another minor, in a state of nudity.

(b) It is no defense to a charge under this section that the minor creates, receives, exchanges, sends, or possesses a photograph, video, or other material that shows themselves in a state of nudity.

(c) Applicability.--This section shall not apply to the use of a computer or a telecommunications device to transmit or distribute a photograph or other depiction involving sexual intercourse, deviate sexual intercourse, sadism, masochism or masturbation. This section does not prohibit a person guilty under this section to be charged with other chargeable criminal sex offenses under Guam law.

(d) An offense under this section constitutes a "status offense". Any minor found to commits an offense under this section shall be found guilty of illegal use of a telecommunications device involving a minor in a state of nudity, a delinquent act that would be a misdemeanor if it could be committed as an adult.

(e) A minor who violates this section is guilty of a separate offense for each separate photograph, video, or other material that shows a minor in a state of nudity which is created, received, exchanged, sent, or possessed.

(f) Any minor who is convicted of a violation of this section, shall be ordered in addition to the sentence ordered by the Court, as part of his or her sentence, to participate in the educational program similar to that discussed under subsection (g) of this Section.

(g) A juvenile or minor who commits the offense of Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor-Sexting, may be eligible for a diversionary program.

(1) As used herein, "eligible offense" means an offense chargeable under this Section where:

(A) the facts of the case involve the creation, exhibition or distribution without malicious intent of a photograph depicting nudity as defined in that section through the use of a telecommunications device or a computer; and

(B) the creator and subject of the photograph are juveniles or were juveniles at the time of its making.

(2) The Office of the Attorney General, Family Division, or whichever designated division of the Office of the Attorney General that addresses matters involving juveniles in the community of Guam, will incorporate such a diversionary program under its current services. Such diversionary program would be similar to or incorporated under the current Pre-Adjudicatory Diversionary Program that the Office of the Attorney General currently utilizes. The program would require the Office of the Attorney General to develop an educational program for juveniles who commit an eligible offense as defined in this Act. The Office of the Attorney General shall then consult with the Judiciary of Guam, Juvenile Probation Division, to discuss and implement such educational program, to include the same or similar conditions as the current Pre-Adjudicatory Diversionary Program in place between the Office of the Attorney General and Judiciary of Guam, Juvenile Probation Office. The Office of the Attorney General shall be the sole agency responsible for the determination as to whether a minor

may be admitted into the diversionary program. A juvenile who successfully completes the program would have the opportunity to avoid prosecution, and any records relating to such an offense, upon completion of the program, would be dismissed and expunged.

(3) Admission to the program shall be limited to juveniles who:

(A) have not previously been adjudicated delinquent for or convicted of a criminal offense under Title 9 of the Guam Code Annotated that constitutes a third degree felony or greater;

(B) were not aware that their actions could constitute and did not have the intent to commit a criminal offense;

(C) may be harmed by the imposition of criminal sanctions; and

(D) would likely be deterred from engaging in similar conduct in the future by completing the program.

(4) The educational program shall provide information concerning:

(A) the legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable local and federal statutes;

(B) the non-legal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

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

(D) the connection between bullying and cyberbullying and juveniles sharing sexually suggestive or explicit materials.

(5) The Attorney General may promulgate guidelines to effectuate the provisions of this Section.

Section 8. A new Section 28.101 is hereby *added* to Article 2, Chapter 28 of Title 9, Guam Code Annotated, to read as follows:

"§ 28.101. Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor-Sexting; Mandatory Distribution of Information Brochure about Sexting by Retail Stores Who Sell Cellular Telephone Equipment or Cellular Telephone Equipment Service Contracts.

(a) Definitions. As used in this Section:

(1) "Cellular telephone equipment" or "equipment" means a wireless telephone handset used in conjunction with wireless telephone service.

(2) "Wireless telephone service" means commercial mobile radio service, as defined in subsection (d) of section 3329 of the Communications Act of 1934 (47 U.S.C. s.332).

(3) Sexting is defined in §28.100(a) of Title 9 G.C.A.

(4) "Store or other retail mercantile establishment" or "store" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale on Guam.

(b) It shall be an unlawful practice for any store or other retail mercantile establishment to sell cellular telephone equipment to an individual, or to sell a contract for cellular telephone equipment service to an individual, or to renew a contract for cellular telephone equipment service with an individual, unless the store encloses an informational brochure with such equipment or contract that informs the individual about the dangers of the practice known as sexting.

(1) The informational brochure required pursuant to subsection (b) shall include, but not be limited to, an explanation of the types of criminal penalties that may be imposed on an individual who engages in sexting, as well as a list of the names, telephone numbers, and addresses of agencies qualified and available to answer questions related to sexting, such as the Office of the Attorney General, Consumer Protection Division, or any other government or nonprofit organizations that is dedicated to educating communities about safety and self-responsibility when using cellular telephone equipment.

(2) The Office of the Attorney General, Consumer Protection Division, the Guam Police Department, and the Department of Revenue and Taxation shall notify all stores that sell cellular telephone equipment or cellular telephone equipment service contracts, of the requirements of this Act by advertising in local newspapers of general circulation on Guam, and shall prepare an information brochure on sexting and make copies available to all such stores.

(3) The Office of the Attorney General shall annually report to the Legislature on the effectiveness of the brochure preparation and distribution required by subsection c. of this section.

(c) The owners of any store other retail mercantile establishment which violates subsection (b) shall be subject to the penalty of fines not to exceed \$1,000.00 per each violation, and if applicable be subject to the sentence imposed for corporations under §80.16 of Title 9 G.C.A."

Section 9. Section 3112.1 of Title 17, Guam Code Annotated, is hereby *amended* to read:
"§ 3112.1. Same: Policy Against Bullying.

(a) As used in this Section:

(1) 'at school' means in a classroom, elsewhere on or immediately adjacent to school premises, on a school bus or other school-related vehicle, at an official school bus stop, or at a school-sponsored activity or event whether or not it is held on school premises.

(2) 'harassment, intimidation, or bullying' means any gesture or written, verbal, or physical act that a reasonable person under the circumstances should know will have the effect of harming a pupil or damaging his or her property or placing a pupil in reasonable fear of harm to his or her person or damage to his or her property, or that has the effect of insulting or demeaning any pupil or group of pupils in such a way as to disrupt or interfere with the school's educational mission or the education of any pupil. 'Harassment, intimidation, or bullying' includes, but is not limited to, such a gesture or written, verbal, or physical act that is reasonably perceived as being motivated by a pupil's religion, race, color, national origin, age, sex, sexual orientation, disability, height, weight, or socioeconomic status, or by any other distinguishing characteristic.

(3) "Cyberbullying" means the use of any electronic communication device to harass, intimidate or bully as defined in the above subsection (2).

(b) The Guam Education Policy Board (the 'Board') shall adopt a policy prohibiting "harassment, intimidation, or bullying" and "cyberbullying" at school. The content of the policy shall be determined by the Board but shall contain at least the components in Subsection (3). The policy shall be adopted through a process that includes representation of parents or guardians, pupils, teachers, staff, administrators, volunteers, and community representatives.

(c) The policy shall include at least each of the following components:

(1) A statement prohibiting "harassment, intimidation, or bullying" and "cyberbullying" of a pupil.

(2) A definition of "harassment, intimidation, or bullying" and "cyberbullying" that includes at least the acts described in the definition in this Section.

(3) A description of the type of behavior expected from each pupil.

(4) Consequences and appropriate remedial action for a person who commits an act of "harassment, intimidation, or bullying" and "cyberbullying"

(5) A procedure for reporting an act of "harassment, intimidation, or bullying" and "cyberbullying" including a provision that permits a person to report an act of "harassment, intimidation, or bullying" and "cyberbullying" anonymously. However, this Subsection shall *not* be construed to permit formal disciplinary action solely on the basis of an anonymous report.

(6) A procedure for prompt investigation of reports of violations and complaints, identifying either the principal or the principal's designee as the person responsible for the investigation.

(7) The range of ways in which a school will respond once an incident of "harassment, intimidation, or bullying" and "cyberbullying" is identified.

(8) A statement that prohibits reprisal or retaliation against any person who reports an act of "harassment, intimidation, or bullying" and "cyberbullying," and the consequences and appropriate remedial action for a person who engages in that type of reprisal or retaliation.

(9) Consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of "harassment, intimidation, or bullying" and "cyberbullying".

(10) A statement of how the policy is to be publicized including notice that the policy applies to participation in school-sponsored activities.

(11) A school employee, pupil, or volunteer shall not engage in reprisal, retaliation, or false accusation against a victim, witness, or one with reliable information about an act of "harassment, intimidation, or bullying" and "cyberbullying".

(12) A school employee or volunteer who has witnessed, or has reliable information that a pupil has been subjected to "harassment, intimidation, or bullying" and "cyberbullying", whether verbal or physical, shall report the incident to the appropriate school official designated by the Board policy.

(13) A school employee who promptly reports an incident of "harassment, intimidation, or bullying" and "cyberbullying" to the appropriate school official

designated by the Board policy, and who makes this report in compliance with the procedures in the policy prohibiting “harassment, intimidation, or bullying” and “cyberbullying” is not liable for damages arising from any failure to remedy the reported incident.

(d) The Board shall adopt the policy under this Section and transmit a copy of its policy to the Superintendent of Education by February 28, 2004.

(e) The Board shall ensure that notice of the policy under this Section is included in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for all schools, and in its pupil handbooks.

(f) Public schools are required to form “bullying” and “cyberbullying” prevention task forces; implement prevention, intervention, and remediation programs; and explore other initiatives that involve the school community, law enforcement, assistance organizations, and community members. School community is defined as parents or guardians, pupils, teachers, staff, and administrators.

(g) Each school shall do all of the following:

(1) Provide training on the school's “harassment, intimidation, or bullying” and “cyberbullying” policies to the school community and volunteers who have significant contact with pupils.

(2) Develop a process for discussing the “harassment, intimidation, or bullying” and “cyberbullying” policy with pupils as part of the curriculum.

(h) A school shall incorporate information regarding its policy against “harassment, intimidation, or bullying” and “cyberbullying” into its employee training program.

(i) This Section does not prevent a victim from seeking redress under any other available law, either civil or criminal. This Section does not create or alter any tort liability.

(j) The Board shall establish rules for appropriate disciplinary action for the Department of Education personnel who do not comply with the policy prohibiting harassment, intimidation, or bullying.

(k) “Harassment, Intimidation, or Bullying” and “Cyberbullying” are CRIMINAL IN NATURE and any of these actions can constitute a criminal offense that is chargeable under Guam Law.”

Section 10. Severability. If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

Section 11. Effective Date. This Act shall be effective upon enactment.

PUERTO RICO

No distinction

U.S. VIRGIN ISLANDS

No distinction