

2A:4A-71.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 128

NJSA: 2A:4A-71.1 (Permits diversionary program for juveniles who are criminally charged for "sexting" or posting sexual images)

BILL NO: A1561 (Substituted for S2700)

SPONSOR(S) Lampitt and others

DATE INTRODUCED: January 12, 2010

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Law and Public Safety
Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 29, 2011
SENATE: June 29, 2011

DATE OF APPROVAL: September 16, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

A1561

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill)	Yes	
COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	Yes Law and Public Budget and Appropri.

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S2700

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill)	Yes	
COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes Law and Public Budget and Appropri.
FLOOR AMENDMENT STATEMENT:	No	
LEGISLATIVE FISCAL NOTE:	No	

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2011, CHAPTER 128, *approved September 16, 2011*
Assembly, No. 1561 (*Second Reprint*)

1 AN ACT ²[creating a] concerning² diversionary ²[program]
2 programs² for certain juveniles¹, amending P.L.1982, c.81¹ and
3 supplementing Title 2A of the New Jersey Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

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

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

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

27 (2) The age and maturity of the juvenile;

28 (3) The risk that the juvenile presents as a substantial danger to
29 others;

30 (4) The family circumstances, including any history of drugs,
31 alcohol abuse or child abuse on the part of the juvenile, his parents
32 or guardian;

33 (5) The nature and number of contacts with court intake services
34 and the court that the juvenile or his family have had;

35 (6) The outcome of those contacts, including the services to
36 which the juvenile or family have been referred and the results of
37 those referrals;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted January 24, 2011.

²Senate SLP committee amendments adopted June 13, 2011.

1 (7) The availability of appropriate services outside referral to the
2 court;

3 (8) Any recommendations expressed by the victim or
4 complainant, or arresting officer, as to how the case should be
5 resolved; **[and]**

6 (9) Any recommendation expressed by the county prosecutor;
7 **and**

8 (10) The ²amenability of the juvenile to participation in a
9 remedial education or counseling program that satisfies the
10 requirements of subsection b. of section 2 of P.L. , c. (C.)
11 (pending before the Legislature as this bill) if the² offense alleged is
12 an eligible offense ²[pursuant to section 3] as defined in subsection
13 c. of section 2² of P.L. , c. (C.)(pending before the
14 Legislature as this bill) ²[and the juvenile is eligible to participate
15 in the educational reform program set forth section 3 of P.L. ,c.
16 (C.) (pending before the Legislature as this bill)]².¹

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

18

19 ¹2. (New section) ²a.² Where a complaint against a juvenile
20 pursuant to section 11 of P.L.1982, c.77 (C.2A:4A-30) alleges that
21 the juvenile has committed an eligible offense ²[satisfying the
22 criteria set forth in subsection c. of section 3 of P.L. , c. (C.)
23 (pending before the Legislature as this bill)] as defined in
24 subsection c. of this section² and the court has approved diversion
25 of the complaint pursuant to section 4 of P.L.1982, c.81 (C.2A:4A-
26 73) ²,² the resolution of the complaint shall include ²the juvenile's²
27 participation in ²[an educational] a remedial education or
28 counseling² program ²[set forth in section 3 of P.L. , c.
29 (C.) (pending before the Legislature as this bill).¹] . The
30 parents or guardian of the juvenile shall bear the cost of
31 participation in the program, except that the court shall take into
32 consideration the ability of the juvenile's parents or guardian to pay
33 and the availability of such a program in the area in which the
34 juvenile resides and, where appropriate, may permit the juvenile to
35 participate in a self-guided awareness program in lieu of a remedial
36 education or counseling program provided that it satisfies the
37 requirements of subsection b. of this section.

38 b. A remedial education or counseling program satisfies the
39 requirements of this act if the program is designed to increase the
40 juvenile's awareness of:

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

44 (2) the non-legal consequences of sharing sexually suggestive or
45 explicit materials including, but not limited to, the effect on
46 relationships, loss of educational and employment opportunities,

1 and being barred or removed from school programs and
 2 extracurricular activities;

3 (3) the potential, based upon the unique characteristics of
 4 cyberspace and the Internet, of long-term and unforeseen
 5 consequences for sharing sexually suggestive or explicit materials;
 6 and

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

9 c. As used in this act, “eligible offense” means an offense in
 10 which:

11 (1) the facts of the case involve the creation, exhibition or
 12 distribution of a photograph depicting nudity as defined in
 13 N.J.S.2C:24-4 through the use of an electronic communication
 14 device, an interactive wireless communications device, or a
 15 computer; and

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

18
 19 ¹‘[1.] ²‘[3. (New section).] a. As used in P.L. , c. (C.)
 20 (pending before the Legislature as this bill), “eligible offense”
 21 means an offense ¹‘[under N.J.S.2C:24-4]’ in which:

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

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

29 b. The Attorney General, in consultation with the
 30 Administrative Director of the Administrative Office of the Courts,
 31 shall develop an educational program for juveniles who have
 32 committed an eligible offense as defined under the provisions of
 33 subsection a. of this section. ¹‘[The county prosecutor shall
 34 determine whether a juvenile shall be admitted to the program.]’ A
 35 juvenile who successfully completes the program shall have the
 36 opportunity to avoid prosecution for the eligible offense.

37 c. Admission to the program shall be limited to ¹‘[juveniles
 38 who] cases where’¹:

39 (1) ¹‘[have] the juvenile has’ not previously been adjudicated
 40 delinquent for or convicted of a ¹‘[criminal offense under Title 2C
 41 of the New Jersey Statutes or the laws of the United States] crime
 42 or offense which, if committed by an adult, would constitute
 43 aggravated sexual assault; sexual assault; aggravated assault;
 44 aggravated criminal sexual contact; endangering the welfare of a
 45 child pursuant to N.J.S.2C:24-4; luring or enticing a child pursuant
 46 to section 1 of P.L.1993, c.291 (C.2C:13-6); luring or enticing an

1 adult pursuant to section 1 of P.L.2005, c.1 (C.2C:13-7) or an
2 attempt to commit any of the enumerated offenses ¹;

3 (2) ~~'[were] the juvenile was'~~ not aware that ~~'[their] his'~~
4 actions could constitute and did not have the intent to commit a
5 criminal offense;

6 (3) ~~'[may be harmed by the imposition of criminal sanctions]~~
7 there is a likelihood that the juvenile's offense is related to a
8 condition or situation that would be conducive to change through
9 his participation in the educational program¹; and

10 (4) ~~'[would likely be deterred from engaging in similar conduct~~
11 ~~in the future by completing the program]~~ the benefits to society in
12 admitting the juvenile into this educational program outweigh the
13 harm done to society by abandoning criminal prosecution¹.

14 d. The educational program shall provide information
15 concerning:

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

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

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

28 (4) the 'possible' connection between bullying and cyber-
29 bullying and juveniles sharing sexually suggestive or explicit
30 materials.

31 e. The Attorney General may promulgate guidelines to
32 effectuate the provisions of this act. ²

33
34 ~~'[2.]~~ ²~~[4.]~~ 3.² This act shall take effect on the first day of the
35 seventh month after enactment.

36
37
38 _____
39
40 Permits diversionary program for juveniles who are criminally
41 charged for "sexting" or posting sexual images.

ASSEMBLY, No. 1561

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Co-Sponsored by:

Assemblyman McKeon

SYNOPSIS

Creates diversionary program for juveniles who are criminally charged for “sexting” or posting sexual images.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/11/2010)

A1561 LAMPITT

1 AN ACT creating a diversionary program for certain juveniles and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. As used in this act, “eligible offense” means an offense
8 under N.J.S.2C:24-4 in which:

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

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

15 b. The Attorney General, in consultation with the
16 Administrative Director of the Administrative Office of the Courts,
17 shall develop an educational program for juveniles who have
18 committed an eligible offense as defined under the provisions of
19 subsection a. of this section. The county prosecutor shall determine
20 whether a juvenile shall be admitted to the program. A juvenile
21 who successfully completes the program shall have the opportunity
22 to avoid prosecution for the eligible offense.

23 c. Admission to the program shall be limited to juveniles who:

24 (1) have not previously been adjudicated delinquent for or
25 convicted of a criminal offense under Title 2C of the New Jersey
26 Statutes or the laws of the United States;

27 (2) were not aware that their actions could constitute and did not
28 have the intent to commit a criminal offense;

29 (3) may be harmed by the imposition of criminal sanctions; and

30 (4) would likely be deterred from engaging in similar conduct in
31 the future by completing the program.

32 d. The educational program shall provide information
33 concerning:

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

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

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

46 (4) the connection between bullying and cyber-bullying and
47 juveniles sharing sexually suggestive or explicit materials.

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

3

4 2. This act shall take effect on the first day of the seventh
5 month after enactment.

6

7

8

STATEMENT

9

10 This bill establishes an educational program that is intended to
11 be an alternative to prosecution for juveniles who are charged with
12 a criminal offense for posting sexually suggestive or sexually
13 explicit photographs, usually on the Internet. The educational
14 program also would include juveniles who engage in the behavior
15 commonly known as “sexting,” in which sexually suggestive or
16 explicit pictures are transmitted via cell phones.

17 The bill requires the Attorney General, in consultation with the
18 Administrative Director of the Administrative Office of the Courts,
19 to develop an educational program for juveniles who commit an
20 eligible offense as defined in the bill. The county prosecutor would
21 determine whether a minor may be admitted into the program. A
22 juvenile who successfully completes the program would have the
23 opportunity to avoid prosecution.

24 Admission to the program would be limited to juveniles who: (1)
25 have not previously been adjudicated delinquent for or convicted of
26 a criminal offense; (2) were not aware that their actions could
27 constitute and did not have the intent to commit a criminal offense;
28 (3) may be harmed by the imposition of criminal sanctions; and (4)
29 would likely would be deterred from engaging in similar conduct in
30 the future by completing the program.

31 The educational program is to provide information concerning:
32 the legal consequences of and penalties for sexting or posting
33 sexual pictures online, including the applicable federal and State
34 statutes; the non-legal consequences of sexting or posting such
35 pictures, including, but not limited to, the effect on relationships,
36 loss of educational and employment opportunities, and being barred
37 or removed from school programs and extracurricular activities;
38 how the unique characteristics of cyberspace and the Internet can
39 produce long-term and unforeseen consequences for sexting and
40 posting such photographs; and the connection between bullying and
41 cyber-bullying and juveniles sexting or posting sexual images.

42 The teenage practices of sexting and posting sexual images
43 online are nationwide problems that have perplexed parents, school
44 administrators, and law enforcement officials. Prosecutors in
45 several states have charged teenagers who have engaged in these
46 behaviors with criminal offenses, including distribution of child
47 pornography.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1561

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 2011

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1561.

This bill establishes an educational program as an alternative to prosecution for certain juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, or who engage in the behavior commonly known as “sexting,” in which these pictures are transmitted via cell phones.

As amended by the committee, the bill provides that where a complaint against a juvenile alleges that the juvenile has committed an “eligible offense” as described in the bill and the court approves diversion of the complaint, the resolution of the complaint would include participation in the educational program created by the bill.

The bill provides that an “eligible offense” means an offense in which:

(1) the facts of the case involve the creation, exhibition or distribution of a photograph depicting nudity as defined in N.J.S.A.2C:24-4 through the use of an electronic communication device, 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.

Under the bill, the Attorney General, in consultation with the Administrative Office of the Courts, would develop an educational program for these juveniles. A juvenile who successfully completes the program would have the opportunity to avoid prosecution for the offense.

Admission to the program would be limited to cases where:

(1) the juvenile has not previously been adjudicated delinquent for or convicted of a 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; luring or enticing a child; luring or enticing an adult or an attempt to commit any of the enumerated offenses;

(2) the juvenile was not aware that his actions could constitute, and did not have the intent to commit, a criminal offense;

(3) 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; and

(4) the benefits to society in admitting the juvenile into this educational program outweigh the harm done to society by abandoning criminal prosecution.

The educational program would 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 possible connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

1. Insert new section 1 which supplements the Juvenile Code to provide for the diversion of juveniles into the newly created educational program.

2. Renumber section 1 and 2; eliminates the term "without malicious intent;" eliminates the reference to N.J.S.2C:24-4 as part of the definition of "eligible offense" and adds reference to that section as part of the definition of "nudity;" adds reference to "electronic communication device."

3. Clarify that admission to the program would be prohibited for juveniles convicted of certain enumerated offenses.

4. Expands factors to be considered for admission into the program.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1561

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: MARCH 31, 2011

SUMMARY

- Synopsis:** Creates diversionary program for juveniles who are criminally charged for "sexting" or posting sexual images.
- Type of Impact:** Expenditure increase. General Fund.
- Agencies Affected:** Office the Attorney General; Administrative Office of The Courts; County Prosecutors

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost		Indeterminate Expenditure.	
Local Cost		Indeterminate Expenditure.	

- The Office of Legislative Services (OLS) notes that the cost to implement this bill is indeterminate; however, the OLS anticipates a cost for the creation and establishment of a diversion program.
- Establishes a diversionary program for juveniles who are criminally charged for "sexting" or posting sexual images.
- Requires the Attorney General, in consultation with the Administrative Office of the Courts (AOC), to develop an educational program for juveniles.

BILL DESCRIPTION

Assembly Bill No. 1561 [1R] of 2010 establishes an educational program as an alternative to prosecution for certain juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, or who engage in the behavior commonly known as "sexting," in which these pictures are transmitted via cell phones.

The bill provides that where a complaint against a juvenile alleges that the juvenile has committed an “eligible offense” as described in the bill and the court approves diversion of the complaint, the resolution of the complaint would include participation in the educational program created by the bill. The bill defines an “eligible offense.”

Under the bill, the Attorney General, in consultation with the AOC, would develop an educational program for these juveniles. A juvenile who successfully completes the program would have the opportunity to avoid prosecution for the offense. The bill defines the limited cases in which a juvenile would be eligible for admission and provides the basic information which should be provided in the program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that the cost to implement this bill is indeterminate; however, the OLS anticipates a cost for the creation and establishment of a diversionary program.

Under the provisions of the bill, it requires the Attorney General, in consultation with the AOC, to develop an educational program for juveniles. The bill states that at a minimum the program should cover specific topics concerning the sharing of sexual materials: (1) the legal consequences and penalties; (2) the non-legal consequences; (3) how the unique characteristics of cyberspace and the Internet can produce long-term and unforeseen consequences; and (4) the possible connection between bullying and cyber-bullying and juveniles sharing these materials.

A spokesperson with the AOC unofficially noted that at the current point in time there were few sexting cases. They further noted that the bulk of the cost associated with the bill would be reflected in the development of the program as required by the bill.

Section: Law and Public Safety
Analyst: Kristin Brunner Santos
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1561

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 2011

The Senate Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 1561 (1R).

As amended and reported by the committee, this bill establishes an educational program as an alternative to prosecution for certain juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, or who engage in the behavior commonly known as “sexting,” in which these pictures are transmitted via cell phones.

The amended bill provides that where a complaint against a juvenile alleges that the juvenile has committed an “eligible offense” as defined in the bill and the court approves diversion of the complaint, the resolution of the complaint would include participation in a remedial education or counseling program if the juvenile is amenable to participation in such a program.

The amended bill defines “eligible offense” to mean an offense in which:

(1) the facts of the case involve the creation, exhibition or distribution of a photograph depicting nudity as defined in N.J.S.2C:24-4 through the use of an electronic communication device, 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.

Under the amended bill, the parent or guardian of the juvenile is to bear the cost of participation in the program, except that the court is required to take into consideration the ability of the juvenile’s parents or guardian to pay and the availability of such a program in the area where the juvenile resides. Also, if appropriate, the court may permit the juvenile to participate in a self-guided awareness program in lieu of a remedial education or counseling program provided that it satisfies the bill’s requirements.

The amended bill provides that a remedial education or counseling program satisfies the bill’s requirements if the program is designed to increase the juvenile’s awareness of:

(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 possible connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials.

As amended and reported by the committee, this bill is identical to the Senate Committee Substitute for Senate Bill No. 2700, which also was reported by the committee on this same date.

As received by the committee, the bill required the Attorney General in consultation with the Administrative Office of the Courts to develop the educational program; as amended, the juvenile may participate in an existing program. The committee also amended bill to require the parent or guardian of the juvenile to bear the cost of participation in the program. The amendments also provide that the court may permit the juvenile to participate in a self-guided awareness program in lieu of a remedial education or counseling program if the program satisfies the bill's requirements.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 1561

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1561 (2R).

This bill establishes a diversionary program for juveniles who are criminally charged for "sexting" or posting sexual images. The bill provides for participation in a remedial education or counseling program as an alternative to criminal prosecution for certain juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, or who engage in the behavior commonly known as "sexting," in which these pictures are transmitted via cell phones.

The bill provides that where a complaint against a juvenile alleges that the juvenile has committed an "eligible offense" as defined in the bill and the court approves diversion of the complaint, the resolution of the complaint would include participation in a remedial education or counseling program if the juvenile is amenable to participation in such a program.

The bill defines "eligible offense" to mean an offense in which:

(1) the facts of the case involve the creation, exhibition or distribution of a photograph depicting nudity as defined in N.J.S.2C:24-4 through the use of an electronic communication device, 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.

The bill provides that the parent or guardian of the juvenile is to bear the cost of participation in the program, except that the court is required to take into consideration the ability of the juvenile's parents or guardian to pay and the availability of such a program in the area where the juvenile resides. Also, if appropriate, the court may permit the juvenile to participate in a self-guided awareness program in lieu of a remedial education or counseling program provided that it satisfies the bill's requirements.

The bill provides that a remedial education or counseling program satisfies the bill's requirements if the program is designed to increase the juvenile's awareness of

(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 possible connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials.

As reported by the committee, the bill is identical to Senate Bill No. 2700 (SCS), which also was reported by the committee on this same date.

FISCAL IMPACT:

Assembly Bill No. 1561 (2R) is not certified for a Fiscal Note.

SENATE, No. 2700

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 17, 2011

Sponsored by:

Senator JAMES BEACH

District 6 (Camden)

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

SYNOPSIS

Creates diversionary program for juveniles who are criminally charged for “sexting” or posting sexual images.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/10/2011)

S2700 BEACH, GIRGENTI

2

1 AN ACT creating a diversionary program for certain juveniles, and
2 amending P.L.1982, c. 81 and supplementing Title 2A of the
3 New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.1982, c.81 (C.2A:4A-71) is amended to
9 read as follows:

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

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

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

27 (2) The age and maturity of the juvenile;

28 (3) The risk that the juvenile presents as a substantial danger to
29 others;

30 (4) The family circumstances, including any history of drugs,
31 alcohol abuse or child abuse on the part of the juvenile, his parents
32 or guardian;

33 (5) The nature and number of contacts with court intake services
34 and the court that the juvenile or his family have had;

35 (6) The outcome of those contacts, including the services to
36 which the juvenile or family have been referred and the results of
37 those referrals;

38 (7) The availability of appropriate services outside referral to
39 the court;

40 (8) Any recommendations expressed by the victim or
41 complainant, or arresting officer, as to how the case should be
42 resolved; **[and]**

43 (9) Any recommendation expressed by the county prosecutor;
44 and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

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1 (10) The offense alleged is an eligible offense pursuant to section
2 3 of P.L. , c. (C.)(pending before the Legislature as this
3 bill) and the juvenile is eligible to participate in the educational
4 reform program set forth section 3 of P.L. ,c. (C.)(pending
5 before the Legislature as this bill).
6 (cf: P.L.1988, c.44, s.17)

7
8 2. (New section) Where a complaint against a juvenile
9 pursuant to section 11 of P.L.1982, c.77 (C.2A:4A-30) alleges that
10 the juvenile has committed an eligible offense satisfying the criteria
11 set forth in subsection c. of section 3 of P.L. , c. (C.)
12 (pending before the Legislature as this bill) and the court has
13 approved diversion of the complaint pursuant to section 4 of
14 P.L.1982, c.81 (C.2A:4A-73) the resolution of the complaint shall
15 include participation in an educational program set forth in 3 of
16 P.L. , c. (C.) (pending before the Legislature as this bill).

17
18 3. (New section). a. As used in P.L. , c. (C.)(pending
19 before the Legislature as this bill), “eligible offense” means an
20 offense in which:

21 (1) the facts of the case involve the creation, exhibition or
22 distribution of a photograph depicting nudity as defined in
23 N.J.S.2C:24-4 through the use of an electronic communication
24 device, an interactive wireless communications device or a
25 computer; and

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

28 b. The Attorney General, in consultation with the
29 Administrative Director of the Administrative Office of the Courts,
30 shall develop an educational program for juveniles who have
31 committed an eligible offense as defined under the provisions of
32 subsection a. of this section. A juvenile who successfully
33 completes the program shall have the opportunity to avoid
34 prosecution for the eligible offense.

35 c. Admission to the program shall be limited to cases where:

36 (1) the juvenile has not previously been adjudicated delinquent
37 for or convicted of a crime or offense which, if committed by an
38 adult, would constitute aggravated sexual assault; sexual assault;
39 aggravated assault; aggravated criminal sexual contact; endangering
40 the welfare of a child pursuant to N.J.S.2C:24-4; luring or enticing a
41 child pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); luring
42 or enticing an adult pursuant to section 1 of P.L.2005, c.1 (C.2C:13-
43 7) or an attempt to commit any of the enumerated offenses;

44 (2) the juvenile was not aware that his actions could constitute
45 and did not have the intent to commit a criminal offense;

46 (3) there is a likelihood that the juvenile’s offense is related to a
47 condition or situation that would be conducive to change through
48 his participation in the educational program; and

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4

1 (4) the benefits to society in admitting the juvenile into this
2 educational program outweigh the harm done to society by
3 abandoning criminal prosecution.

4 d. The educational program shall provide information
5 concerning:

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

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

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

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

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

22

23 4. This act shall take effect on the first day of the seventh
24 month after enactment.

25

26

27

STATEMENT

28

29 This bill establishes an educational program as an alternative to
30 prosecution for certain juveniles who are charged with a criminal
31 offense for posting sexually suggestive or sexually explicit
32 photographs, or who engage in the behavior commonly known as
33 “sexting,” in which these pictures are transmitted via cell phones.

34 The bill provides that where a complaint against a juvenile
35 alleges that the juvenile has committed an “eligible offense” and the
36 court approves diversion of the complaint, the resolution of the
37 complaint would include participation in the educational program
38 created by the bill. The bill defines an “eligible offense” as an
39 offense in which: (1) the facts of the case involve the creation,
40 exhibition or distribution of a photograph depicting nudity as
41 defined in N.J.S.A.2C:24-4 through the use of an electronic
42 communication device, an interactive wireless communications
43 device or a computer; and (2) the creator and subject of the
44 photograph are juveniles or were juveniles at the time of its making.

45 Under the bill, the Attorney General, in consultation with the
46 Administrative Office of the Courts, would develop an educational
47 program for these juveniles. A juvenile who successfully completes

1 the program would have the opportunity to avoid prosecution for
2 the offense.

3 Admission to the program would be limited to cases where:

4 (1) the juvenile has not previously been adjudicated delinquent
5 for or convicted of a crime or offense which, if committed by an
6 adult, would constitute aggravated sexual assault; sexual assault;
7 aggravated assault; aggravated criminal sexual contact; endangering
8 the welfare of a child; luring or enticing a child; luring or enticing
9 an adult or an attempt to commit any of the enumerated offenses;

10 (2) the juvenile was not aware that his actions could constitute,
11 and did not have the intent to commit, a criminal offense;

12 (3) there is a likelihood that the juvenile's offense is related to a
13 condition or situation that would be conducive to change through
14 his participation in the educational program; and

15 (4) the benefits to society in admitting the juvenile into this
16 educational program outweigh the harm done to society by
17 abandoning criminal prosecution.

18 The educational program would provide information concerning:

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

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

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

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

33 In addition, the bill amends N.J.S.A.2A:4A-71 to specifically
34 provide for the diversion of juveniles into the newly created
35 educational program created under the bill as one of the
36 enumerated recommendations which can be made by the court.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2700**

STATE OF NEW JERSEY

DATED: JUNE 13, 2011

The Senate Law and Public Safety Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2700.

This committee substitute provides for participation in a remedial education or counseling program as an alternative to prosecution for certain juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, or who engage in the behavior commonly known as “sexting,” in which these pictures are transmitted via cell phones.

The substitute provides that where a complaint against a juvenile alleges that the juvenile has committed an “eligible offense” as defined in the substitute and the court approves diversion of the complaint, the resolution of the complaint would include participation in a remedial education or counseling program if the juvenile is amenable to participation in such a program.

The substitute defines “eligible offense” to mean an offense in which:

(1) the facts of the case involve the creation, exhibition or distribution of a photograph depicting nudity as defined in N.J.S.2C:24-4 through the use of an electronic communication device, 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.

The substitute provides that the parent or guardian of the juvenile is to bear the cost of participation in the program, except that the court is required to take into consideration the ability of the juvenile’s parents or guardian to pay and the availability of such a program in the area where the juvenile resides. Also, if appropriate, the court may permit the juvenile to participate in a self-guided awareness program in lieu of a remedial education or counseling program provided that it satisfies the substitute’s requirements.

The substitute provides that a remedial education or counseling program satisfies the substitute’s requirements if the program is designed to increase the juvenile’s awareness of

(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 possible connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials.

As reported by the committee, this committee substitute is identical to Assembly Bill No. 1561 (1R), which also was amended and reported by the committee on this same date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2700**

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2700 (SCS).

This bill establishes a diversionary program for juveniles who are criminally charged for "sexting" or posting sexual images. The substitute provides for participation in a remedial education or counseling program as an alternative to criminal prosecution for certain juveniles who are charged with a criminal offense for posting sexually suggestive or sexually explicit photographs, or who engage in the behavior commonly known as "sexting," in which these pictures are transmitted via cell phones.

The substitute provides that where a complaint against a juvenile alleges that the juvenile has committed an "eligible offense" as defined in the substitute and the court approves diversion of the complaint, the resolution of the complaint would include participation in a remedial education or counseling program if the juvenile is amenable to participation in such a program.

The substitute defines "eligible offense" to mean an offense in which:

(1) the facts of the case involve the creation, exhibition or distribution of a photograph depicting nudity as defined in N.J.S.2C:24-4 through the use of an electronic communication device, 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.

The substitute provides that the parent or guardian of the juvenile is to bear the cost of participation in the program, except that the court is required to take into consideration the ability of the juvenile's parents or guardian to pay and the availability of such a program in the area where the juvenile resides. Also, if appropriate, the court may permit the juvenile to participate in a self-guided awareness program in lieu of a remedial education or counseling program provided that it satisfies the substitute's requirements.

The substitute provides that a remedial education or counseling program satisfies the substitute's requirements if the program is designed to increase the juvenile's awareness of

(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 possible connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials.

As reported by the committee, the committee substitute is identical to Assembly Bill No. 1561 (2R), which also was reported by the committee on this same date.

FISCAL IMPACT:

The substitute is not certified for a Fiscal Note.