

HOUSE No. 1550

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to transmitting indecent visual depictions by teens.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------|-----------------------|------------------|
| <i>Jeffrey N. Roy</i> | <i>10th Norfolk</i> | <i>1/9/2019</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>1/28/2019</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> | <i>1/29/2019</i> |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> | <i>1/29/2019</i> |
| <i>Stephan Hay</i> | <i>3rd Worcester</i> | <i>1/31/2019</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> | <i>2/1/2019</i> |
| <i>Brian W. Murray</i> | <i>10th Worcester</i> | <i>2/1/2019</i> |

HOUSE No. 1550

By Mr. Roy of Franklin, a petition (accompanied by bill, House, No. 1550) of Jeffrey N. Roy and others relative to the transmitting of indecent visual depictions by persons younger than eighteen years of age. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 948 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to transmitting indecent visual depictions by teens.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Chapter 272 of the General Laws is hereby amended by inserting after
2 section 29C the following section:-

3 Section 29D. (a) "Indecent visual depiction" means a depiction or portrayal in any pose,
4 posture, or setting involving a lewd exhibition of the unclothed genitals, pubic area, buttocks, or,
5 if such person is female, a fully or partially developed breast of the person.

6 (b) Any person who is less than eighteen years of age that uses a telecommunications or
7 other device to knowingly transmit or distribute to another person an indecent visual depiction,
8 including but not limited to, a photograph, media, or a text message with attached media,
9 depicting another person who is less than eighteen years of age in a state of sexual activity, or a

10 state of indecent visual nudity, or any person who is less than eighteen years of age, who
11 intentionally obtains an image in violation of this section and distributes the image or images by
12 means of uploading same on an Internet website, shall be punished by a fine of not less than fifty
13 nor more than five hundred dollars or by commitment to the department of youth services for not
14 more than six months, or both.

15 (c) A person does not knowingly transmit or distribute the material in violation of this
16 section by reporting the matter to a law enforcement agency, teacher, principal, or parent, or by
17 affording a law enforcement agency, teacher, principal, or parent access to the image.

18 (d) A person who has been convicted under this section shall not be required to register
19 with the Sex Offender Registry Board and no data relating to such conviction shall be
20 transmitted to the Board pursuant to G.L. c. 6, § 178E.

21 (e) Jurisdiction to hear a violation of this section is vested exclusively in the Juvenile
22 Court Division of the Trial Court.

23 (f) It shall be an affirmative defense for any crime alleged under G.L. c. 272, §§ 29A,
24 29B, 29C, or 29D that (a) the image portrays no person other than the defendant; or (b) the
25 defendant was less than eighteen, the image portrays only a teen older than fifteen and was
26 knowingly and voluntarily created and provided to the defendant by the teen in the image, and
27 the defendant has not provided or made available the visual depiction to another person except
28 the child depicted who originally sent the visual depiction to the defendant.

29 (g) Nothing in this section shall be construed to prohibit a prosecution for disorderly
30 conduct, public indecency, child pornography, or any other applicable provision of law.

31 SECTION 2. Chapter 119 of the General Laws is hereby amended by inserting after
32 section 39L the following section:-

33 Section 39M. If a child is alleged to be a juvenile delinquent by reason of violating
34 sections 29B, 29C, or 29D of Chapter 272, unless the district attorney objects in writing stating
35 the reasons for his objection, the court shall, if arraignment has not yet occurred, indefinitely stay
36 arraignment and direct that the child enter and complete an educational diversion program
37 approved by the district attorney. If the court finds, on its own motion or at the request of the
38 prosecutor, that the child has failed to complete the diversion program, the court shall bring the
39 case forward, arraign the child and restore the delinquency complaint to the docket for further
40 proceedings. If arraignment has already occurred, unless the district attorney objects in writing
41 stating the reasons for his objection, the court shall place the child on pretrial probation under
42 section 87 of chapter 276. The conditions of such probation shall include, but not be limited to,
43 completion of an educational diversion program approved by the district attorney or attorney
44 general. If the child fails to comply with the conditions of probation, the court shall restore the
45 delinquency to the docket for trial or further proceedings.

46 The Attorney General, in consultation with the Massachusetts Aggression Reduction
47 Center (MARC) at Bridgewater State University and the Department of Elementary and
48 Secondary Education, shall develop and create a comprehensive educational diversion program
49 designed to provide teenagers with information about the legal consequences of and penalties for
50 transmitting indecent visual depictions known as “sexting” or posting indecent visual depictions
51 online, including the applicable federal and state statutes; the non-legal consequences of sexting
52 or posting such pictures, including, but not limited to, the effect on relationships, loss of
53 educational and employment opportunities, and being barred or removed from school programs

54 and extracurricular activities; how the unique characteristics of cyberspace and the Internet can
55 produce long-term and unforeseen consequences for sexting and posting such photographs; and
56 the connection between bullying and cyber-bulling and juveniles sexting or posting sexual
57 images. The said educational diversion program shall be used as part of any diversion program
58 required in this section and shall be made available to school districts for use in educational
59 programs on the topic. The Department of Elementary and Secondary Education shall encourage
60 school districts to implement instruction in media literacy skills at all grade levels, and in any of
61 the core subjects or other subjects, to equip students with the knowledge and skills for accessing,
62 analyzing, evaluating, and creating all types of media.