

HOUSE No. 1567

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: |
|------------------------------|-----------------------|
| <i>Jeffrey N. Roy</i> | <i>10th Norfolk</i> |
| <i>Claire D. Cronin</i> | <i>11th Plymouth</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |
| <i>Michael J. Finn</i> | <i>6th Hampden</i> |
| <i>Leonard Mirra</i> | <i>2nd Essex</i> |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> |
| <i>Steven S. Howitt</i> | <i>4th Bristol</i> |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>Aaron Vega</i> | <i>5th Hampden</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |

HOUSE No. 1567

By Mr. Roy of Franklin, a petition (accompanied by bill, House, No. 1567) of Jeffrey N. Roy and others relative to the penalty for the transmission of indecent visual depictions by persons less than eighteen years. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 amended by adding Paragraphs (a)
2 through (f) as a new Section 29D.

3 (a) "Indecent visual depiction" means a depiction or portrayal in any pose, posture, or
4 setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area,
5 buttocks, or, 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
7 or other device to knowingly transmit or distribute to another person an indecent visual
8 depiction, including but not limited to, a photograph, media, or a text message with attached
9 media, depicting another person who is less than eighteen years of age in a state of sexual
10 activity, or a state of indecent visual nudity, or any person who is less than eighteen years of age,
11 who knowingly obtains an image in violation of this section and distributes the image or images
12 by means of uploading same on an Internet website, shall be punished as follows:

13 (1) For a first offense subject to the court's discretion, and when the prosecuting attorney
14 and the defendant have agreed, if the defendant's violation did not involve the distribution of
15 such visual medium for the purpose of harassing, intimidating, or embarrassing the minor
16 depicted or with the intent to injure the reputation of the other person or with the intent to cause
17 emotional distress to the other person or any commercial purpose, said minor commits a
18 noncriminal offense and is subject to completion of a diversion program developed in
19 accordance with paragraph (e) of this section. For a second offense, said minor commits a
20 noncriminal offense and is subject to a civil fine of two hundred fifty dollars and re-completion
21 of a diversion program in accordance with paragraph (e) of this section. The civil fine is subject
22 to all applicable court costs, assessments, and surcharges.

23 (2) In any situation in the court's discretion, if the defendant's violation involved the
24 distribution of such visual medium to another person and was for the purpose of harassing,
25 intimidating, or embarrassing the minor depicted or with the intent to injure the reputation of the
26 other person or with the intent to cause emotional distress to the other person or any commercial
27 purpose, is guilty of a misdemeanor, and upon conviction, being adjudicated in need of
28 supervision, or entry of a plea of guilty or nolo contendere, shall pay a fine of one thousand
29 dollars; shall perform community service; and at the expense of the convicted minor's parents
30 may be required to attend counseling or other supportive services to address the acts that led to
31 the need for supervision. The minor is still subject to counseling if his or her parents are unable
32 to pay for such services. The civil fine is subject to all applicable court costs, assessments, and
33 surcharges.

34 (c) A person less than eighteen years of age does not knowingly transmit or distribute
35 the material in violation of this section by reporting the matter to a law enforcement agency,

36 teacher, principal, or parent, or by affording a law enforcement agency, teacher, principal, or
37 parent access to the image.

38 (d) A person who has been convicted of a violation of this section shall not be required
39 to register with the sex offender registry and any record of such violation from the Board of
40 Probation is therefore expunged.

41 (e) The Massachusetts Aggression Reduction Center (MARC) at Bridgewater State
42 University shall develop and create a comprehensive education program designed to provide
43 teenagers with information about the legal consequences of and penalties for transmitting
44 indecent visual depictions known as “sexting” or posting indecent visual depictions online,
45 including the applicable federal and state statutes; the non-legal consequences of sexting or
46 posting such pictures, including, but not limited to, the effect on relationships, loss of educational
47 and employment opportunities, and being barred or removed from school programs and
48 extracurricular activities; how the unique characteristics of cyberspace and the Internet can
49 produce long-term and unforeseen consequences for sexting and posting such photographs; and
50 the connection between bullying and cyber-bullying and juveniles sexting or posting sexual
51 images. The said education program shall be used as part of any diversion program required
52 under this section and shall be made available to school districts for use in educational programs
53 on the topic.

54 (f) Jurisdiction to hear a violation of this section is vested exclusively in the Juvenile
55 Court.

56 Section 2: It shall be an affirmative defense for any crime alleged under G.L. c. 272, §
57 29A, 29B, 29C, or this section that (a) the image portrays no person other than the defendant; or

58 (b) the defendant was less than nineteen, the image portrays only a teen older than fifteen and
59 was knowingly and voluntarily created and provided to the defendant by the teen in the image,
60 and the defendant has not provided or made available the visual depiction to another person
61 except the child depicted who originally sent the visual depiction to the defendant.