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HOUSE . . . . . No. 4370

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:

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

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

(b) Any person who is less than eighteen years of age that uses a telecommunications or other device to knowingly transmit or distribute to another person an indecent visual depiction, including but not limited to, a photograph, media, or a text message with attached media, depicting another person who is less than eighteen years of age in a state of sexual activity, or a state of indecent visual nudity, or any person who is less than eighteen years of age, who intentionally obtains an image in violation of this section and distributes the image or images by 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 imprisonment for not more than six months in a house
14 of correction, 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 of a violation of this section shall not be required
19 to register 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 or the attorney general
35 objects in writing stating the reasons for his objection, the court may, if arraignment has not yet
36 occurred, indefinitely stay arraignment and direct that the child enter and complete an
37 educational diversion program approved by the district attorney or the attorney general. The
38 child may request a hearing and the court may rule on any objections raised by the district
39 attorney or the attorney general before the arraignment. If the court finds, on its own motion or at
40 the request of the prosecutor, that the child has failed to complete the diversion program, the
41 court shall bring the case forward, arraign the child and restore the delinquency complaint to the
42 docket for further proceedings. If arraignment has already occurred, unless the district attorney
43 or the attorney general objects in writing stating the reasons for his objection, the court may
44 place the child on pretrial probation under section 87 of chapter 276. The conditions of such
45 probation shall include, but not be limited to, completion of an educational diversion program
46 approved by the district attorney or attorney general. If the child fails to comply with the
47 conditions of probation, the court shall restore the delinquency to the docket for trial or further
48 proceedings. The child may request a hearing and the court may rule on any objections raised by
49 the district attorney or the attorney general at or prior to the pretrial conference.

50 The Attorney General or District Attorney, in consultation with the Massachusetts
51 Aggression Reduction Center (MARC) at Bridgewater State University and the Department of
52 Elementary and Secondary Education, shall develop and create a comprehensive educational
53 diversion program designed to provide teenagers with information about the legal consequences
54 of and penalties for transmitting indecent visual depictions known as “sexting” or posting
55 indecent visual depictions online, including the applicable federal and state statutes; the non-

56 legal consequences of sexting or posting such pictures, including, but not limited to, the effect on
57 relationships, loss of educational and employment opportunities, and being barred or removed
58 from school programs and extracurricular activities; how the unique characteristics of cyberspace
59 and the Internet can produce long-term and unforeseen consequences for sexting and posting
60 such photographs; and the connection between bullying and cyber-bulling and juveniles sexting
61 or posting sexual images. The said educational diversion program shall be used as part of any
62 diversion program required in this section and shall be made available to school districts for use
63 in educational programs on the topic. The Department of Elementary and Secondary Education
64 shall encourage school districts to implement instruction in media literacy skills at all grade
65 levels, and in any of the core subjects or other subjects, to equip students with the knowledge and
66 skills for accessing, analyzing, evaluating, and creating all types of media.