

# **HOUSE . . . . . No. 4455**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, May 3, 2018.

The committee on the Judiciary to whom were referred the message from His Excellency the Governor recommending legislation relative to the harmful distribution of sexually explicit visual material (House, No. 3655), the petition (accompanied by bill, House, No. 948) of Jeffrey N. Roy and others relative to the transmitting of indecent visual depictions by persons younger than eighteen years of age, and the petition (accompanied by bill, House, No. 2330) of Harold P. Naughton, Jr., relative to the disclosure of visual images of persons without consent, reports recommending that the accompanying bill (House, No. 4455) ought to pass.

For the committee,

CLAIRE D. CRONIN.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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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. Section 37O of chapter 71 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out the second sentence of the definition of  
3 "Cyber-bullying" and inserting in place thereof the following sentence:-

4           Cyber-bullying shall also include: (i) the creation of a web page or blog in which the  
5 creator assumes the identity of another person; (ii) the knowing impersonation of another person  
6 as the author of posted content or messages; or (iii) the violation of sections 29D of chapter 272,  
7 if the creation, impersonation or violation creates any of the conditions enumerated in clauses (i)  
8 to (v), inclusive, of the definition of bullying.

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

11           Section 29D. (a) "Indecent visual depiction" means a photographic or video depiction or  
12 portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed human  
13 male or female genitals, pubic area or buttocks with less than a full opaque covering, or the

14 showing of the fully or partially developed female breast with less than a fully opaque covering  
15 of any portion thereof below a point immediately above the top of the areola.

16 (b) Any person who is under eighteen years of age that uses a telecommunications or  
17 other device to knowingly transmit or distribute to another person an indecent visual depiction,  
18 including but not limited to, a photograph, media, or a text message with attached media,  
19 depicting another person who is under eighteen years of age in a state of sexual activity, or a  
20 state of indecent visual nudity, or any person who is under eighteen years of age, who  
21 intentionally obtains an image in violation of this section and distributes the image or images by  
22 means of uploading same on an Internet website, shall be punished by a fine of not less than fifty  
23 nor more than five hundred dollars or by commitment to the department of youth services for not  
24 more than six months, or both.

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

28 (d) A person who has been convicted under this section shall not be required to register  
29 with the sex offender registry board and no data relating to such conviction shall be transmitted  
30 to the board pursuant to section 178E of chapter 6.

31 (e) Jurisdiction to hear a violation of this section is vested exclusively in the juvenile  
32 court division of the trial court.

33 (f) It shall be an affirmative defense for any crime alleged under sections 29A, 29B, 29C,  
34 or 29D of chapter 272 that (a) the image portrays no person other than the defendant; or (b) the  
35 defendant was under eighteen years of age, and:

- 36 (i) the image portrays only an individual older than fifteen years of age; and
- 37 (ii) the image was knowingly and voluntarily created and provided to the defendant by
- 38 the individual in the image; and
- 39 (iii) the defendant has not provided or made available the visual depiction to another
- 40 person except the individual depicted who originally sent the visual depiction to the defendant.

41 (g) Nothing in this section shall be construed to prohibit a prosecution for disorderly

42 conduct, public indecency, child pornography, or any other applicable provision of law.

43 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after

44 section 39L the following section:-

45 Section 39M. If a child is alleged to be a juvenile delinquent by reason of violating

46 sections 29B, 29C, or 29D of chapter 272, unless the district attorney objects in writing stating

47 the reasons for his objection, the court shall, if arraignment has not yet occurred, indefinitely stay

48 arraignment and direct that the child enter and complete an educational diversion program

49 approved by the district attorney. If the court finds, on its own motion or at the request of the

50 prosecutor, that the child has failed to complete the diversion program, the court shall bring the

51 case forward, arraign the child and restore the delinquency complaint to the docket for further

52 proceedings. If arraignment has already occurred, unless the district attorney objects in writing

53 stating the reasons for his objection, the court shall place the child on pretrial probation under

54 section 87 of chapter 276. The conditions of such probation shall include, but not be limited to,

55 completion of an educational diversion program approved by the district attorney or attorney

56 general. If the child fails to comply with the conditions of probation, the court shall restore the

57 delinquency to the docket for trial or further proceedings.

58           The attorney general, in consultation with the Massachusetts Aggression Reduction  
59 Center at Bridgewater State University and the department of elementary and secondary  
60 education, shall develop and create a comprehensive educational diversion program designed to  
61 provide teenagers with information about the legal consequences of and penalties for  
62 transmitting indecent visual depictions known as “sexting” or posting indecent visual depictions  
63 online, including the applicable federal and state statutes; the non-legal consequences of sexting  
64 or posting such pictures, including, but not limited to, the effect on relationships, loss of  
65 educational and employment opportunities, and being barred or removed from school programs  
66 and extracurricular activities; how the unique characteristics of cyberspace and the internet can  
67 produce long-term and unforeseen consequences for sexting and posting such photographs; and  
68 the connection between bullying and cyber-bullying and juveniles sexting or posting sexual  
69 images. Said educational diversion program shall be used as part of any diversion program  
70 required in this section and shall be made available to school districts for use in educational  
71 programs on the topic. The department of elementary and secondary education shall encourage  
72 school districts to implement instruction in media literacy skills at all grade levels, and in any of  
73 the core subjects or other subjects, to equip students with the knowledge and skills for accessing,  
74 analyzing, evaluating, and creating all types of media.

75           SECTION 4. Subsection (b) of section 105 of said chapter 272, as so appearing, is hereby  
76 amended by adding the following paragraph:-

77           Whoever willfully photographs, videotapes or electronically surveils another person who  
78 is nude or partially nude, when that person is in a gymnasium, athletic facility, restroom, or  
79 changing area, such that the person would have a reasonable expectation of privacy in not being  
80 so photographed, videotaped or electronically surveilled, and does so without that person’s

81 consent, shall be punished by imprisonment in the house of correction for not more than 2 ½  
82 years or by a fine of nor more than \$5,000, or by both such fine and imprisonment.

83 SECTION 5. Section 1 shall take effect on July 1, 2018.