

HOUSE No. 4602

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 6, 2020.

The committee on the Judiciary, to whom was referred the 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, reports recommending the accompanying bill (House, No. 4602) ought to pass.

For the committee,

CLAIRE D. CRONIN.

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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.

4 (a) Whoever, while under 18 years of age, possesses or disseminates to another person
5 any visual material, including but not limited to, a photograph, media, or a text message with
6 attached media, that violates sections 29B or 29C of this chapter or whoever, while under 18
7 years of age, intentionally obtains material in violation of this section and distributes the material
8 by means of uploading same on an Internet website, shall be punished by a fine of not less than
9 fifty nor more than five hundred dollars or by commitment to the department of youth services
10 for not more than six months, or both.

11 (b) A person does not knowingly disseminate the material in violation of this section by
12 reporting the matter to a law enforcement agency, teacher, principal, or parent, or by affording a
13 law enforcement agency, teacher, principal, or parent access to the material.

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

(e) The juvenile court department shall have exclusive jurisdiction of proceedings under this section.

(f) It shall be an affirmative defense for any crime alleged under G.L. c. 272, §§ 29A, 29B, 29C, or 29D that (a) the visual material portrays no person other than the defendant; or (b) the defendant was under 18 years of age, the material portrays only an individual over the age of 15 and was knowingly and voluntarily created and provided to the defendant by the individual in the image, and the defendant has not provided or made available the material to another person except the individual depicted who originally sent the material to the defendant.

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

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

Section 39M. If a child is alleged to be a juvenile delinquent by reason of violating sections 29B, 29C, or 29D of this chapter, unless the district attorney objects in writing stating the reasons for the objection, the court shall, if arraignment has not yet occurred, indefinitely stay arraignment and direct that the child enter and complete an educational diversion program approved by the district attorney. If the court finds, on its own motion or at the request of the prosecutor, that the child has failed to complete the diversion program, the court shall bring the case forward, arraign the child and restore the delinquency complaint to the docket for further

proceedings. If arraignment has already occurred, unless the district attorney objects in writing stating the reasons for the objection, the court shall place the child on pretrial probation under section 87 of chapter 276. The conditions of such probation shall include, but not be limited to, completion of an educational diversion program approved by the district attorney or attorney general. If the child fails to comply with the conditions of probation, the court shall restore the delinquency to the docket for trial or further proceedings.

The Attorney General, in consultation with the Massachusetts Aggression Reduction Center (MARC) at Bridgewater State University and the Department of Elementary and Secondary Education, shall develop and create a comprehensive educational diversion program designed to provide teenagers with information about the legal consequences of and penalties for transmitting indecent visual depictions known as “sexting” or posting indecent visual depictions online, including the applicable federal and state statutes; the non-legal consequences of sexting or posting such pictures, 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; how the unique characteristics of cyberspace and the Internet can produce long-term and unforeseen consequences for sexting and posting such photographs; and the connection between bullying and cyber-bullying and juveniles sexting or posting sexual images. The educational diversion program shall be used as part of any diversion program required in this section and shall be made available to school districts for use in educational programs on the topic. The Department of Elementary and Secondary Education shall encourage school districts to implement instruction in media literacy skills at all grade levels, and in any of the core subjects or other subjects, to equip students with the knowledge and skills for accessing, analyzing, evaluating, and creating all types of media.