HOUSE . . . . . No. 4115

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 10, 2023.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 1012) of John F. Keenan, James K. Hawkins, Walter F. Timilty, Kay Khan and other members of the General Court for legislation relative to transmit indecent visual depictions by teens and the unlawful distribution of explicit images, the petition (accompanied by bill, Senate, No. 1077) of Michael O. Moore, Susannah M. Whipps, Jack Patrick Lewis, Rebecca L. Rausch and other members of the General Court for legislation to improve protections relative to domestic violence, the petition (accompanied by bill, Senate, No. 1097) of Patrick M. O'Connor for legislation relative to domestic abuse prevention, the petition (accompanied by bill, Senate, No. 1139) of John C. Velis for legislation relative to transmitting indecent visual depictions by teens and the unlawful distribution of explicit images, and the petition (accompanied by bill, House, No. 1542) of Richard M. Haggerty relative to victims of coercive control, the petition (accompanied by bill, House, No. 1547) of Natalie M. Higgins, Tram T. Nguyen and others relative to domestic violence protections, the petition (accompanied by bill, House, No. 1745) of Jeffrey N. Roy and others relative to transmitting indecent visual depictions by teens and the unlawful distribution of explicit images, and the petition (accompanied by bill, House, No. 3856) of Meghan Kilcoyne relative to coercive control occurring between family or household members, reports recommending that the accompanying bill (House, No. 4115) ought to pass.

For the committee,

MICHAEL S. DAY.

FILED ON: 10/5/2023

HOUSE . . . . . No. 4115

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to prevent abuse and exploitation.

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 12 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by inserting after section 35 the following section: -

Section 36. The attorney general, in consultation with the department of elementary and secondary education, the department of youth services and the Massachusetts district attorneys association shall develop and implement a comprehensive educational diversion program. The program shall be designed to provide adolescents with information about: (i) the legal consequences of, and penalties for, possessing or disseminating visual material in violation of section 29D of chapter 272, commonly known as “sexting”, including applicable federal and state law; (ii) the non-legal consequences of sexting or posting sexual images, including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and removal, exclusion or expulsion from school programs and extracurricular activities; (iii) how the unique characteristics of the internet can produce long-term and unforeseen consequences for sexting and posting sexual images online, including the impact on health relationships and risk of trafficking; and (iv) and the connection between bullying and cyber-bullying, sexual assault and

dating violence and juveniles sexting or posting sexual images. The attorney general shall consult available research on effective educational diversion programs, including programs on sexting, in designing the curriculum and shall annually review the program design and make updates as needed to improve efficacy. The educational diversion program shall be used as part of any diversion program required pursuant to section 54B of chapter 119 and shall be made available to school districts for use in educational programs on the topic. Law enforcement, district attorneys and clerk magistrates may refer a child, where appropriate, to the educational diversion program.

SECTION 2. Chapter 71 of the General Laws, as so appearing, is hereby amended by inserting after section 98 the following section: -

Section 99. The department shall encourage school districts to implement instruction in media literacy skills at all grade levels, and in any of the core subjects under section 1D of chapter 69, life skills programming or other subjects, to equip students with the knowledge and skills for accessing, analyzing, evaluating and creating all types of media and shall use content from the educational diversion program established pursuant to section 36 of chapter 12 in this instruction.

SECTION 3. Chapter 119 of the General Laws, as so appearing, is hereby amended by inserting after section 54A the following section: -

Section 54B (a) If a child is alleged to be a delinquent child by reason of violating sections 29B, 29C, or 29D of chapter 272 the court shall, prior to arraignment, indefinitely stay arraignment and direct that the child enter and complete the educational diversion program established pursuant to section 36 of chapter 12; provided, however, that the district attorney

may object in writing to the stay of arraignment. If the district attorney so objects, the court shall consider the district attorney's objection and make a determination whether to direct a child to enter and complete said education diversion program. If the court finds, on its own motion or at the request of the district attorney, 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.

(b) If a child is alleged to be a delinquent child by reason of violating sections 29B, 29C, or 29D of chapter 272 and arraignment has already occurred, the court shall place the child on pretrial probation pursuant to section 87 of chapter 276. The conditions of such probation shall include, but not be limited to, completion of the educational diversion program established pursuant to section 36 of chapter 12; provided, however, that the district attorney may object in writing to pretrial probation. If the district attorney so objects, the court shall consider the district attorney's objections in its decision to place the child on pretrial probation. If the court finds, on its own motion or at the request of the district attorney, that the child has failed to comply with the conditions of probation, the court shall restore the delinquency complaint to the docket for trial or further proceedings.

SECTION 4. Section 1 of Chapter 209A of the General Laws, as so appearing, is hereby amended by striking out the definition of "abuse" and inserting in place thereof the following definitions: -

"Abuse", the occurrence of one or more of the following acts between family or household members:

(a) attempting to cause or causing physical harm;

(b) placing another in fear of imminent serious physical harm;

(c) causing another to engage involuntarily in sexual relations by force, threat or duress;

(d) coercive control.

"Coercive control", an act or pattern of behavior committed with the intent to substantially restrict an individual's safety or autonomy through threat, intimidation, harassment, isolation, control, coercion or compelled compliance, including but not limited to:

(i) isolating the family or household member from friends, relatives or other sources of support;

(ii) depriving the family or household member of basic needs;

(iii) repeatedly humiliating or using degrading language or behavior towards the family or household member;

(iv) controlling, regulating or monitoring the family or household member's activities, communications, movements, finances, economic resources, or access to services, including through technological means;

(v) compelling a family or household member to abstain from or engage in a specific behavior or activity, including engaging in criminal activity;

(vi) harming or threatening to harm a child or relative of the family or household member;

(vii) committing or threatening to commit cruelty or abuse to animals connected to the family or household member;

(viii) damaging property belonging to the family or household member;

(ix) threatening to publish sensitive personal information relating to the family or household member, including explicit images;

(x) threatening to make false reports to law enforcement or other government officials or agencies; or

(xi) using repeated court actions not warranted by existing law or good faith argument.

SECTION 5. Section 43A of chapter 265 of the General Laws, as so appearing, is hereby amended by striking out, in line 7, the figure "$1,000" and inserting in place thereof the following figure: - $5,000.

SECTION 6. Said section 43A of said chapter 265, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsections: -

(b)(1) As used in this subsection the following words shall have the following meanings unless the context clearly requires otherwise:

"Distribute", give, sell, transfer, disseminate, publish, upload, circulate, broadcast, or engage in any other form of transmission, electronic or otherwise.

"Identifiable", identifiable from the visual material itself or information offered in connection with the visual material.

"Partially nude", the exposure of fully uncovered buttocks, or all or part of the human genitals or the female nipple-areolar complex.

"Publish", (i) disseminate with the intent that an image or images be made available by any means to any person or other legal entity; (ii) disseminate with the intent that an image or images be sold by another person or legal entity; (iii) post, present, display, exhibit, circulate, advertise or allow access by any means, so as to make an image or images available to the public; or (iv) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means, and to make such images available to the public.

"Visual material", any photograph, film, video, or digital image or recording, whether produced by electronic, mechanical or other means or any part, representation or reproduction thereof.

(2) Whoever knowingly distributes visual material depicting another person, either identifiable in the visual material or identified by the distributing person, who is nude, partially nude or engaged in sexual conduct, when the distribution causes physical or economic injury to the person depicted in the visual material or causes the person depicted in the visual material to suffer substantial emotional distress, and does so with the intent to harm, harass, intimidate, threaten, coerce or cause substantial emotional distress, or does so with reckless disregard for the depicted person's lack of consent to the distribution of the visual material and reasonable expectation that the visual material would remain private, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2½ years, by a fine of not more than $10,000, or by both such fine and imprisonment.

(3) For purposes of this subsection, consent to the creation of visual material shall not constitute consent to the distribution of the visual material.

(4) This subsection shall not preclude other remedies available at law or in equity, including, but not limited to, the issuance by a court with proper jurisdiction of appropriate orders to restrain or prevent the distribution of visual material in violation of this subsection.

(5) Visual material that is part of any court record arising from a prosecution under this subsection shall not be open to public inspection and, unless otherwise ordered in writing by the court, shall only be made available for inspection by court personnel to a prosecuting attorney, a defendant's attorney, a defendant or a victim connected to such prosecution; provided, however, that this paragraph shall not prohibit disclosure, inspection or other use of the visual material in the underlying prosecution or any related court proceeding in accordance with applicable evidentiary and procedural rules or court order.

(6) This subsection shall not apply to: (i) visual material involving nudity, partial nudity or sexual conduct that is voluntary or consensual and occurring: (A) in a commercial setting, or (B) in a place where a person does not have a reasonable expectation of privacy; (ii) distribution made in the public interest, including the reporting of unlawful conduct; (iii) lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings or medical treatment, including telemedicine; (iv) distribution of visual material that constitutes a matter of public concern; (v) interactive computer services, as defined in 47 U.S.C. 230(f)(2), for content solely provided by another person; or (vi) information services or telecommunications services, as defined in 47 U.S.C. 153, for content solely provided by another person.

(c) Whoever, after having been convicted of an offense under this section, commits a second or subsequent offense, or whoever commits an offense under this section having previously been convicted of a violation of section 43, shall be punished by imprisonment in a

house of correction for not more than 2½ years or in a state prison for not more than 10 years, by a fine of not more than $15,000, or by both such fine and imprisonment.

SECTION 7. Chapter 272 of the General Laws, as so appearing, is hereby amended by inserting after section 29C the following section: -

Section 29D. (a) Whoever, while under the age of criminal majority: (i) possesses, purchases or disseminates to another person any visual material in violation of section 29B or section 29C of this chapter, or (ii) whoever, while under the age of criminal majority, uploads visual material of another person in violation of this section to an internet website, may be punished by a commitment to the department of youth services.

(b) Knowingly disseminating visual material by reporting the matter to a law enforcement agency, parent, foster parent, guardian, teacher, principal, or other relevant school personnel, or by affording a law enforcement agency, parent, foster parent, guardian, teacher, principal or other relevant school personnel access to the visual material shall not constitute dissemination in violation of this section.

(c) 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 section 178E of chapter 6.

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

(e) It shall be an affirmative defense for any crime alleged under sections 29A, 29B, 29C or 29D of this chapter that: (i) the visual material portrays no person other than the juvenile; or

(ii) the juvenile was under the age of criminal majority, the visual material portrays only an individual age 16 or older and was knowingly and voluntarily created and provided to the juvenile by the individual in the image, and the juvenile has not provided or made available the material to another person except the individual depicted who originally sent the material to the juvenile.

(f) 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 8. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby amended by striking, in line 13, the word “sections” and inserting in place thereof the following words: - subsection (b)(iii) of 13A, sections 13M,.