## The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2710) of the House Bill to prevent abuse and exploitation (House, No. 4241, amended), reports recommending passage of the accompanying bill (House, No. 4744). June 11, 2024.

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## The Commonwealth of Massachusetts

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

An Act to prevent abuse and exploitation.

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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 is hereby amended by adding the following section:-

Section 36. (a) The attorney general, in consultation with the office of the child advocate, the department of elementary and secondary education, the department of youth services, the Massachusetts District Attorneys Association, the committee for public counsel services, the commission on lesbian, gay, bisexual, transgender, queer and questioning youth, Jane Doe Inc.: The Massachusetts Coalition Against Sexual Assault and Domestic Violence and MASOC, Inc., shall develop and administer a comprehensive educational diversion program about the activity commonly known as "sexting". 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 and other applicable federal and state laws; (ii) the nonlegal consequences of possessing and disseminating sexual images including, but not limited to, the effect on relationships, loss of educational and employment opportunities and removal, exclusion and expulsion from school programs and extracurricular activities; (iii)

how the internet may produce long-term and unforeseen consequences for possessing or disseminating sexual images online, including the health of relationships and risk of trafficking; (iv) the responsible use of visual material digitization; and (v) the connection between adolescents' possession or dissemination of sexual images and sexual assault, dating violence and bullying.

- (b) In designing the program curriculum, the attorney general shall research effective educational diversion programs, including programs in other states and programs on sexting. The office of the child advocate shall annually review the program design and curriculum and recommend to the attorney general updates as needed to improve efficacy.
- (c) The educational diversion program created under this section shall be used for any diversion program required pursuant to section 54B of chapter 119; provided, however, that the district attorney or court having jurisdiction may, where appropriate, refer a delinquent child or an alleged delinquent child to the educational diversion program under this section for violations or alleged violations of other laws if the district attorney or court deems such educational diversion program may be beneficial to a delinquent child or an alleged delinquent child.
- (d) Educational material from the educational diversion program shall be made available to school districts for use in educational programs on the topic of possessing or disseminating sexual images.
- 33 SECTION 2. Chapter 71 of the General Laws is hereby amended by adding the following section:-
  - Section 100. The department shall encourage school districts to implement instruction in age-appropriate media literacy skills at all grade levels, including 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.

The instruction shall use content from the educational diversion program developed under section 36 of chapter 12.

SECTION 3. Chapter 119 of the General Laws 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 a violation of section 29B, 29C or 29D of chapter 272, the court shall, prior to arraignment, indefinitely stay arraignment and direct the child to enter into and complete the educational diversion program developed under 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 objection of the district attorney and shall make a determination on whether to direct the child to enter and complete the educational diversion program. The court may request that the Massachusetts probation service conduct an assessment or that the attorney general make a determination of eligibility to assist the court in making its determination.

(b) The attorney general shall submit to the court a report indicating the child's successful completion of the educational diversion program. If the court finds on its own initiative or by motion of the district attorney that the child has failed to complete the educational diversion program, the court shall bring the case forward, arraign the child and restore the delinquency complaint to the docket for further proceedings; provided, however, that the judge shall first provide an opportunity for both the district attorney and counsel for the child to be heard on any such motion.

(c) If a child is alleged to be a delinquent child by reason of a violation of section 29B, 29C or 29D of chapter 272 and arraignment has already occurred, the court shall, upon consultation with counsel for the child, 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 developed under section 36 of chapter 12. The district attorney may object in writing to pretrial probation. If the district attorney so objects, the court shall consider the objection of the district attorney and make a determination on whether to place the child on pretrial probation. The court may request that the Massachusetts probation service conduct an assessment or that the attorney general make a determination of eligibility to assist the court in making its determination.

- (d) The attorney general shall submit to the court a report indicating the child's successful completion of the educational diversion program. If the court finds on its own initiative or by motion 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.
- (e) The following shall not be admissible against the child in any proceedings: (i) a decision by the child not to enter into the educational diversion program developed under section 36 of chapter 12; (ii) a district attorney's objection to a stay of arraignment or pretrial probation in order for a child to enter into such educational diversion program; (iii) an assessment by the Massachusetts probation service or a determination of eligibility by the attorney general for a child to enter into such educational diversion program; and (iv) any statement made by the child or the child's family during any assessment, determination of eligibility or hearing by the court to determine whether to divert a child to such educational diversion program. A statement or other

disclosure or a record thereof made by a child during the stay of proceedings or pretrial probation shall not be disclosed at any time to a commonwealth or other law enforcement officer in connection with the investigation or prosecution of any charges against the child or a codefendant.

SECTION 4. Section 1 of chapter 209A of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by striking out the definition of "Abuse" and inserting in place thereof the following 2 definitions:-

"Abuse", the occurrence of any 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;
- 93 (c) causing another to engage involuntarily in sexual relations by force, threat or duress;
- 94 (d) coercive control.

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- 95 "Coercive control", either:
  - (a) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce or compel compliance of a family or household member that causes that family or household member to reasonably fear physical harm or have a reduced sense of physical safety or autonomy, including, but not limited to:
- (i) isolating the family or household member from friends, relatives or other sources ofsupport;

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

- (iii) controlling, regulating or monitoring the family or household member's activities, communications, movements, finances, economic resources or access to services, including through technological means;
- (iv) compelling a family or household member to abstain from or engage in a specific behavior or activity, including engaging in criminal activity;
  - (v) threatening to harm a child or relative of the family or household member;
- (vi) threatening to commit cruelty or abuse to an animal connected to the family or household member;
  - (vii) intentionally damaging property belonging to the family or household member;
- (viii) threatening to publish sensitive personal information relating to the family or household member, including sexually explicit images; or
- (ix) using repeated court actions found by a court not to be warranted by existing law or good faith argument; or
- (b) a single act intended to threaten, intimidate, harass, isolate, control, coerce or compel compliance of a family or household member that causes the family or household member to reasonably fear physical harm or have a reduced sense of physical safety or autonomy of: (i) harming or attempting to harm a child or relative of the family or household member; (ii) committing or attempting to commit abuse to an animal connected to the family or household member; or (iii) publishing or attempting to publish sexually explicit images of the family or household member.

123 SECTION 5. Section 43A of chapter 265 of the General Laws, as so appearing, is hereby 124 amended by striking out, in line 7, the figure "\$1,000" and inserting in place thereof the 125 following figure: \$5,000. 126 SECTION 6. Said section 43A of said chapter 265, as so appearing, is hereby further 127 amended by striking out subsection (b) and inserting in place thereof the following 2 128 subsections:-129 (b)(1) As used in this subsection, the following words shall have the following meanings 130 unless the context clearly requires otherwise: 131 "Digitization", the creation or alteration of visual material including, but not limited to, 132 through the use of computer-generated images, in a manner that would falsely appear to a 133 reasonable person to be an authentic representation of the person depicted. 134 "Distribute", give, sell, transfer, disseminate, publish, upload, circulate, broadcast or 135 engage in any other form of transmission, electronic or otherwise. 136 "Identifiable", recognizable from the visual material itself or from information offered in 137 connection with the visual material. "Partially nude", the exposure of fully uncovered buttocks or all or part of the human 138 139 genitals or the female nipple-areolar complex. 140 "Publish", (i) disseminate an image with the intent that it be made available by any means 141 to any person or other legal entity; (ii) disseminate an image with the intent that it be sold by 142 another person or legal entity; (iii) post, present, display, exhibit, circulate, advertise or allow

access to an image by any means so as to make such image available to the public; or (iv)

disseminate an image with the intent that it be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means so as to make such image available to the public.

"Visual material", a 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, including visual material produced by digitization, depicting another person, who is either identifiable in the visual material or identified by the distributing person, who is nude, partially nude or engaged in sexual conduct and to whom the distribution causes physical or economic injury or substantial emotional distress, and distributes such visual material with: (i) the intent to harm, harass, intimidate, threaten, coerce or cause substantial emotional distress; or (ii) reckless disregard for: (A) the likelihood that the person depicted will suffer harm, harassment, intimidation, threat, coercion or substantial emotional distress; (B) the depicted person's lack of consent to the distribution of such visual material, including material produced by digitization; and (C) the depicted person's 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. Nothing in this section shall preclude a prosecution under section 29C of chapter 272.
- (3) For the 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 of competent 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 district 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 a 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 after having previously been convicted of a violation of section 43, shall be punished by imprisonment in a

house of correction for not more than  $2\frac{1}{2}$  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 is hereby amended by inserting after section 29C the following section:-

Section 29D. (a) Whoever, while under the age of criminal majority, possesses, purchases or disseminates, including by uploading to an internet website, any visual material, as defined in section 31, in violation of section 29B or 29C may be punished in accordance with section 58 of chapter 119.

- (b) For the purposes of this section, knowingly disseminating visual material by: (i) reporting the matter to a law enforcement agency, to the department of elementary and secondary education or to a parent, foster parent, guardian, teacher, principal or other relevant school personnel; or (ii) affording a law enforcement agency, the department of elementary and secondary education or a parent, foster parent, guardian, teacher, principal or other relevant school personnel access to the visual material for purposes within the agency's, department's or person's position, authority or capacity 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. A person who has been adjudicated under this section shall not be subject to section 100J of chapter 276 and shall be eligible for expungement of any criminal records of such adjudication.

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

- (e) It shall be an affirmative defense for any crime alleged to have been committed by a juvenile under section 29A, 29B, 29C or this section that: (i) the visual material portrays no person other than the juvenile; or (ii)(A) the juvenile was under 18 years of age at the time of the alleged offense; (B) the visual material portrays only an individual age 16 or older; (C) the visual material was knowingly and voluntarily created and provided to the juvenile by the individual in the image; and (D) 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 prohibit a prosecution for disorderly conduct, public indecency, child pornography or any other applicable provision of law.
- (g) The Massachusetts District Attorneys Association, with assistance from the 11 district attorneys' offices, shall annually, not later than February 15, report on its actions under section 29D of chapter 272 of the General Laws to the clerks of the house of representatives and senate and the chairs of the joint committee on the judiciary. The report shall include, for each office:
  (i) the number of cases under section 29D referred to that office; (ii) the number of arraignments conducted for an alleged violation of section 29D; (iii) the number of cases under section 29D where no action was taken; (iv) the number of cases under section 29D where the alleged offender was directed to enter into the educational diversion program developed under section 15 of chapter 18C; (v) the number of cases under section 29D in which the district attorney objected to diversion pursuant to section 54B of chapter 119 and, of those, the number of cases in which the court proceeded with diversion over the district attorney's objection; (vi) the number of

arraignments conducted for an alleged violation of section 29D after the alleged offender failed to complete the educational diversion program developed under section 15 of chapter 18C; and (vii) to the extent feasible, the age, gender identity and race of each person diverted or arraigned for alleged violations of section 29D; provided, however, that all personally identifiable information published in said report shall be deidentified.

SECTION 8. Section 63 of chapter 277 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by striking out, in line 13, the word "sections" and inserting in place thereof the following words:- clause (iii) of subsection (b) of section 13A, sections 13M,.