

HOUSE No. 4744

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.

Michael S. Day	John F. Keenan
Christine P. Barber	James B. Eldridge
Alyson Sullivan-Almeida	Ryan C. Fattman

HOUSE No. 4744

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:

1 SECTION 1. Chapter 12 of the General Laws is hereby amended by adding the following
2 section:-

3 Section 36. (a) The attorney general, in consultation with the office of the child advocate,
4 the department of elementary and secondary education, the department of youth services, the
5 Massachusetts District Attorneys Association, the committee for public counsel services, the
6 commission on lesbian, gay, bisexual, transgender, queer and questioning youth, Jane Doe Inc.:
7 The Massachusetts Coalition Against Sexual Assault and Domestic Violence and MASOC, Inc.,
8 shall develop and administer a comprehensive educational diversion program about the activity
9 commonly known as “sexting”. The program shall be designed to provide adolescents with
10 information about: (i) the legal consequences of and penalties for possessing or disseminating
11 visual material in violation of section 29D of chapter 272 and other applicable federal and state
12 laws; (ii) the nonlegal consequences of possessing and disseminating sexual images including,
13 but not limited to, the effect on relationships, loss of educational and employment opportunities
14 and removal, exclusion and expulsion from school programs and extracurricular activities; (iii)

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

20 (b) In designing the program curriculum, the attorney general shall research effective
21 educational diversion programs, including programs in other states and programs on sexting. The
22 office of the child advocate shall annually review the program design and curriculum and
23 recommend to the attorney general updates as needed to improve efficacy.

24 (c) The educational diversion program created under this section shall be used for any
25 diversion program required pursuant to section 54B of chapter 119; provided, however, that the
26 district attorney or court having jurisdiction may, where appropriate, refer a delinquent child or
27 an alleged delinquent child to the educational diversion program under this section for violations
28 or alleged violations of other laws if the district attorney or court deems such educational
29 diversion program may be beneficial to a delinquent child or an alleged delinquent child.

30 (d) Educational material from the educational diversion program shall be made available
31 to school districts for use in educational programs on the topic of possessing or disseminating
32 sexual images.

33 SECTION 2. Chapter 71 of the General Laws is hereby amended by adding the following
34 section:-

35 Section 100. The department shall encourage school districts to implement instruction in
36 age-appropriate media literacy skills at all grade levels, including in any of the core subjects

37 under section 1D of chapter 69, life skills programming or other subjects, to equip students with
38 the knowledge and skills for accessing, analyzing, evaluating and creating all types of media.
39 The instruction shall use content from the educational diversion program developed under
40 section 36 of chapter 12.

41 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after
42 section 54A the following section:-

43 Section 54B. (a) If a child is alleged to be a delinquent child by reason of a violation of
44 section 29B, 29C or 29D of chapter 272, the court shall, prior to arraignment, indefinitely stay
45 arraignment and direct the child to enter into and complete the educational diversion program
46 developed under section 36 of chapter 12; provided, however, that the district attorney may
47 object in writing to the stay of arraignment. If the district attorney so objects, the court shall
48 consider the objection of the district attorney and shall make a determination on whether to direct
49 the child to enter and complete the educational diversion program. The court may request that the
50 Massachusetts probation service conduct an assessment or that the attorney general make a
51 determination of eligibility to assist the court in making its determination.

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

59 (c) If a child is alleged to be a delinquent child by reason of a violation of section 29B,
60 29C or 29D of chapter 272 and arraignment has already occurred, the court shall, upon
61 consultation with counsel for the child, place the child on pretrial probation pursuant to section
62 87 of chapter 276. The conditions of such probation shall include, but not be limited to,
63 completion of the educational diversion program developed under section 36 of chapter 12. The
64 district attorney may object in writing to pretrial probation. If the district attorney so objects, the
65 court shall consider the objection of the district attorney and make a determination on whether to
66 place the child on pretrial probation. The court may request that the Massachusetts probation
67 service conduct an assessment or that the attorney general make a determination of eligibility to
68 assist the court in making its determination.

69 (d) The attorney general shall submit to the court a report indicating the child's successful
70 completion of the educational diversion program. If the court finds on its own initiative or by
71 motion of the district attorney that the child has failed to comply with the conditions of
72 probation, the court shall restore the delinquency complaint to the docket for trial or further
73 proceedings.

74 (e) The following shall not be admissible against the child in any proceedings: (i) a
75 decision by the child not to enter into the educational diversion program developed under section
76 36 of chapter 12; (ii) a district attorney's objection to a stay of arraignment or pretrial probation
77 in order for a child to enter into such educational diversion program; (iii) an assessment by the
78 Massachusetts probation service or a determination of eligibility by the attorney general for a
79 child to enter into such educational diversion program; and (iv) any statement made by the child
80 or the child's family during any assessment, determination of eligibility or hearing by the court to
81 determine whether to divert a child to such educational diversion program. A statement or other

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

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

89 “Abuse”, the occurrence of any of the following acts between family or household
90 members:

- 91 (a) attempting to cause or causing physical harm;
- 92 (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.

95 “Coercive control”, either:

- 96 (a) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce
97 or compel compliance of a family or household member that causes that family or household
98 member to reasonably fear physical harm or have a reduced sense of physical safety or
99 autonomy, including, but not limited to:

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

- 102 (ii) depriving the family or household member of basic needs;
- 103 (iii) controlling, regulating or monitoring the family or household member's activities,
104 communications, movements, finances, economic resources or access to services, including
105 through technological means;
- 106 (iv) compelling a family or household member to abstain from or engage in a specific
107 behavior or activity, including engaging in criminal activity;
- 108 (v) threatening to harm a child or relative of the family or household member;
- 109 (vi) threatening to commit cruelty or abuse to an animal connected to the family or
110 household member;
- 111 (vii) intentionally damaging property belonging to the family or household member;
- 112 (viii) threatening to publish sensitive personal information relating to the family or
113 household member, including sexually explicit images; or
- 114 (ix) using repeated court actions found by a court not to be warranted by existing law or
115 good faith argument; or
- 116 (b) a single act intended to threaten, intimidate, harass, isolate, control, coerce or compel
117 compliance of a family or household member that causes the family or household member to
118 reasonably fear physical harm or have a reduced sense of physical safety or autonomy of: (i)
119 harming or attempting to harm a child or relative of the family or household member; (ii)
120 committing or attempting to commit abuse to an animal connected to the family or household
121 member; or (iii) publishing or attempting to publish sexually explicit images of the family or
122 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.

138 “Partially nude”, the exposure of fully uncovered buttocks or all or part of the human
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
143 access to an image by any means so as to make such image available to the public; or (iv)

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

146 “Visual material”, a photograph, film, video or digital image or recording, whether
147 produced by electronic, mechanical or other means, or any part, representation or reproduction
148 thereof.

149 (2) Whoever knowingly distributes visual material, including visual material produced by
150 digitization, depicting another person, who is either identifiable in the visual material or
151 identified by the distributing person, who is nude, partially nude or engaged in sexual conduct
152 and to whom the distribution causes physical or economic injury or substantial emotional
153 distress, and distributes such visual material with: (i) the intent to harm, harass, intimidate,
154 threaten, coerce or cause substantial emotional distress; or (ii) reckless disregard for: (A) the
155 likelihood that the person depicted will suffer harm, harassment, intimidation, threat, coercion or
156 substantial emotional distress; (B) the depicted person’s lack of consent to the distribution of
157 such visual material, including material produced by digitization; and (C) the depicted person’s
158 reasonable expectation that the visual material would remain private, shall be guilty of the crime
159 of criminal harassment and shall be punished by imprisonment in a house of correction for not
160 more than 2½ years, by a fine of not more than \$10,000 or by both such fine and imprisonment.
161 Nothing in this section shall preclude a prosecution under section 29C of chapter 272.

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

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

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

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

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

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

188 SECTION 7. Chapter 272 of the General Laws is hereby amended by inserting after
189 section 29C the following section:-

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

194 (b) For the purposes of this section, knowingly disseminating visual material by: (i)
195 reporting the matter to a law enforcement agency, to the department of elementary and secondary
196 education or to a parent, foster parent, guardian, teacher, principal or other relevant school
197 personnel; or (ii) affording a law enforcement agency, the department of elementary and
198 secondary education or a parent, foster parent, guardian, teacher, principal or other relevant
199 school personnel access to the visual material for purposes within the agency's, department's or
200 person's position, authority or capacity shall not constitute dissemination in violation of this
201 section.

202 (c) A person who has been adjudicated under this section shall not be required to register
203 with the sex offender registry board and no data relating to such adjudication shall be transmitted
204 to the board pursuant to section 178E of chapter 6. A person who has been adjudicated under this
205 section shall not be subject to section 100J of chapter 276 and shall be eligible for expungement
206 of any criminal records of such adjudication.

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

209 (e) It shall be an affirmative defense for any crime alleged to have been committed by a
210 juvenile under section 29A, 29B, 29C or this section that: (i) the visual material portrays no
211 person other than the juvenile; or (ii)(A) the juvenile was under 18 years of age at the time of the
212 alleged offense; (B) the visual material portrays only an individual age 16 or older; (C) the visual
213 material was knowingly and voluntarily created and provided to the juvenile by the individual in
214 the image; and (D) the juvenile has not provided or made available the material to another person
215 except the individual depicted who originally sent the material to the juvenile.

216 (f) Nothing in this section shall prohibit a prosecution for disorderly conduct, public
217 indecency, child pornography or any other applicable provision of law.

218 (g) The Massachusetts District Attorneys Association, with assistance from the 11 district
219 attorneys' offices, shall annually, not later than February 15, report on its actions under section
220 29D of chapter 272 of the General Laws to the clerks of the house of representatives and senate
221 and the chairs of the joint committee on the judiciary. The report shall include, for each office:
222 (i) the number of cases under section 29D referred to that office; (ii) the number of arraignments
223 conducted for an alleged violation of section 29D; (iii) the number of cases under section 29D
224 where no action was taken; (iv) the number of cases under section 29D where the alleged
225 offender was directed to enter into the educational diversion program developed under section 15
226 of chapter 18C; (v) the number of cases under section 29D in which the district attorney objected
227 to diversion pursuant to section 54B of chapter 119 and, of those, the number of cases in which
228 the court proceeded with diversion over the district attorney's objection; (vi) the number of

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

234 SECTION 8. Section 63 of chapter 277 of the General Laws, as appearing in the 2022
235 Official Edition, is hereby amended by striking out, in line 13, the word “sections” and inserting
236 in place thereof the following words:- clause (iii) of subsection (b) of section 13A, sections
237 13M,.