

# SENATE . . . . . No. 2710

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Senate, March 21, 2024 -- Text of the Senate amendment to the House Bill to prevent abuse and exploitation (House, No. 4241, amended) (being the text of Senate document numbered 2703, printed as amended)

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Third General Court  
(2023-2024)  
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1 SECTION 1. Chapter 18C of the General Laws is hereby amended by adding the  
2 following section:-

3 Section 15. (a) The office of child advocate, in consultation with the attorney general, the  
4 department of elementary and secondary education, the department of youth services, the  
5 committee for public counsel services, the commission on lesbian, gay, bisexual, transgender,  
6 queer and questioning youth and the Massachusetts District Attorneys Association, shall develop  
7 and implement a comprehensive educational diversion program about the activity commonly  
8 known as “sexting”. The office of the child advocate shall consult with Jane Doe Inc.: The  
9 Massachusetts Coalition Against Sexual Assault and Domestic Violence and MASOC, Inc. in the  
10 development of the program. The program shall be designed to provide adolescents with  
11 information about: (i) the legal consequences of and penalties for possessing or disseminating  
12 visual material in violation of section 29D of chapter 272 and other applicable federal and state  
13 laws; (ii) the nonlegal consequences of possessing or disseminating sexual images including, but  
14 not limited to, the effect on relationships, loss of educational and employment opportunities and  
15 removal and the exclusion or expulsion from school programs and extracurricular activities; (iii)

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

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

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

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

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

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

38 section 1D of chapter 69, life skills programming or other subjects to equip students with the  
39 knowledge and skills for accessing, analyzing, evaluating and creating all types of media. The  
40 instruction shall use content from the educational diversion program developed under section 15  
41 of chapter 18C.

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

44 Section 54B. (a) If a child is alleged to be a delinquent child by reason of a violation of  
45 section 29B, 29C or 29D of chapter 272, the court shall, prior to arraignment, indefinitely stay  
46 arraignment and direct the child to enter into and complete the educational diversion program  
47 developed under section 15 of chapter 18C; provided, however, that the district attorney may  
48 object in writing to the stay of arraignment upon a showing that failure to proceed with the  
49 arraignment would result in the substantial likelihood of serious harm to a member of the  
50 community. If the district attorney so objects, the court shall consider the district attorney's  
51 objection and shall make a determination on whether to direct the child to enter and complete the  
52 educational diversion program. If the court finds on its own motion or on motion by the district  
53 attorney that the child has failed to complete the educational diversion program, the court shall  
54 bring the case forward, arraign the child and restore the delinquency complaint to the docket for  
55 further proceedings; provided, however, that the judge shall first provide an opportunity for both  
56 the district attorney and counsel for the child to be heard on any such motion.

57 (b) If a child is alleged to be a delinquent child by reason of a violation of section 29B,  
58 29C or 29D of chapter 272 and arraignment has already occurred, the court shall, upon  
59 consultation with counsel for the child, place the child on pretrial probation pursuant to section

60 87 of chapter 276. The district attorney may object in writing to pretrial probation upon a  
61 showing that failure to proceed with the prosecution would result in the substantial likelihood of  
62 serious harm to a member of the community. If the district attorney objects, the court shall  
63 consider the district attorney's objections in its decision to place the child on pretrial probation.  
64 The conditions of such probation shall include, but not be limited to, completion of the  
65 educational diversion program developed under section 15 of chapter 18C. If the court finds on  
66 its own motion or motion of the district attorney that the child has failed to comply with the  
67 conditions of probation, the court shall restore the delinquency complaint to the docket for trial  
68 or further proceedings.

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

72 "Abuse", the occurrence of any of the following acts between family or household  
73 members: (i) attempting to cause or causing physical harm; (ii) placing another in fear of  
74 imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations  
75 by force, threat or duress; or (iv) coercive control.

76 "Coercive control", either:

77 (i) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce or  
78 compel compliance of a family or household member that causes that family or household  
79 member to reasonably fear physical harm or have a reduced sense of physical safety including,  
80 but not limited to: (A) isolating the family or household member from friends, relatives or other  
81 sources of support; (B) depriving the family or household member of basic needs; (C)

82 controlling, regulating or monitoring the family or household member’s activities,  
83 communications, movements, finances, economic resources or access to services, including  
84 through technological means; (D) compelling a family or household member to abstain from or  
85 engage in a specific behavior or activity, including engaging in criminal activity; (E) threatening  
86 to harm a child or relative of the family or household member; (F) threatening to commit cruelty  
87 or abuse to an animal connected to the family or household member; (G) intentionally damaging  
88 property belonging to the family or household member; or (H) threatening to publish sexually  
89 explicit images of the family or household member; or

90 (ii) a single act intended to threaten, intimidate, harass, isolate, control, coerce or compel  
91 compliance of a family or household member that causes the family or household member to  
92 reasonably fear physical harm or have a reduced sense of physical safety including, but not  
93 limited to: (A) harming a child or relative of the family or household member; (B) committing  
94 abuse to an animal connected to the family or household member; or (C) publishing sexually  
95 explicit images of the family or household member; provided, however, “coercive control” shall  
96 not include isolated conduct undertaken by an individual to protect themselves or their children  
97 from the risk of present or future harm.

98 SECTION 5. Section 1 of chapter 258E of the General Laws, as so appearing, is hereby  
99 amended by striking out the definitions of “Harassment” and “Court” and inserting in place  
100 thereof the following 3 definitions:-

101 “Coercive control”, either:

102 (i) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce or  
103 compel compliance of a person that causes that person to reasonably fear physical harm or have a

104 reduced sense of physical safety including, but not limited to: (A) isolating the person from  
105 friends, relatives or other sources of support; (B) depriving the person of basic needs; (C)  
106 controlling, regulating or monitoring the person’s activities, communications, movements,  
107 finances, economic resources or access to services, including through technological means; (D)  
108 compelling the person to abstain from or engage in a specific behavior or activity, including  
109 engaging in criminal activity; (E) threatening to harm a child or relative of the person; (F)  
110 threatening to commit cruelty or abuse to an animal connected to the person; (G) intentionally  
111 damaging property belonging to the person; or (H) threatening to publish sexually explicit  
112 images of the person; or

113 (ii) a single act intended to threaten, intimidate, harass, isolate, control, coerce or compel  
114 compliance of a person that causes the person to reasonably fear physical harm or have a reduced  
115 sense of physical safety including, but not limited to: (A) harming a child or relative of the  
116 person; (B) committing abuse to an animal connected to the person; or (C) publishing sexually  
117 explicit images of the person; provided, however, that “coercive control” shall not include  
118 isolated conduct undertaken by an individual to protect themselves or their children from the risk  
119 of present or future harm.

120 “Court”, the district court or Boston municipal court, the superior court or the juvenile  
121 court departments of the trial court.

122 “Harassment”, (i) 3 or more acts of willful and malicious conduct aimed at a specific  
123 person committed with the intent to cause fear, intimidation, abuse or damage to property and  
124 that does in fact cause fear, intimidation, abuse or damage to property; (ii) coercive control; or  
125 (iii) an act that: (A) by force, threat or duress causes another to involuntarily engage in sexual

126 relations; or (B) constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43  
127 or 43A of chapter 265 or section 3 of chapter 272.

128 SECTION 6. Section 43A of chapter 265 of the General Laws, as so appearing, is hereby  
129 amended by striking out, in line 7, the figure “\$1,000” and inserting in place thereof the  
130 following figure:- \$5,000.

131 SECTION 7. Said section 43A of said chapter 265, as so appearing, is hereby further  
132 amended by striking out subsection (b) and inserting in place thereof the following 2  
133 subsections:-

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

136 “Digitization”, the creation or alteration of visual material including, but not limited to,  
137 through the use of computer-generated images, in a manner that would falsely appear to a  
138 reasonable person to be an authentic representation of the person depicted.

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

141 “Identifiable”, recognizable from the visual material itself or from information offered in  
142 connection with the visual material.

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

145 “Publish”, (i) disseminate an image with the intent that it be made available by any means  
146 to any person or other legal entity; (ii) disseminate an image with the intent that it be sold by

147 another person or legal entity; (iii) post, present, display, exhibit, circulate, advertise or allow  
148 access to an image by any means so as to make such image available to the public; or (iv)  
149 disseminate an image with the intent that it be posted, presented, displayed, exhibited, circulated,  
150 advertised or made accessible by any means to make such image available to the public.

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

154 (2) Whoever knowingly distributes visual material, including visual material produced by  
155 digitization, depicting another person, who is either identifiable in the visual material or  
156 identified by the distributing person, who is nude, partially nude or engaged in sexual conduct  
157 and to whom the distribution causes physical or economic injury or substantial emotional  
158 distress and distributes such visual material: (i) with the intent to harm, harass, intimidate,  
159 threaten, coerce or cause substantial emotional distress; and (ii) with reckless disregard for the  
160 depicted person’s lack of consent to the distribution of such visual material, including material  
161 produced by digitization, and for the depicted person’s reasonable expectation that the visual  
162 material would remain private, shall be guilty of the criminal harassment and shall be punished  
163 by imprisonment in a house of correction for not more than 2½ years, by a fine of not more than  
164 \$10,000 or by both such fine and imprisonment. Nothing in this section shall preclude a  
165 prosecution under section 29C of chapter 272.

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

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

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

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

188 (c) Whoever, after having been convicted of an offense under this section, commits a  
189 second or subsequent offense or whoever commits an offense under this section after having

190 previously been convicted of a violation of section 43, shall be punished by imprisonment in a  
191 house of correction for not more than 2½ years or in a state prison for not more than 10 years, by  
192 a fine of not more than \$15,000 or by both such fine and imprisonment.

193 SECTION 8. Chapter 272 of the General Laws is hereby amended by inserting after  
194 section 29C the following section:-

195 Section 29D. (a) Whoever, while under the age of criminal majority, possesses, purchases  
196 or disseminates to another person any visual material in violation of section 29B or 29C or  
197 knowingly uploads any such visual material of another person to an internet website may be  
198 punished in accordance with section 58 of chapter 119.

199 (b) For the purposes of this section, knowingly disseminating visual material by: (i)  
200 reporting the matter to a law enforcement agency, to the department of elementary and secondary  
201 education, to a parent, foster parent or guardian or to a teacher, principal or other relevant school  
202 personnel; or (ii) affording a law enforcement agency, the department of elementary and  
203 secondary education, a parent, foster parent or guardian or a teacher, principal or other relevant  
204 school personnel access to the visual material for purposes within the agency's, department's or  
205 person's role or such person's professional capacity shall not constitute dissemination in  
206 violation of this section.

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

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

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

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

223 SECTION 9. The Massachusetts District Attorneys Association shall work with the 11  
224 district attorneys' offices to prepare and submit an annual report on its actions under section 29D  
225 of chapter 272 of the General Laws to the clerks of the senate and house of representatives not  
226 later than February 15. The association shall provide the district attorneys' offices with an  
227 agreed-upon template to prepare the report that shall include, but

228 not be limited to: (i) the number of cases where the alleged offender was directed to enter  
229 into the educational diversion program developed under section 15 of chapter 18C of the General  
230 Laws for an alleged violation of section 29D of chapter 272 of the General Laws; (ii) the number  
231 of arraignments conducted for an alleged violation of said section 29D of said chapter 272; (iii)  
232 to the extent feasible, the age and sex of the person that was diverted or arraigned for alleged

233 violations of said section 29D of said chapter 272; and (iv) any other information which the  
234 association deems relevant and necessary within the scope of the report.

235 SECTION 10. (a) There shall be a special commission to examine and investigate the  
236 potential impacts and legal implications of advanced technology and the internet on protecting  
237 individuals from harm, abuse and exploitation.

238 (b) The commission shall consist of: the attorney general or a designee, who shall serve  
239 as chair; the chairs of the joint committee on the judiciary or their designees; the chairs of the  
240 joint committee on advanced information technology, the internet and cybersecurity or their  
241 designees; the minority leader of the senate or a designee; the minority leader of the house of  
242 representatives or a designee; the secretary of public safety and security or a designee; the  
243 secretary of technology services and security or a designee; the chief justice of the trial court or a  
244 designee; the chief counsel of the committee for public counsel services or a designee; the  
245 executive director of the American Civil Liberties Union of Massachusetts, Inc. or a designee;  
246 the executive director of Jane Doe, Inc.: The Massachusetts Coalition Against Sexual Assault  
247 and Domestic Violence or a designee; the executive director of MASOC, Inc. or a designee; the  
248 executive director of the Massachusetts Chiefs of Police Association Incorporated or a designee;  
249 and a member of the Massachusetts District Attorneys' Association.

250 (c) The commission shall examine and investigate the potential impacts and legal  
251 implications of advanced technology and the internet on protecting individuals from harm, abuse  
252 and exploitation including, but not limited to, issues regarding: (i) the false impersonation of an  
253 individual by the use of the individual's name, likeness or photographs, pretending to be the  
254 individual or occupying the individual's position, whether through in-person interactions or by

255 internet or electronic communications, without the express authorization of that person and using  
256 such impersonation with intent to obtain a benefit, to injure or defraud another or to harass or  
257 embarrass the person being impersonated; (ii) the creation or distribution of a video of a person  
258 in which such person's face or body has been digitally altered to appear to be someone else with  
259 the intention of spreading malicious or false information; (iii) the exchange of written sexually-  
260 obscene private conversations, content or screenshots between adults in which the corresponding  
261 individuals are identifiable; and (iv) the existence, status or necessity of a reasonable expectation  
262 of privacy relative to text messages sent to another person's cell phone.

263 (d) The commission shall file an interim report with the joint committee on judiciary, the  
264 joint committee on advanced information technology, the internet and cybersecurity and the  
265 senate and house committees on ways and means not later than December 31, 2024. The  
266 commission shall file its final report and recommendations, together with drafts of legislation  
267 necessary to carry such recommendations into effect, by filing the same with the joint committee  
268 on judiciary, the joint committee on advanced information technology, the internet and  
269 cybersecurity and the senate and house committees on ways and means not later than July 31,  
270 2025.