

# **HOUSE . . . . . No. 4241**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, January 9, 2024.

The committee on Ways and Means, to whom was referred the Bill to prevent abuse and exploitation (House, No. 4115), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4241).

For the committee,

AARON MICHLEWITZ.

**HOUSE . . . . . No. 4241**

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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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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 department of elementary  
4 and secondary education, the department of youth services and the Massachusetts District  
5 Attorneys Association, shall develop and implement a comprehensive educational diversion  
6 program about the activity commonly known as “sexting”. The program shall be designed to  
7 provide adolescents with information about: (i) the legal consequences of, and penalties for,  
8 possessing or disseminating visual material in violation of section 29D of chapter 272 and other  
9 applicable federal and state law; (ii) the non-legal consequences of possessing or disseminating  
10 sexual images, including, but not limited to, the effect on relationships, loss of educational and  
11 employment opportunities and removal, exclusion or expulsion from school programs and  
12 extracurricular activities; (iii) how the internet may produce long-term and unforeseen  
13 consequences for possessing or disseminating sexual images online, including the health of

14 relationships and risk of trafficking; and (iv) the connection between adolescents possessing or  
15 disseminating sexual images and sexual assault, dating violence and bullying.

16 (b) In designing the curriculum, the attorney general shall research effective educational  
17 diversion programs, including programs in other states and programs on sexting; provided, that  
18 the attorney general shall annually review the program design and curriculum and make updates  
19 as needed to improve efficacy.

20 (c) The educational diversion program shall be used for any diversion program required  
21 pursuant to section 54B of chapter 119; provided, that the district attorney or court having  
22 jurisdiction may, where appropriate, refer a delinquent child or alleged delinquent child to said  
23 educational diversion program for violations or alleged violations of other laws if the district  
24 attorney or court deems said educational diversion program may be beneficial to a delinquent  
25 child or alleged delinquent child.

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

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

31 Section 100. The department shall encourage school districts to implement instruction in  
32 media literacy skills at all grade levels, and in any of the core subjects under section 1D of  
33 chapter 69, life skills programming or other subjects, to equip students with the knowledge and  
34 skills for accessing, analyzing, evaluating and creating all types of media. The instruction shall

35 use content from the educational diversion program established pursuant to section 36 of chapter  
36 12.

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

39 Section 54B. (a) If a child is alleged to be a delinquent child by reason of violating  
40 section 29B, 29C or 29D of chapter 272, the court shall, prior to arraignment, indefinitely stay  
41 arraignment and direct that the child enter and complete the educational diversion program  
42 established in section 36 of chapter 12; provided, however, that the district attorney may object  
43 in writing to the stay of arraignment. If the district attorney so objects, the court shall consider  
44 the district attorney's objection and shall make a determination on whether to direct the child to  
45 enter and complete said educational diversion program. If the court finds, on its own motion or at  
46 the request of the district attorney, that the child has failed to complete the educational diversion  
47 program, the court shall bring the case forward, arraign the child and restore the delinquency  
48 complaint to the docket for further proceedings.

49 (b) If a child is alleged to be a delinquent child by reason of violating section 29B, 29C or  
50 29D of chapter 272 and arraignment has already occurred, the court shall place the child on  
51 pretrial probation pursuant to section 87 of chapter 276. The district attorney may object in  
52 writing to pretrial probation. If the district attorney so objects, the court shall consider the district  
53 attorney's objections in its decision to place the child on pretrial probation. The conditions of  
54 such probation shall include, but shall not be limited to, completion of the educational diversion  
55 program established in section 36 of chapter 12. If the court finds, on its own motion or at the  
56 request of the district attorney, that the child has failed to comply with the conditions of

57 probation, the court shall restore the delinquency complaint to the docket for trial or further  
58 proceedings.

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

62 “Abuse”, the occurrence of 1 or more of the following acts between family or household  
63 members:

64 (a) attempting to cause or causing physical harm;

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

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

67 (d) coercive control.

68 “Coercive control”, either:

69 (a) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce  
70 or compel compliance of a family or household member that causes the family or household  
71 member to fear physical harm or have a reduced sense of physical safety or autonomy, including,  
72 but not limited to:

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

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

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

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

81 (v) threatening to harm a child or relative of the family or household member;

82 (vi) threatening to commit cruelty or abuse to an animal connected to the family or  
83 household member;

84 (vii) intentionally damaging property belonging to the family or household member;

85 (viii) threatening to publish sensitive personal information relating to the family or  
86 household member, including sexually explicit images; or

87 (ix) using repeated court actions found by a court not to be warranted by existing law or  
88 good faith argument; or

89 (b) a single act intended to threaten, intimidate, harass, isolate, control, coerce or compel  
90 compliance of a family or household member that causes the family or household member to fear  
91 physical harm or have a reduced sense of physical safety or autonomy, including, but not limited  
92 to:

93 (i) harming a child or relative of the family or household member;

94 (ii) committing abuse to an animal connected to the family or household member; or

95 (iii) publishing sexually explicit images of the family or household member.

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

99 SECTION 6. Said section 43A of said chapter 265, as so appearing, is hereby further  
100 amended by striking out subsection (b) and inserting in place thereof the following 2  
101 subsections:-

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

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

106 “Identifiable”, identifiable from the visual material itself or information offered in  
107 connection with the visual material.

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

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

116 “Visual material”, any photograph, film, video, or digital image or recording, whether  
117 produced by electronic, mechanical or other means or any part, representation or reproduction  
118 thereof.

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

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

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

134 (5) Visual material that is part of any court record arising from a prosecution under this  
135 subsection shall not be open to public inspection and, unless otherwise ordered in writing by the  
136 court, shall only be made available for inspection by court personnel to a prosecuting attorney, a  
137 defendant’s attorney, a defendant or a victim connected to such prosecution; provided, however,

138 that this paragraph shall not prohibit disclosure, inspection or other use of the visual material in  
139 the underlying prosecution or any related court proceeding in accordance with applicable  
140 evidentiary and procedural rules or court order.

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

150 (c) Whoever, after having been convicted of an offense under this section, commits a  
151 second or subsequent offense, or whoever commits an offense under this section having  
152 previously been convicted of a violation of section 43, shall be punished by imprisonment in a  
153 house of correction for not more than 2½ years or in a state prison for not more than 10 years, by  
154 a fine of not more than \$15,000, or by both such fine and imprisonment.

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

157 Section 29D. (a) Whoever possesses, purchases, disseminates to another person or  
158 uploads any visual material, as defined in section 31, to an internet website in violation of section

159 29B or section 29C while under the age of 18 may be punished by a commitment to the  
160 department of youth services.

161 (b) For the purposes of this section, knowingly disseminating visual material by (i)  
162 reporting the matter to a law enforcement agency, parent, foster parent, guardian, teacher,  
163 principal or other relevant school personnel; or (ii) by affording a law enforcement agency,  
164 parent, foster parent, guardian, teacher, principal or other relevant school personnel access to the  
165 visual material shall not constitute dissemination in violation of this section.

166 (c) A person who has been adjudicated under this section shall not be required to register  
167 with the sex offender registry board and no data relating to such adjudication shall be transmitted  
168 to the board pursuant to section 178E of chapter 6.

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

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

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

180 SECTION 8. Section 63 of chapter 277 of the General Laws, as appearing in the 2022  
181 Official Edition, is hereby amended by striking out, in line 13, the word “sections” and inserting  
182 in place thereof the following words:- clause (iii) of subsection (b) of section 13A, sections  
183 13M,.