

SENATE No. 2703

The Commonwealth of Massachusetts

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

SENATE, March 14, 2024.

The committee on Senate Ways and Means to whom was referred the House Bill to prevent abuse and exploitation (House, No. 4241); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2703.

For the committee,
Michael J. Rodrigues

The Commonwealth of Massachusetts

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

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

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

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

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

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

32 Section 100. The department shall encourage school districts to implement instruction in
33 age-appropriate media literacy skills at all grade levels and in any of the core subjects under
34 section 1D of chapter 69, life skills programming or other subjects to equip students with the
35 knowledge and skills for accessing, analyzing, evaluating and creating all types of media. The
36 instruction shall use content from the educational diversion program developed under section 15
37 of chapter 18C.

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

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

53 (b) If a child is alleged to be a delinquent child by reason of a violation of section 29B,
54 29C or 29D of chapter 272 and arraignment has already occurred, the court shall, upon
55 consultation with counsel for the child, place the child on pretrial probation pursuant to section
56 87 of chapter 276. The district attorney may object in writing to pretrial probation. If the district
57 attorney objects, the court shall consider the district attorney's objections in its decision to place
58 the child on pretrial probation. The conditions of such probation shall include, but not be limited
59 to, completion of the educational diversion program developed under section 15 of chapter 18C.
60 If the court finds on its own motion or motion of the district attorney that the child has failed to

61 comply with the conditions of probation, the court shall restore the delinquency complaint to the
62 docket for trial or further proceedings.

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

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

70 “Coercive control”, either:

71 (i) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce or
72 compel compliance of a family or household member that causes that family or household
73 member to reasonably fear physical harm or have a reduced sense of physical safety including,
74 but not limited to: (A) isolating the family or household member from friends, relatives or other
75 sources of support; (B) depriving the family or household member of basic needs; (C)
76 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; (D) compelling a family or household member to abstain from or
79 engage in a specific behavior or activity, including engaging in criminal activity; (E) threatening
80 to harm a child or relative of the family or household member; (F) threatening to commit cruelty
81 or abuse to an animal connected to the family or household member; (G) intentionally damaging

82 property belonging to the family or household member; or (H) threatening to publish sexually
83 explicit images of the family or household member; or

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

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

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

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

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

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

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

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

109 “Publish”, (i) disseminate an image with the intent that it be made available by any means
110 to any person or other legal entity; (ii) disseminate an image with the intent that it be sold by
111 another person or legal entity; (iii) posting, presenting, displaying, exhibiting, circulating,
112 advertising or allowing access to an image by any means so as to make such image available to
113 the public; or (iv) disseminate an image with the intent that it be posted, presented, displayed,
114 exhibited, circulated, advertised or made accessible by any means to make such image available
115 to the public.

116 “Visual material”, a 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, including visual material produced by
120 digitization, depicting another person, who is either identifiable in the visual material or
121 identified by the distributing person, who is nude, partially nude or engaged in sexual conduct
122 and to whom the distribution causes physical or economic injury or substantial emotional
123 distress and distributes such visual material: (i) with the intent to harm, harass, intimidate,
124 threaten, coerce or cause substantial emotional distress; and (ii) with reckless disregard for the

125 depicted person's lack of consent to the distribution of such visual material, including material
126 produced by digitization, and for the depicted person's reasonable expectation that the visual
127 material would remain private, shall be guilty of the criminal harassment and shall be punished
128 by imprisonment in a house of correction for not more than 2½ years, by a fine of not more than
129 \$10,000 or by both such fine and imprisonment.

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

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

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

142 (6) This subsection shall not apply to: (i) visual material involving nudity, partial nudity
143 or sexual conduct that is voluntary or consensual and occurring: (A) in a commercial setting; or
144 (B) in a place where a person does not have a reasonable expectation of privacy; or (ii)
145 distribution made in the public interest, including the reporting of unlawful conduct; (iii) lawful
146 and common practices of law enforcement, criminal reporting, corrections, legal proceedings or

147 medical treatment, including telemedicine; (iv) distribution of visual material that constitutes
148 parody, satire or commentary on a matter of public concern; (v) interactive computer services as
149 defined in 47 U.S.C. 230(f)(2) for content solely provided by another person; or (vi) information
150 services or telecommunications services as defined in 47 U.S.C. 153 for content solely provided
151 by another person.

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

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

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

163 (b) For the purposes of this section, knowingly disseminating visual material by: (i)
164 reporting the matter to a law enforcement agency, to the department of elementary and secondary
165 education, to a parent, foster parent or guardian or to a teacher, principal or other relevant school
166 personnel; or (ii) affording a law enforcement agency, the department of elementary and
167 secondary education, a parent, foster parent or guardian or a teacher, principal or other relevant
168 school personnel access to the visual material for purposes within the agency's, department's or

169 person's role or such person's professional capacity shall not constitute dissemination in
170 violation of this section.

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

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

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

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