An Act to prevent abuse and exploitation
Chapter 118 of the Acts of 2024
Signed by Governor Healey on June 20, 2024

"Sexting" diversion program

Section 1: Amends MGL c. 12 by adding a new section, § 36, which mandates that the AG consult with the OCA, DESE, DYS, MDAA, CPCS and others to develop and implement a comprehensive diversion program about the activity commonly known as "sexting." The program shall provide adolescents with information regarding the:

i. Legal consequences and penalties for violations of MGL c. 272, § 29D, commonly known as "sexting;"
ii. Non-Legal consequences of possessing or disseminating sexual images, such as loss of education and employment opportunities, effects on relationships and exclusion from school programs and extracurricular activities;
iii. Unforeseen consequences of possessing or disseminating sexual images online, including impacting relationships, and the risk of trafficking;
iv. Responsible use of visual material digitization; and
v. Intersection between adolescents possessing or dissemination sexual images with bullying, sexual assault and dating violence.

The AG shall research effective diversion programs. The OCA shall annually review the diversion program and provide recommendations to the AGO, as needed. The educational diversion program shall be used as part of any diversion program required pursuant to MGL. c. 119, § 54B and shall be available to school districts for use in educational programs.

District Attorneys and the court may refer a child, when appropriate, to the educational diversion program as required pursuant to MGL c. 119, § 54B.

Section 2: Amends MGL c. 71 by adding a new section, § 100 that mandates DESE to encourage schools to teach media literacy and to use content from the comprehensive educational diversion program.

Pre-arraignment diversion

Section 3: (a) Amends MGL c. 119 by adding a new section, § 54B that mandates the court, prior to arraignment, when a child is alleged delinquent for violating MGL c. 272, §§ 29B (dissemination of visual material of a child in the state of nudity or sexual conduct), 29C (knowingly purchasing or possessing visual material of a child depicted in sexual conduct), or 29D (possessing, purchasing or disseminating any visual material defined in section 31while under the age of criminal majority) to indefinitely stay the arraignment and direct the child to enter and complete the educational diversion program. *However, the DA may object in writing to the stay of arraignment and the court shall determine whether to direct the child to the diversion program.* The court may request the assistance of Probation or the AGO to make eligibility determinations.

(b) The AGO shall submit a report indicating the child's successful completion of diversion. If the court finds, on its own motion or at the request of the DA, that the child has failed to complete the diversion program, the court shall bring the case forward, arraign the child and restore the delinquency complaint for further proceedings after allowing the DA and counsel for the child to be heard on the motion.

Pre-trial probation and diversion

(c) If a child is alleged delinquent for violating MGL c. 272, §§ 29B, 29C, or 29D and has been arraigned, the court shall consult with counsel for the child and place the child on pretrial probation. Probation conditions shall include, but not be limited to, completion of the educational diversion program. *The DA may object in writing to pretrial probation and the court shall determine whether to place the child on pretrial probation.* The court may request the assistance of Probation or the AGO to make eligibility determinations.

(d) The AGO shall submit a report indicating the child's successful completion of diversion. If the court finds, on its own motion or at the request of the DA, 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.

Information not admissible against a child

(e) The following shall not be admissible against a child in any proceedings: the decision not to enter the diversion program, the DA's objection to the stay of arraignment or pretrial probation, Probation or the AGO's assessment, and any statements made by the child or the child's family during any assessments or hearings. *Any statements, disclosures or records made during the stay of proceedings or pretrial probation shall not be disclosed at any time to the Commonwealth or other law enforcement in connection with the investigation or prosecution of any charges against the child or a codefendant.*

Amendments to c. 209A, Abuse Prevention

Section 4: Amends MGL c. 209A by striking the definition of "abuse" and inserting the following definitions:

"Abuse:" Any of the following acts between family or household members:

a) Attempting to cause or causing physical harm;
b) Placing another in fear of serious physical harm;
c) Causing another to engage involuntarily in sexual relations by force, threat or duress;
d) Coercive control

"Coercive control:"

a) Pattern of behavior 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, including but not limited to:

i. Isolating them from friends, relatives or other sources of support;
ii. Depriving basic needs;
iii. Controlling, regulating or monitoring their activities, communications, movements, finances, economic resources, or access to services, including through technological means;
iv. Compelling them to abstain from or engage in a specific behavior or activity, including engaging in criminal activity;
v. Harming or threatening to harm a child or relative of them;
vi. Committing or threatening to commit cruelty or abuse to their pets;
vii. Intentionally damaging their property;

viii. Threating to publish sensitive personal information, including sexually explicit images;
ix. Threatening to make false reports to law enforcement or other government officials; or
x. Using repeated court actions found by a court not to be warranted by existing law or good faith argument.

b) 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, including but not limited to:

i. Harming or attempting to harm a child, relative or household member:
ii. Committing or attempting to commit abuse to a pet; or
iii. Publishing or attempting to publish sexually explicit images of the family or household member.

Amendments to c. 265, Criminal Harassment; criminalization of "revenge porn"

Section 5: Amends MGL c. 265, § 43A (criminal harassment) by increasing the fine of not more than $1,000 to not more than $5,000.

Section 6: Further amends MGL c. 265, § 43A by striking subsection (b), the penalty for second or subsequent criminal harassment convictions, and replaces it with the following subsections:

(b)(1) Defines the following terms: "Digitization," "Distribute," "Identifiable," "Partially nude," "Publish," and "Visual material."

(2) Whoever knowingly distributes visual material (including produced by digitization), depicting another person, either identifiable in the visual material or identified by the distributing person, who is nude, partially nude or engaged in sexual conduct, when the distribution causes physical or economic injury or substantial emotional distress, and does so with the intent to cause (or reckless disregard for the likelihood to cause) harm, harassment, intimidation, threaten, coercion or substantial emotional distress; does so without the depicted person's consent; and with the 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 precludes a prosecution under c. 272, § 29C.
(3) Consent to create visual material shall not be consent to the distribution of such material.
(4) Subsection (b) shall not preclude other remedies available at law or in equity.
(5) *Visual material that is part of any court record from the prosecution under this subsection shall not be open to public inspection, and unless the court orders otherwise in writing, shall only be made available for inspection by court personnel to a prosecuting attorney, the defendant's attorney, a defendant or a victim connected to the prosecution. Nothing in this subsection prohibits disclosure, inspection, or use of the visual material in the underlying prosecution or other related court proceeding in accordance with evidentiary and procedural rules or court order.*
(6) This subsection shall not apply to visual material that is voluntary or consensual and occurring in a commercial setting or a place where a person does not have a reasonable expectation of privacy. This subsection shall also not apply to visual material distribution made in the public interest (including reporting the unlawful conduct); lawful and common practices in law enforcement or medical treatment) including telemedicine; visual material distribution on a matter of public concern; interactive computer services for content solely provided by another person; or information services or telecommunication services for content solely provided by another person.

(c) Second or subsequent offenses under this section shall by punished by imprisonment in HOC for not more than 2 ½ years or in a state prison for not more than 10 years, by a fine of not more than $15,000, or both.

Amends c. 272, Crimes Against Chastity, Morality, Decency and Good Order

Section 7: Amends MGL c. 272 by adding a new section, § 29D:

(a) Persons under the age of criminal majority who possess, purchase, or disseminates to another visual material in violation of section 29B or 29C of this chapter, or who uploads visual material of another to the internet in violation of law may be punished by a commitment to DYS.
(b) Knowingly disseminating visual material by reporting the matter to law enforcement, parent, guardian, or school personnel shall not constitute dissemination in violation of this section.
(c) Adjudications under this section shall not require SORB registration and no data relating to the adjudication shall be transmitted to the SORB. Adjudications shall be eligible for expungement.
(d) Provides juvenile court exclusive jurisdiction of proceedings under this section.
(e) Lists affirmative defenses for crimes alleged to be committed by a juvenile under sections 29A, 29B, 29C or 29D.
(f) This section does not preclude prosecutions for disorderly conduct, public indecency, child pornography, or any other applicable law.

New DAO/MDAA annual reporting requirements

(g) The MDAA shall work with the District Attorneys to report annually, not later than February 15, to the Chairs of the Judiciary Committee and the House and Senate Clerks the number of cases under § 29D:

i. referred to the DAO;
ii. arraigned for an alleged violation;
iii. where no action was taken by the DAO;
iv. where the alleged offender was directed to enter the educational diversion program;
v. where the DAO objected to diversion, and of those, the number of cases where the court proceeded with diversion over the DAO's objection;
vi. where arraignments were conducted after the alleged offender failed to complete the diversion program; and
vii. to the extent feasible, the age, gender identity and race of each person diverted or arraigned (without identifying information).

Amends SOL for A&B on family/household member, or someone with active restraining order

Section 8: Amends MGL c. 277, by § 63 (limitations of criminal prosecutions) by extending the SOL to 15 years for assault and battery on a family or household member, or against someone with an active protection order.