



# LEGAL UPDATE

## AN ACT TO PREVENT ABUSE AND EXPLOITATION

The Governor signed An Act to Prevent Abuse and Exploitation (commonly referred to as the Revenge Porn bill) on June 20, 2024. The law goes into effect on September 18, 2024. The following is a summary of the Act as it applies to law enforcement.

### **CHANGES TO MGL C 209A § 1**

The Act made two changes to the definitions contained in MGL c 209A § 1. First, the definition of “abuse” has been amended. Second, a new term, “coercive control” has been added. The new definitions are:

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

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm;
- (c) causing another to engage involuntarily in sexual relations by force, threat or duress;
- (d) coercive control.

“Coercive control”, either:

- (a) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce or compel compliance of a family or household member that causes that 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 the family or household member from friends, relatives or other sources of support;
  - (ii) depriving the family or household member of basic needs;
  - (iii) controlling, regulating or monitoring the family or household member’s

activities, communications, movements, finances, economic resources or access to services, including through technological means;

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

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

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

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

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

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

(b) a 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 of:

(i) harming or attempting to harm a child or relative of the family or household member;

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

(iii) publishing or attempting to publish sexually explicit images of the family or household member.

#### **CHANGES TO CRIMINAL HARASSMENT STATUTE: MGL C 265 § 43A**

The fine for a first offense has increased from \$1,000.00 to \$5,000.00. The potential house of correction sentence remains at no more than 2 ½ yrs.

The penalty for a second or subsequent offense can now include a fine of up to \$15,000. The language of the statute related to subsequent offenses now reads:

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

The criminal harassment statute has also been amended by adding the following subsection:

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

**For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.**

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

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

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

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

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

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

(2) Whoever knowingly distributes visual material, including visual material produced by digitization, depicting another person, who is either identifiable in the visual material or identified by the distributing person, who is nude, partially nude or engaged in sexual conduct and to whom the distribution causes physical or economic injury or substantial emotional distress, and distributes such visual material with:

(i) the intent to harm, harass, intimidate, threaten, coerce or cause substantial emotional distress; or

(ii) reckless disregard for:

(A) the likelihood that the person depicted will suffer harm, harassment, intimidation, threat, coercion or substantial emotional distress;

(B) the depicted person’s lack of consent to the distribution of such visual material, including material produced by digitization; and

(C) the depicted person’s 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 shall preclude a prosecution under section 29C of chapter 272.

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- (3) For the purposes of this subsection, consent to the creation of visual material shall not constitute consent to the distribution of the visual material.
- (4) This subsection shall not preclude other remedies available at law or in equity including, but not limited to, the issuance by a court of competent jurisdiction of appropriate orders to restrain or prevent the distribution of visual material in violation of this subsection.
- (5) Visual material that is part of any court record arising from a prosecution under this subsection shall not be open to public inspection and, unless otherwise ordered in writing by the court, shall only be made available for inspection by court personnel to a district attorney, a defendant's attorney, a defendant or a victim connected to such prosecution; provided, however, that this paragraph shall not prohibit disclosure, inspection or other use of the visual material in the underlying prosecution or any related court proceeding in accordance with applicable evidentiary and procedural rules or a court order.
- (6) This subsection shall not apply to:
  - (i) visual material involving nudity, partial nudity or sexual conduct that is voluntary or consensual and occurring
    - (A) in a commercial setting, or
    - (B) in a place where a person does not have a reasonable expectation of privacy;
  - (ii) distribution made in the public interest, including the reporting of unlawful conduct;
  - (iii) lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings or medical treatment, including telemedicine;
  - (iv) distribution of visual material that constitutes a matter of public concern;
  - (v) interactive computer services as defined in 47 U.S.C. 230(f)(2) for content solely provided by another person; or
  - (vi) information services or telecommunications services as defined in 47 U.S.C. 153 for content solely provided by another person.

#### **DIVERSION FOR JUVENILES CHARGED WITH CERTAIN OFFENSES**

MGL c 119, the chapter of our General Laws aimed at the protection and care of children, has been amended to include a new section: § 54B. This section requires juvenile court judges to enroll juveniles charged with certain crimes into an educational diversion program to be developed by the Attorney General's office. The crimes are:

MGL c 272 § 29B: dissemination of visual material of child in state of nudity or sexual conduct;

MGL c 272 § 29C: knowing purchase or possession of visual material of child depicted in sexual conduct; and

MGL c 272 § 29D: minors who possess, purchase or disseminates visual material in violation of § 29B or § 29C.

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The District Attorney can object to the placement of a juvenile into the diversion program at which point the judge will consider the objection and determine whether to enroll the juvenile in the program.

### **CHANGES TO MGL C 272: CRIMES AGAINST CHASTITY, MORALITY, DECENCY, AND GOOD ORDER**

A new section has been added to MGL c 272 regarding minors. The new section reads as follows:

#### **MGL c 272 § 29D:**

- (a) Whoever, while under the age of criminal majority, possesses, purchases or disseminates, including by uploading to an internet website, any visual material, as defined in section 31, in violation of section 29B or 29C may be punished in accordance with section 58 of chapter 119.
- (b) For the purposes of this section, knowingly disseminating visual material by:
  - (i) reporting the matter to a law enforcement agency, to the department of elementary and secondary education or to a parent, foster parent, guardian, teacher, principal or other relevant school personnel; or
  - (ii) affording a law enforcement agency, the department of elementary and secondary education or a parent, foster parent, guardian, teacher, principal or other relevant school personnel access to the visual material for purposes within the agency's, department's or person's position, authority or capacity
 shall not constitute dissemination in violation of this section.
- (c) A person who has been adjudicated under this section shall not be required to register with the sex offender registry board and no data relating to such adjudication shall be transmitted to the board pursuant to section 178E of chapter 6. A person who has been adjudicated under this section shall not be subject to section 100J of chapter 276 and shall be eligible for expungement of any criminal records of such adjudication.
- (d) The juvenile court department shall have exclusive jurisdiction of proceedings under this section.
- (e) It shall be an affirmative defense for any crime alleged to have been committed by a juvenile under section 29A, 29B, 29C or this section that:
  - (i) the visual material portrays no person other than the juvenile; or
  - (ii)
    - (A) the juvenile was under 18 years of age at the time of the alleged offense;
    - (B) the visual material portrays only an individual age 16 or older;
    - (C) the visual material was knowingly and voluntarily created and provided to the juvenile by the individual in the image; and
    - (D) the juvenile has not provided or made available the material to another person except the individual depicted who originally sent the material to the juvenile.

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

Subsection (g) imposes certain reporting requirements on the Massachusetts District Attorney's Association.

#### **CHANGE TO STATUTE OF LIMITATIONS**

The Act added MGL c 265 §§ 13M (assault and battery on a family or household member) and 13A(b)(iii) (assault and battery upon another while a protective order is in effect) to the list of crimes with a 10-year statute of limitations.

NOTE: Application of the statute of limitations is complicated and nuanced. Officers are encouraged to consult with their local prosecutor's office before charging cases that could implicate the statute of limitations.

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