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To the Honorable Senate and House of Representatives,

In 2017 and in 2019, I filed nearly identical bills that responded to important concerns raised by the Governor's Council to Address Sexual Assault and Domestic Violence regarding the laws governing the harmful distribution of sexually explicit visual materials by both adults and teenagers in Massachusetts. Today I am again submitting for your consideration "An Act Relative to the Harmful Distribution of Sexually Explicit Visual Material," because parents, educators, law enforcement, the courts, and our communities continue to confront the same issues addressed by this legislation.

Our administration is deeply concerned by the serious harm and painful trauma suffered by individuals who are victimized by a perpetrator's malicious and vengeful distribution of explicit images. Through frequent news reports and countless victim impact statements, we have heard the painful personal stories about the devastating and lasting effects of on victims of cyberbullying and the non-consensual dissemination of sexually explicit materials. Today, the Lt. Governor and I announced the filing of this legislation at a roundtable event where we were joined by several survivors whose stories the urgent need for the enactment of this legislation.

The legislation I am filing today responds to the Council's concern about unintended problems of the current law banning child pornography in the Commonwealth. That law subjects a minor who engages in peer-to-peer distribution of sexually explicit visual material to criminal prosecution for the felony of distributing or possessing child pornography. While that conduct falls within the letter of the law, lawmakers did not intend for a minor engaged in such conduct to be exposed to such a severe sanction. The legislation I am filing today addresses this issue in three ways.

First, the legislation creates a presumption that any child charged with distributing or possessing child pornography should be placed in an educational diversion program rather than go through the juvenile justice process and potentially be committed to the Department of Youth Services. District Attorneys and the Attorney General will retain prosecutorial discretion to use the juvenile justice process in appropriate cases, but the default should be diversion rather than prosecution.

Second, for those cases in which the juvenile justice system is appropriate, this legislation gives law enforcement a new tool, allowing minors to be charged with a misdemeanor rather than a felony. Juveniles prosecuted for this new misdemeanor offense would be entitled to the same presumption that they should be diverted from the juvenile justice system.

Third, and most importantly, this legislation requires schools to provide age-appropriate education on the risks and harmful effects of the creation, possession, and distribution of sexually explicit visual depictions of minors as they relate to cyber-bullying. Using school's existing cyber-bullying programming as a framework, this will promote prevention and early intervention, and reduce the number of teens engaged in harmful distribution of these sorts of images.

This legislation would also finally remedy a gap in Massachusetts law by criminalizing conduct widely referred to as "revenge pornography" Our laws do not currently prohibit a person from taking a sexually explicit image or recording that was lawfully obtained from a romantic partner and then distributing it with the intent to harm the person depicted and without that person's consent. Our laws should recognize the serious nature of this behavior with a serious consequence. This legislation closes the gap in our law by creating a new felony offense and empowering judges in criminal proceedings to issue appropriate orders to restrain or prevent the future commission of the new offense. Over thirty other states have taken similar steps to protect their citizens by criminalizing this conduct. The citizens of Massachusetts deserve the same level of protections.

This bill makes important corrections in the laws of the Commonwealth addressing non-consensual distribution of private and potentially harmful images. I urge your prompt enactment of this legislation.

Respectfully submitted,



Charles D. Baker
Governor