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By Mr. McCarthy, a petition (accompanied by bill, Senate, No. 1813) of Robert E. McCarthy for legislation to provide for the protection and welfare of certain children. The Judiciary.

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-seven.

### AN ACT TO PROVIDE FOR THE PROTECTION AND WELFARE OF CERTAIN CHILDREN.

*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 149 of the General Laws is hereby  
2 amended by inserting after section 104 the following new sec-  
3 tion: —

4 *Section 104A.* Whoever with knowledge that a person is a  
5 child under eighteen years of age, or who while in possession  
6 of such facts that he should have reason to know that such  
7 person is a child under eighteen years of age, hires, employs,  
8 procurs, uses, causes, or encourages such child to pose or be  
9 exhibited in a state of nudity or to participate or engage in  
10 any act that depicts, describes or represents sexual conduct  
11 for purpose of visual representation or reproduction in any  
12 book, magazine, pamphlet, motion picture film, photograph, or  
13 picture shall be punished by imprisonment in the state prison  
14 for a term of not less than five nor more than seven years, or  
15 by a fine of not less than three nor more than five thousand  
16 dollars, or by both such fine and imprisonment.

17 It shall be an affirmative defense in any prosecution pursuant  
18 to this section if the evidence proves that such visual repre-  
19 sentation or reproduction of any posture or exhibition in a  
20 state of nudity was produced, processed, published, printed, or  
21 manufactured for an educational purpose for a bona fide  
22 school, museum, or library.

23 For purposes of this section the words "nudity" and "sexual  
24 conduct" shall have the same meaning as that defined in sec-  
25 tion thirty-one of Chapter Two Hundred and Seventy-two.

1 SECTION 2. Chapter 272 of the General Laws is hereby  
2 amended by inserting after section 29 the following new sec-  
3 tion: —

4 *Section 29A.* Whoever disseminates any visual material that  
5 contains a representation or reproduction of any posture or ex-  
6 hibition in a state of nudity or of any act that depicts, de-  
7 scribes, or represents sexual conduct participated or engaged  
8 in by a child who, according to common judgment and per-  
9 ception, appears to be under eighteen years of age, knowing  
10 the contents of such visual material or with sufficient facts in  
11 his possession to have knowledge of the contents thereof, or  
12 whoever has in his possession any such visual material know-  
13 ing the contents or with sufficient facts in his possession to  
14 have knowledge of the contents thereof, with the intent to  
15 disseminate the same, shall be punished in the state prison  
16 for a term of not less than five nor more than seven years or  
17 by a fine of not less than three nor more than five thousand  
18 dollars, or by both such fine and imprisonment.

19 It shall be an affirmative defense in any prosecution pursuant  
20 to this section if the evidence proves that such dissemination  
21 of any visual material that contains a representation or re-  
22 production of any posture or exhibition in a state of nudity  
23 was produced, processed, published, printed, or manufactured  
24 for an educational purpose for a bona fide school, museum, or  
25 library.

1 SECTION 3. Chapter 272 is hereby further amended by in-  
2 serting after section 30 the following new section: —

3 *Section 30A.* The Superior Court shall also have jurisdiction  
4 to enjoin the dissemination of any visual material that con-  
5 tains a representation or reproduction of any posture or ex-  
6 hibition in a state of nudity or of any act that depicts, de-  
7 scribes, or represents sexual conduct participated or engaged  
8 in by a child who, according to common judgment and per-  
9 ception appears to be under eighteen years of age. The pro-  
10 cedures for issuance of such injunction shall be the same as  
11 those provided in section 30 of this chapter, and are in addi-  
12 tion to criminal proceedings initiated under any provisions of  
13 the General Laws, and not a condition precedent thereto.

1 SECTION 4. Chapter 272 is hereby further amended by  
2 striking the first paragraph of section 31 and inserting in  
3 place thereof the following: — As used in sections twenty-  
4 eight, twenty-eight C, twenty-eight D, twenty-eight E, twenty-  
5 nine, twenty-nine A, thirty, and thirty A, the following words  
6 shall, unless the context requires otherwise, have the follow-  
7 ing meanings: —

1 SECTION 5. Section 31 is hereby further amended by in-  
2 serting after the second sentence in the definition of “nudity”  
3 the following: — In the case of pre-pubertal persons nudity  
4 shall mean uncovered or less than opaquely covered pre-  
5 pubertal human genitals or pubic areas.

1 SECTION 6. Section 31 is hereby further amended by insert-  
2 ing after the definition of “sexual excitement” the following  
3 definition: — “Visual Material” any motion picture film, pic-  
4 ture, photograph, or any book, magazine, or pamphlet that  
5 contains a picture, photograph or similar visual representa-  
6 tion or reproduction. Undeveloped photograph, pictures, mo-  
7 tion picture films and similar visual representations or repro-  
8 ductions may be visual materials notwithstanding that pro-  
9 cessing, development or similar acts may be required to make  
10 the contents thereof apparent.

1 SECTION 7. Chapter 272 of the General Laws is hereby fur-  
2 ther amended by striking the words “sections twenty-eight  
3 and twenty-nine” in section 32 and inserting in place thereof  
4 the following: — “sections twenty-eight, twenty-nine and  
5 twenty-nine A.”

