

HOUSE No. 1523

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relating to comprehensive protection from childhood sexual abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ronald Mariano	3rd Norfolk
Barbara A. L'Italien	18th Essex
Alice K. Wolf	25th Middlesex
John W. Scibak	2nd Hampshire
Garrett J. Bradley	3rd Plymouth
Robert S. Hargraves	1st Middlesex
A. Stephen Tobin	2nd Norfolk
Kevin G. Honan	17th Suffolk
Bradley H. Jones, Jr.	20th Middlesex
Robert P. Spellane	13th Worcester
Cheryl A. Coakley-Rivera	10th Hampden
Sean Garballey	23rd Middlesex
Mary E. Grant	6th Essex
James Arciero	2nd Middlesex
Alice Hanlon Peisch	14th Norfolk
Paul Kujawski	8th Worcester
Robert L. Hedlund	Plymouth and Norfolk
William Smitty Pignatelli	4th Berkshire
Peter J. Koutoujian	10th Middlesex

Anne M. Gobi	5th Worcester
James Dwyer	30th Middlesex
Jennifer M. Callahan	18th Worcester
Walter F. Timilty	7th Norfolk
Steven A. Baddour	First Essex
James E. Timilty	Bristol and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1592 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATING TO COMPREHENSIVE PROTECTION FROM CHILDHOOD SEXUAL
ABUSE.

*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. This Act may be cited as the Comprehensive Protection from Childhood
2 Sexual Abuse Act of 2009.

3 SECTION 2. Section 51A of Chapter 119 of the General Laws, as most recently amended by
4 Section 97 of Chapter 176 of the Acts of 2008, shall be amended by adding at the end of
5 subsection (k) the following new paragraph:-

6 All corporations and other institutions, which employ mandated reporters not professionally
7 licensed by the commonwealth, shall institute a program to implement the reporting
8 requirements of this section. Such program shall include, at a minimum, (i) the promulgation of a
9 written protocol to be followed when a 51A report is required; (ii) an education program for each
10 mandated reporter; and (iii) the posting, in a prominent public location, of the requirements of
11 this section and the penalties for non-compliance.

12 SECTION 3. Section 51A of Chapter 119 of the General Laws, as most recently amended by
13 Section 96 of Chapter 176 of the Acts of 2008, shall be amended by inserting, in the last sentence
14 of subsection (c), the words “a sexual assault or” before the words “ serious bodily injury.”

15 SECTION 4. Section 51A of Chapter 119 of the General Laws, as most recently amended by
16 Section 96 of Chapter 176 of the Acts of 2008, shall be amended by adding at the end of
17 subsection (c) the following sentence:-

18 Any corporation or other institution which employs a mandated reporter who fails to make a
19 report required by this section, shall be punished by a fine of not more than one hundred
20 thousand dollars. It shall be a defense to any prosecution under this section that the corporation
21 or other institution had complied with the requirements of subsection (k).

22 SECTION 5. Section 51A of Chapter 119 of the General Laws, as most recently amended by
23 Section 95 of Chapter 176 of the Acts of 2008, shall be amended by adding at the end of
24 subsection (a) the following sentence: -

25 A mandated reporter who has reasonable cause to believe that a person who is alleged to have
26 sexually abused a child in the past, presently represents a credible threat to a child under the age
27 of eighteen years in a child or youth serving organization, shall have the same obligation to make
28 oral and written reports of such threat to the appropriate law enforcement agency or official and
29 the department.

30 SECTION 6. Chapter 258C of the General Laws is hereby amended by striking out section 2
31 (b), as so appearing, and inserting in place thereof the following section:-

32 (b) No compensation shall be paid under this chapter unless the claimant demonstrates that the
33 crime was reported to the police or other law enforcement authorities or to an agency or entity
34 obligated by law to report complaints of criminal misconduct to law enforcement authorities.

35 Except in the case where the division finds such report to have been delayed for good cause, such
36 report shall have been made within five days after the occurrence of such crime. In the case of a
37 claimant who was sexually abused as a minor, such good cause shall include the report of any
38 duly licensed mental health professional stating an opinion that the claimant did not make the
39 connection between the sexual abuse and the harm suffered as a result by the claimant at the time
40 the abuse occurred, and that claimant's failure to make the connection was consistent with the
41 typical responses by such victims of childhood sexual abuse.

42 SECTION 7. Chapter 258C of the General Laws is hereby amended by striking out section 5 (a)
43 (1), as so appearing, and inserting in place thereof the following section: -

44 (a) (1) A claim for compensation under this chapter shall be filed within three years of the date of
45 the crime. In the case of a claimant who was sexually abused as a minor, said three years shall
46 commence to run when the claimant first makes the connection between the sexual abuse and the
47 harm suffered as a result by the claimant. The report of any duly licensed mental health
48 professional stating an opinion as to the date when the claimant first made the connection
49 between the sexual abuse and the harm suffered by the claimant, and that the claimant's failure to
50 make the connection prior to that date was consistent with the typical responses by such victims
51 of childhood sexual abuse, shall be prima facie evidence in all proceedings under this chapter.

52 SECTION 8. Chapter 277 of the General Laws is hereby amended by striking out the second and
53 third sentences of section 63, as so appearing, and inserting in place thereof the following: -

54 An indictment or complaint for an offense set forth in section 13B, 13F, 13H, 13L, 22, 22A,
55 23 or 24B of chapter 265 or for conspiracy to commit any of these offenses, or an accessory
56 thereto, or any one or more of them, may be found and filed at any time after the commission of
57 such offense, provided that the victim was under the age of 18 when the offense was committed.

58 SECTION 9. Section 4C of Chapter 260 of the General Laws, as appearing in the 2004
59 Official Edition, shall be amended by striking out the first paragraph thereof as so appearing, and
60 inserting in place thereof the following: -

61 Any actions for assault and battery alleging the defendant sexually abused a minor, or for
62 negligence alleging that the defendant negligently supervised a third person who sexually abused
63 a minor, or that the defendant's conduct caused or contributed to the sexual abuse of a minor by a
64 third person, may be commenced at any time.

65 SECTION 10. Section 9 shall take effect six (6) months after passage, and shall have
66 prospective application only. As to all actions under Section 4C of Chapter 260 which are
67 pending on the effective date of section 9, and all such actions commenced under Section
68 4C within a two (2) year period after the effective date of section 9, it shall not be a defense that
69 such action is barred by any applicable statute of limitations.

70 SECTION 11. All actions under Section 4C of Chapter 260, in which the acts alleged occurred
71 prior to the effective date of Section 9, but which are commenced after the two year period set
72 forth in Section 10, shall be governed by the provisions of Section 4C of Chapter 260 as it was in
73 effect prior to the enactment of Section 9.

74 SECTION 12. Section 85K of Chapter 231 of the General Laws, as appearing in the 2004
75 Official Edition, shall be amended by adding at the end thereof the following:
76 Notwithstanding any other provision of this section, the limitations on liability set forth in this
77 section shall not apply if the claim is for intentional or negligent conduct which caused or
78 contributed to the sexual abuse of a minor. For purposes of this section, "sexual abuse" shall be
79 defined as set forth in section 4C of chapter 260.

80 SECTION 13. Section 85W of Chapter 231 of the General Laws, as appearing in the

81 2004 Official Edition, shall be amended by adding at the end thereof the following:

82 Notwithstanding any other provision of this section, the limitations on liability set forth in this
83 section shall not apply if the claim is for intentional or negligent conduct which caused or
84 contributed to the sexual abuse of a minor. For purposes of this section, "sexual abuse" shall be
85 defined as set forth in section 4C of chapter 260.

86 SECTION 14. The provisions of Sections 12 & 13 shall apply to all claims under Section
87 4C of Chapter 260 which have accrued, and to all actions which are pending, on the date upon
88 which it becomes effective.

89 SECTION 15. The provisions of Sections 12 & 13 shall be deemed to be retroactive to the
90 fullest extent permitted under the Constitution of the United States and the Declaration of Rights
91 of the Commonwealth of Massachusetts.

92 SECTION 16. Except as otherwise provided herein, the provisions of this bill shall become
93 effective upon passage.

94 SECTION 17. Each section of this Act shall be separable and shall continue in effect if any
95 provision hereof is deemed to be unconstitutional or otherwise ineffective.