

HOUSE No. 4265

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle M. DuBois and Carmine L. Gentile

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 adoption of the accompanying bill:

An Act to protect victims of rape and children conceived during the commission of said offense.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|----------------------------------|--------------------------------|
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> |
| <i>Carmine L. Gentile</i> | <i>13th Middlesex</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> |
| <i>Donald R. Berthiaume, Jr.</i> | <i>5th Worcester</i> |
| <i>Nicholas A. Boldyga</i> | <i>3rd Hampden</i> |
| <i>Harriette L. Chandler</i> | <i>First Worcester</i> |
| <i>Edward F. Coppinger</i> | <i>10th Suffolk</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |
| <i>David F. DeCoste</i> | <i>5th Plymouth</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Carole A. Fiola</i> | <i>6th Bristol</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> |
| <i>Randy Hunt</i> | <i>5th Barnstable</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |

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| <i>Barbara L'Italien</i> | <i>Second Essex and Middlesex</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> |
| <i>Mathew Muratore</i> | <i>1st Plymouth</i> |
| <i>Keiko M. Orrall</i> | <i>12th Bristol</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Tom Sannicandro</i> | <i>7th Middlesex</i> |
| <i>Jose F. Tosado</i> | <i>9th Hampden</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> |

HOUSE No. 4265

By Representatives DuBois of Brockton and Gentile of Sudbury, a petition (subject to Joint Rule 12) of Michelle M. DuBois, Carmine L. Gentile and others for legislation to protect victims of rape and children conceived during the commission of said offense. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to protect victims of rape and children conceived during the commission of said offense.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect rape victims and their children and to ensure that convicted rapists cannot use the court system to further assault said rape victim, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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. Subsection (a) of section 3 of chapter 209C of the General Laws, as
2 appearing in the 2014 Official Edition, is hereby amended by striking out the last sentence.

3 SECTION 2. The first paragraph of subsection (e) of section 10 of said chapter 209C, as
4 so appearing, is hereby amended by striking out the last sentence.

5 SECTION 3. Said chapter 209C is hereby amended by inserting after section 10 the
6 following section:-

7 Section 10A. (a) (1) Upon or after the adjudication of an assault or rape under section
8 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or
9 17 of chapter 272, the court that maintained jurisdiction for the adjudication where a defendant

10 was convicted of, was granted a continuance without a finding for or otherwise pleaded guilty to
11 said offense shall hold a hearing to determine if a child was conceived during the commission of
12 said offense.

13 In these matters when the court finds upon a showing by a preponderance of evidence
14 that pregnancy was caused by unwanted sexual conduct, no parental rights can be presumed,
15 adjudicated or established, nor can the probate and family court assert jurisdiction to determine
16 the rights or interests of any person with regard to said pregnancy or child born from said
17 pregnancy.

18 (2) If the court finds upon a showing by a preponderance of evidence that a child was
19 conceived during the commission of said offense and the defendant is the biological source of
20 the child's conception: (1) a rebuttable presumption shall be established that the defendant is
21 unfit and it is not in the best interests of the child to be placed in sole custody, shared legal
22 custody, or shared physical custody with the defendant; provided that, this presumption may be
23 overcome with regard to shared legal custody or shared physical custody but not sole custody by
24 clear and convincing evidence substantiated by the Judge's written finding of facts that the
25 defendant is a fit parent and as such shared legal custody or shared physical custody is by the
26 Judge's written finding of facts in the best interests of the child and the other parent of the child
27 conceived during the commission of that offense consents to such shared legal custody or shared
28 physical custody; (2) the court may make a new custody order as to the legal and physical
29 custodial rights of the defendant; and (3) the court may modify any previous award granted to the
30 defendant for sole custody, shared legal custody or shared physical custody of the child.

31 (b) Notwithstanding section 10, no court shall make an order providing visitation rights
32 to a person who is the biological source of a child's conception if that person was convicted of,
33 was granted a continuance without a finding for or otherwise pleaded guilty to an assault or rape
34 under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or
35 section 2, 3, 4 or 17 of chapter 272 and is seeking to obtain visitation with the child who was
36 conceived during the commission of that offense, unless the judge makes an independent
37 determination substantiated by the Judge's written finding of facts that visitation is in the best
38 interests of the child and the other parent of the child conceived during the commission of that
39 offense consents to such visitation.

40 (c) Notwithstanding section 3 of chapter 215, the court that maintained jurisdiction for
41 the proceeding in which the defendant was convicted of, was granted a continuance without a
42 finding for or otherwise pleaded guilty to section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to
43 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272 shall possess exclusive
44 jurisdiction over: (i) a proceeding pursuant to this section or any modification of an order made
45 hereunder; (ii) any action or order related to the defendant's physical and legal custodial of the
46 child conceived during the commission of the offense, regardless of when any such action or
47 order was filed or adjudicated; and (iii) an action to require the convicted defendant to pay
48 monetary restitution for the consequences of conception during unwanted sexual conduct
49 (pursuant to MGL Ch 119A) and any modification of an order or judgment resulting from such
50 support action.