

**SENATE . . . . . No. 875**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Patricia D. Jehlen***

*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>Patricia D. Jehlen</i> | <i>Second Middlesex</i>          |                 |
| <i>Michael O. Moore</i>   | <i>Second Worcester</i>          | <i>2/3/2017</i> |
| <i>Bruce E. Tarr</i>      | <i>First Essex and Middlesex</i> | <i>2/3/2017</i> |
| <i>Sal N. DiDomenico</i>  | <i>Middlesex and Suffolk</i>     | <i>2/3/2017</i> |

**SENATE . . . . . No. 875**

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By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 875) of Patricia D. Jehlen, Michael O. Moore, Bruce E. Tarr and Sal N. DiDomenico for legislation to protect victims of rape and children conceived during the commission of said offense. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

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

*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, a court in which the defendant in any such matter files a petition to determine  
10 paternity or for any matters related to the custody of or visitation with a child shall hold a hearing  
11 to determine if the child was conceived during the commission of said offense.

12 (2) If the court finds upon a showing by a preponderance of evidence that a child was  
13 conceived during the commission of said offense and the defendant is the biological source of  
14 the child's conception: (1) a presumption shall be established that the defendant is unfit and it is  
15 not in the best interests of the child to be placed in sole custody, shared legal custody, or shared  
16 physical custody with the defendant; provided that, the only way such presumption may be  
17 overcome with regard to shared legal custody or shared physical custody but not sole custody  
18 only upon petition by the rape victim and a written finding by the Judge on a clear and  
19 convincing evidence standard that the defendant is a fit parent and as such shared legal custody  
20 or shared physical custody is by the Judge's written finding of facts in the best interests of the  
21 child.; (2) the court may require the convicted defendant to pay monetary restitution for the  
22 consequences of conception during nonconsensual sexual conduct (pursuant to MGL Ch 119A)  
23 and any modification of an order or judgment resulting from such support action; (3)

24 the court may make a new custody order as to the legal and physical custodial rights of  
25 the defendant; and (4) the court may modify any previous award granted to the defendant for sole  
26 custody, shared legal custody or shared physical custody of the child.

27 (b) Notwithstanding section 10, no court shall make an order providing visitation rights  
28 to a person who is the biological source of a child's conception if that person was convicted of,  
29 was granted a continuance without a finding for or otherwise pleaded guilty to an assault or rape  
30 under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or  
31 section 2, 3, 4 or 17 of chapter 272 and is seeking to obtain visitation with the child who was  
32 conceived during the commission of that offense.

33 (c) In cases where there has been no conviction, continuance without a finding for or  
34 otherwise a plea of guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F,  
35 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272, upon any  
36 complaint to establish paternity and any request for custody or visitation under said complaint,  
37 the court shall consider evidence that such conduct occurred that would constitute a crime under  
38 said sections. If a court finds by clear and convincing evidence that such conduct occurred and  
39 a preponderance of evidence that the child that is the subject of the complaint was conceived  
40 during the commission of such conduct, (1) a presumption shall be established that the defendant  
41 is unfit and it is not in the best interests of the child to be placed in sole custody, shared legal  
42 custody, or shared physical custody with the defendant; provided that, the only way such  
43 presumption may be overcome with regard to shared legal custody or shared physical custody  
44 but not sole custody only upon petition by the rape victim and a written finding by the Judge on a  
45 clear and convincing evidence standard that the defendant is a fit parent and as such shared legal  
46 custody or shared physical custody is (by the Judge's written finding of facts) in the best interests  
47 of the child; (2) the court may require the convicted defendant to pay monetary restitution for the  
48 consequences of conception during nonconsensual sexual conduct (pursuant to MGL Ch 119A)  
49 and any modification of an order or judgment resulting from such support action; (3)

50 the court may make a new custody order as to the legal and physical custodial rights of  
51 the defendant; and (4) the court may modify any previous award granted to the defendant for sole  
52 custody, shared legal custody or shared physical custody of the child and (5) visitation may only  
53 be ordered upon petition by the rape victim and a written finding by the Judge that such  
54 visitation is in the best interest of the child.

55 SECTION 4. Chapter 215 is hereby amended by inserting in section 3 the following  
56 section (d) and renaming the current section (d) section (e):

57 In consideration of a petition to dispense with parental rights to consent to an adoption, if  
58 that person was convicted of, was granted a continuance without a finding for or otherwise  
59 pleaded guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to  
60 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272 or if after a hearing the  
61 court finds by clear and convincing evidence that conduct occurred that would constitute a crime  
62 under said sections and the court finds by a preponderance of the evidence that the child that is  
63 the subject of the petition to dispense with need for the consent of said parent was conceived  
64 during the commission of such offense or conduct, there shall be an irrebuttable presumption that  
65 said parent is unfit and that it is in the best interests of the child to dispense with the need for  
66 consent to adoption by the parent who committed such offense or conduct.