HOUSE DOCKET, NO. 1525 FILED ON: 1/17/2013

HOUSE . . . . . No. 1274

The Commonwealth of Massachusetts

PRESENTED BY:

Edward F. Coppinger

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:

An Act relative to eliminating the statute of limitations for sex crimes in Massachusetts for civil cases.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Edward F. Coppinger	*10th Suffolk*
Protect Mass Children - Joe DiPietro	*1150 Walnut Street* *Newton, MA 02461*
F. Jay Barrows	*1st Bristol*
Christine E. Canavan	*10th Plymouth*
Stephen L. DiNatale	*3rd Worcester*
Carolyn C. Dykema	*8th Middlesex*
Bradley H. Jones, Jr.	*20th Middlesex*
Kay Khan	*11th Middlesex*
Peter V. Kocot	*1st Hampshire*
Paul W. Mark	*2nd Berkshire*
Chris Walsh	*6th Middlesex*
Daniel B. Winslow	*9th Norfolk*
Joan Lovely	*Second Essex*
Angelo L. D'Emilia	*8th Plymouth*
John P. Fresolo	*16th Worcester*

Bradford Hill	*4th Essex*
Marc T. Lombardo	*22nd Middlesex*

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HOUSE . . . . . No. 1274

By Mr. Coppinger of Boston, a petition (accompanied by bill, House, No. 1274) of Edward F. Coppinger and others for legislation to eliminate the statute of limitations for sex crimes in civil cases. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to eliminating the statute of limitations for sex crimes in Massachusetts for civil cases.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 4 of chapter 258 of the General Laws, as appearing in the 2010 Official Edition is hereby amended by inserting after the word "section", in line 7, the following words:- "; provided, however, that a civil action against a public employer instituted pursuant to section 4C of chapter 260 shall not require presentment of such claim as defined in this section within 2 years after the date upon which the action arose but shall require presentment of such claim no later than 9 months prior to filing such complaint in a court of law.

SECTION 2. Said section 4 of chapter 258, as so appearing, is hereby further amended by inserting after the word "accrued", in line 13, the following words:- ";provided, however, that a civil action brought pursuant to section 4C of chapter 260 may be filed indefinitely."

SECTION 3. Section 3A of chapter 260 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "accrues" in line 3 the following:- "; provided however, that claims filed pursuant to section 4C of chapter 260 may be filed indefinitely; provided further, that a civil action against a public employer instituted pursuant to section 4C of chapter 260 shall not require presentment of such claim as defined in this section within 2 years after the date upon which the action arose but shall require presentment of such claim no later than 9 months prior to filing such complaint in a court of law."

SECTION 4. Section 4C of chapter 260 of the General Laws, as appearing in the in the 2010 Official Edition, is hereby amended by striking out, in line 2, the word "three" and inserting in place thereof the following figure:- indefinitely.

SECTION 5. (a) Notwithstanding section 4 of chapter 258, section 3A of chapter 260, section 4C of chapter 260 of the General Laws, or any other general or special law to the

23 contrary, a civil action filed pursuant to said section 4C except for sexual abuse as defined in
24 section 23 of chapter 265, solely because the applicable statute of limitations has or had expired,
25 is revived, and a cause of action may be commenced within 3 years of the bill's enactment. The
26 provisions of this section shall apply to any claim pending or commenced prior to the date of
27 enactment, including any claim dismissed with prejudice solely because of the expiration of the
28 applicable statute of limitations. Nothing in this section shall be construed to alter the applicable
29 statute of limitations period of an action that is not time barred as of the date of enactment;
30 provided further, that nothing herein shall be construed as superseding or limiting the effect of
31 the discovery rule or any other common law, statutory or constitutional authority or tolling
32 provision and any such rules, laws, authorities and provisions shall be fully enforceable apart
33 from or in addition to the rights afforded in this section.

34 (b) If the person alleged to have committed the act of sexual abuse against the victim was
35 employed by an institution, agency, firm, business, corporation, or other public or private legal
36 entity that owed a duty of care to the victim, or the alleged abuser and the minor were engaged in
37 some activity over which the entity had some degree of responsibility or control, damages
38 against the entity shall be awarded only if there is a finding of negligence on the part of the
39 entity; provided, that this subsection shall apply to any public entity notwithstanding section 4 of
40 chapter 258 of the general law or section 3A of chapter 260 of the general law.

41 (c) A certificate of merit shall be filed under oath with the court by the plaintiff that shall
42 include: (i) a declaration by the plaintiff that there is a reasonable and meritorious cause for the
43 filing of the action; and (ii) a notarized statement by a mental health professional licensed
44 pursuant to chapter 112 of the General Laws including, but not limited to, psychologists,
45 marriage and family therapists, mental health counselors, or clinical social workers which shall
46 set forth in reasonable detail the facts and opinions relied upon to conclude that there is a
47 reasonable basis to believe that the plaintiff was subject to one or more acts of sexual abuse as
48 defined in said section 4C that would cause emotional or psychological injury or condition.

49 (d) A defendant against whom a civil action is commenced pursuant to this section may
50 recover attorney's fees if the court determines that a false accusation was made with no basis in
51 fact and with malicious intent. A verdict in favor of the defendant shall not be the sole basis for a
52 determination that an accusation had no basis in fact and was made with malicious intent. The
53 court shall make an independent finding of an improper motive prior to awarding attorney's fees
54 under this section.

55 (e) This section shall not apply to any written, compromised settlement agreement which
56 has been entered into between a competent plaintiff and a defendant where the competent
57 plaintiff was represented by a licensed attorney at the time of the settlement, and the plaintiff
58 signed the agreement or a court of competent jurisdiction approved of such agreement if the
59 plaintiff was not competent at the time of the agreement.