

HOUSE No. 1523

The Commonwealth of Massachusetts

In the Year Two Thousand 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
4 amended by Section 97 of Chapter 176 of the Acts of 2008, shall be amended by adding at the
5 end of subsection (k) the following new paragraph:-

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

12 SECTION 3. Section 51A of Chapter 119 of the General Laws, as most recently
13 amended by Section 96 of Chapter 176 of the Acts of 2008, shall be amended by inserting, in the

14 last sentence of subsection (c), the words “a sexual assault or” before the words “ serious bodily
15 injury.”

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

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

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

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

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

33 (b) No compensation shall be paid under this chapter unless the claimant demonstrates
34 that the crime was reported to the police or other law enforcement authorities or to an agency or

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

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

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

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

56 An indictment or complaint for an offense set forth in section 13B, 13F, 13H, 13L, 22,
57 22A,

58 23 or 24B of chapter 265 or for conspiracy to commit any of these offenses, or an
59 accessory thereto, or any one or more of them, may be found and filed at any time after the
60 commission of such offense, provided that the victim was under the age of 18 when the offense
61 was committed.

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

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

69 SECTION 10. Section 9 shall take effect six (6) months after passage, and shall have
70 prospective application only. As to all actions under Section 4C of Chapter 260 which are
71 pending on the effective date of section 9, and all such actions commenced under Section
72 4C within a two (2) year period after the effective date of section 9, it shall not be a defense that
73 such action is barred by any applicable statute of limitations.

74 SECTION 11. All actions under Section 4C of Chapter 260, in which the acts alleged
75 occurred prior to the effective date of Section 9, but which are commenced after the two year

period set forth in Section 10, shall be governed by the provisions of Section 4C of Chapter 260 as it was in effect prior to the enactment of Section 9.

SECTION 12. Section 85K of Chapter 231 of the General Laws, as appearing in the 2004

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

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

SECTION 13. Section 85W of Chapter 231 of the General Laws, as appearing in the 2004 Official Edition, shall be amended by adding at the end thereof the following:

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

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

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

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

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