

HOUSE No. 1687

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relative To Rape Of An Elder Or A Person With A Disability..

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 Chapter 265 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by adding the following section after section 22B as so appearing:

3 Section 22C Rape of an elder or person with a disability; punishment

4 (1) Whoever has sexual intercourse or unnatural sexual intercourse with an elder, or with
5 a person with a disability as those terms are defined in section 13K of chapter 265, and compels
6 said elder or person with disability to submit by force and against his or her will or compels said
7 elder or person with a disability to submit by threat of bodily injury, shall be punished by
8 imprisonment in the state prison for life or for any term of years. A prosecution commenced
9 under the provisions of this section shall not be placed on file or continued without a finding.

10 (2) Whoever has sexual intercourse or unnatural sexual intercourse with an elder or a
11 person with a disability and compels said elder or person with disability to submit by force and
12 against his or her will or compels said elder or person with a disability to submit by threat of
13 bodily injury and:

14 (a) the sexual intercourse or unnatural sexual intercourse is committed during the
15 commission or attempted commission of any of the following offenses: (1) armed burglary as set
16 forth in section 14 of chapter 266; (2) unarmed burglary as set forth in section 15 of said chapter
17 266; (3) breaking and entering as set forth in section 16 of said chapter 266; (4) entering without
18 breaking as set forth in section 17 of said chapter 266; (5) breaking and entering into a dwelling
19 house as set forth in section 18 of said chapter 266; (6) kidnapping as set forth in section 26 of
20 chapter 265; (7) armed robbery as set forth in section 17 of said chapter 265; (8) unarmed
21 robbery as set forth in section 19 of said chapter 265; (9) assault and battery with a dangerous
22 weapon or assault with a dangerous weapon as set forth in sections 15A and 15B of said chapter
23 265; or (10) home invasion as set forth in section 18C of said chapter 265;

24 (b) poses or exhibits the elder or person with a disability in a state of nudity or sexual
25 conduct;

26 (c) the sexual intercourse or unnatural sexual intercourse results in or is committed by
27 means of an act or acts resulting in bodily injury as defined in section 13K of chapter 265;

28 (d) the sexual intercourse or unnatural sexual intercourse is committed while the victim
29 is tied, bound or gagged;

30 (e) the sexual intercourse or unnatural sexual intercourse is committed after the
31 defendant administered or caused to be administered, alcohol or a controlled substance by
32 injection, inhalation, ingestion or any other means to the victim without the victim's consent;

33 (f) the sexual intercourse or unnatural sexual intercourse is committed by a joint
34 enterprise; or

35 (g) the sexual intercourse or unnatural sexual intercourse was committed in a manner in
36 which the victim could contract a sexually transmitted disease or infection of which the
37 defendant knew or should have known he/she was a carrier, shall be punished by imprisonment
38 in the state prison for life or for any term of years, but not less than 15 years. The sentence
39 imposed on such person shall not be reduced to less than 15 years or suspended, nor shall any
40 person convicted under this section be eligible for probation, parole, work release or furlough or
41 receive any deduction from his/her sentence for good conduct until he/she shall have served 15
42 years of such sentence. Prosecutions commenced under this section shall neither be continued
43 without a finding nor placed on file.

44 (3) Whoever has sexual intercourse or unnatural sexual intercourse with an elder or a
45 person with a disability and compels such elder or person with a disability to submit by force and
46 against his will or compels such elder or persons with a disability to submit by threat of bodily
47 injury, and has been previously convicted of or adjudicated delinquent or as a youthful offender
48 for: indecent assault and battery on an elder or person with a disability as set forth in section 13H
49 of chapter 265; indecent assault and battery on a mentally retarded person as set forth in section
50 13F of chapter 265; assault and battery upon an elder or disabled person as set forth in section
51 13K of chapter 265; rape as set forth in section 22 of chapter 265; or a like violation of the laws
52 of another state, the United States or a military, territorial or Indian tribal authority, shall be
53 punished by imprisonment in the state prison for life or for any term of years, but not less than 20
54 years. The sentence imposed on such person shall not be reduced to less than 20 years, or
55 suspended, nor shall any person convicted under this section be eligible for probation, parole,
56 work release or furlough or receive any deduction from his/her sentence for good conduct until

57 he/she shall have served 20 years of such sentence. Prosecutions commenced under this section
58 shall neither be continued without a finding nor placed on file.

59 In any prosecution commenced pursuant to this section, introduction into evidence of a
60 prior adjudication or conviction or a prior finding of sufficient facts by either certified attested
61 copies of original court papers, or certified attested copies of the defendant's biographical and
62 information data from records of the department of probation, any jail or house of correction or
63 the department of correction, shall be prima facie evidence that the defendant before the court
64 has been convicted previously by a court of the commonwealth or any another jurisdiction. Such
65 documentation shall be self authenticating and admissible, after the commonwealth has
66 established the defendant's guilt on the primary offense, as evidence in any court of the
67 commonwealth to prove the defendant's commission of any prior conviction described therein.
68 The commonwealth shall not be required to introduce any additional corroborating evidence or
69 live witness testimony to establish the validity of such prior conviction.

70 (4) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and
71 abuses an elder or a person with a disability as defined in section 13K of chapter 265 shall be
72 punished by imprisonment in the state prison for life or for any term of years or, except as
73 otherwise provided, for any term in a jail or house of correction. A prosecution commenced
74 under this section shall neither be continued without a finding nor placed on file.

75 (5) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and
76 abuses an elder or a person with a disability and at the time of such intercourse is a caretaker as
77 defined in section 13K of chapter 265 or a mandated reporter as defined in section 15A of
78 chapter 19A and section 10 of chapter 19C respectively shall be punished by imprisonment in the

79 state prison for life or for any term of years, but not less than 10 years. The sentence imposed on
80 such person shall not be reduced to less than 10 years, or suspended , nor shall any person
81 convicted under this section be eligible for probation, parole, work release, or furlough or receive
82 any deduction from his sentence for good conduct until he shall have served 10 years of such
83 sentence. Prosecution commenced under this section shall neither be continued without a finding
84 nor placed on file.

85 (6) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and
86 abuses an elder or a person with a disability as defined in section 13K of chapter 265 and has
87 been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent
88 assault and battery on an elder or person with a disability as set forth in section 13H of chapter
89 265; indecent assault and battery on a mentally retarded person as set forth in section 13F of
90 chapter 265; assault and battery upon an elder or disabled person as set forth in section 13K of
91 chapter 265; rape as set forth in section 22 of chapter 265; or a like violation of the laws of
92 another state, the United States or a military, territorial or Indian tribal authority, shall be
93 punished by imprisonment in the state prison for life or for any term of years, but not less than 15
94 years. The sentence imposed on such person shall not be reduced to less than 15 years, or
95 suspended, nor shall any person convicted under this section be eligible for probation, parole,
96 work release or furlough or receive any deduction from his/her sentence for good conduct until
97 he/she shall have served 15 years of such sentence. Prosecutions commenced under this section
98 shall neither be continued without a finding nor placed on file.

99 In any prosecution commenced pursuant to this section, introduction into evidence of a
100 prior adjudication or conviction or a prior finding of sufficient facts by either certified attested
101 copies of original court papers, or certified attested copies of the defendant's biographical and

102 information data from records of the department of probation, any jail or house of correction or
103 the department of correction, shall be prima facie evidence that the defendant before the court
104 has been convicted previously by a court of the commonwealth or any another jurisdiction. Such
105 documentation shall be self authenticating and admissible, after the commonwealth has
106 established the defendant's guilt on the primary offense, as evidence in any court of the
107 commonwealth to prove the defendant's commission of any prior conviction described therein.
108 The commonwealth shall not be required to introduce any additional corroborating evidence or
109 live witness testimony to establish the validity of such prior conviction.

110 (7) Notwithstanding any general or special law to the contrary, the chief justice for
111 administration and management of the trial court shall establish and implement an annual
112 reporting system that shall provide information to the joint committee on the judiciary relative to
113 the prosecution and disposition of cases which involve offenses established under this act. The
114 reporting system shall be established not later than December 31, 2010 and the first annual report
115 shall be filed with the clerk of the house and the clerk of senate and the joint committee on the
116 judiciary not later than December 31, 2011.