SENATE DOCKET, NO. 1293 FILED ON: 1/14/2009

SENATE . . . . . No. 1553

The Commonwealth of Massachusetts

PRESENTED BY:

***Steven A. Baddour*, (BY REQUEST)**

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 Regarding Juvenile Violence..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian J. Coppola	

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[Pin Slip]

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Regarding Juvenile Violence..

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. Be it enacted that any student who is of school age and is 10 years or older and under the age of 18, who commits onto another student, rape, indecent assault or any other acts of sexual abuse, whether said acts occurred in a public, or private elementary or middle or secondary or elementary or middle or secondary boarding school, which both the offender and the victim attend shall face automatic expulsion from his/her public, or private elementary or middle or secondary or elementary or middle or secondary boarding school.

Said offender need only be ten years or older.

Any school aged student who is 10 years or older and attempts to engage in acts of molestation or molests or both onto another student shall be expelled under applicable laws or in the case of attempted molestation shall face automatic suspension from any public or private day elementary or middle or secondary school or any elementary or middle or secondary boarding school for a period of 10 days for attempted violent molestation or other forms of violent abuse or bullying that involves physical or verbal violence. In the event that head administrator of any

elementary, middle or secondary school hands down the proscribed suspension on a Friday, the suspension is said to commence on Monday and conclude in ten academic days from the Monday, which the suspension commences to be served.

The principal or the superintendent or headmaster of a public elementary, or middle or secondary or the director or the president, in the case of a private elementary or middle or secondary day or boarding school shall have both of the parents, and the victim of said rape, indecent assault or other forms sexual abuse, and both of the parents of the perpetrator present in a parent conference to the allegation of the aforementioned and schedule a hearing be held within 10 days of the allegation of said rape, indecent assault or other sexual abuse. Present at said hearing on the allegation of rape, indecent assault or other forms of sexual abuse, shall be the victim alleging said acts, their parents and the attorney representing the above mentioned school and the alleged offender, their parent and council of the parent of the alleged offenders choice.

The hearing in the case of a public or private elementary, middle or secondary day or boarding school shall consist of the school's principal, who shall preside and hand down disciplinary actions regarding molestation or attempted molestation or both, and two members of the town's school district, which the student attends, which shall include the super intendent and the chair of the school district's school committee and one other member of the school committee who shall determine the guilt or innocence of the student who is alleged to have engaged in molestation or attempted molestation or in the case of any private elementary, middle or secondary day or boarding school, the school's head administrator who is either the principal or director or the president of said private day or boarding school on the elementary or middle or secondary school level and two of the above-mentioned chair person one other member of the school district's school committee or two members of the school's board of trustees. The head

administrator of said private day or boarding elementary or middle or secondary school shall have the same authorities as the public schools would otherwise have in cases of molestation or attempted molestation and the two members of either the school committee or the board of trustees would hold the same proscribed roles in determining the guilt or innocence of a student in an alleged molestation or attempted molestation case.

In the case of an expulsion proceeding for alleged sexual abuse or rape, committed by a minor student who is 10 years of age or older than the victim of such abuse, requisite state of mind must also be taken into consideration and must be determined based on the offender's Intelligence test, which determines retardation, defined as an I.Q of 75 or under, and the child's capacity to appreciate right from wrong. Both a school psychologist and a psychiatrist who the parent must bring the child to and that psychiatrist must be from a hospital setting from outside of the school setting must perform this testing and evaluation.

Upon the finding that the perpetrator did in fact commit acts of rape, indecent assault or other forms of sexual abuse, it shall be the duty of the principal or the superintendent or the head master or the director or the president, in the case of an elementary or middle or secondary boarding school, to report said incidents of rape or indecent assault or other forms of sexual abuse to the Department of Social Services, who shall in turn file a petition, on behalf of the victim of such rape, indecent assault or other incidents of sexual abuse in a juvenile court to have the offender accompany their parent at all times, at the conclusion of the offenders' school day in whichever new public or private day elementary or middle or secondary school he or she may attend and or at the conclusion of any extra curricular activities, or sports games or practice, or special religious instructions or any other instructions, or all of the above, which the offender may be involved in. said alleged offender shall also upon referral of the incident to the

Department of Social Services, be turned over to the juvenile authorities who may in addition to any expulsion and child must accompany parent proceedings bring about formal criminal action alleging said rape, indecent assault or sexual abuse committed by a minor who is 10 years or older. In the case where said minor who is alleged to have committed rape, indecent assault or sexual abuse onto another minor child and the offender is 15 years or older, the juvenile court shall have said offender treated as an adult in the adult criminal courts. The offender who has over 15 and has been found guilty of rape, indecent assault or attempted molestation or any other act committed onto another person shall be subject to imprisonment in the appropriate correctional facilities for the amount of time as deemed under applicable state law, and the imprisonment term shall be commensurate with the offence the offender has been found guilty of in an adult criminal court.

No student alleged to have been an offender of rape, molestation, attempted molestation or any violent acts of bullying or any violence in connection with said rape, attempted molestation, indecent assault shall remain on school premises and must be suspended interim said hearing on such allegation of rape, attempted molestation, indecent assault or acts of physical or verbal violence or both, in the commission of said acts until said case has been decided. Said student must than accompany parent while case is pending and said student must have his/her school work with them at all times, as it shall also be the requirement of the child's parents to go to the school and pick-up the child's school assignments.

In the case of an elementary or middle or secondary boarding school, the alleged offender's parent must remain with the child in a place designated in the town of the boarding school, which the alleged offender attends to facilitate the child's receiving of their school work pending the outcome of said case of rape, attempted molestation, indecent assault or sexual acts

that involve verbal or emotional violence or both or in a case where an alleged offender 10 years or older has engaged in violent physical or verbal abuse or both onto another student. It shall be the responsibility of the boarding school to put both the parent and the alleged offender up, pending said hearing on the above-mentioned matter. If at the conclusion of said hearing, the student age 10 or older has been found guilty on the school level, the parent of the alleged offender shall re-imburse the school for all of the accommodations regarding the overnight and boarding costs of both the alleged student offender and the parent of the alleged offender.

In the case of an elementary or middle or secondary boarding school, in the Commonwealth of Massachusetts, including but not limited to that of special boarding schools that special education for persons with disabilities, a head housemaster or head houseparent shall have on hand a master key to the sleeping quarters of each student. The head housemaster or head houseparent along with the director or president of said elementary boarding school shall promulgate policies as to when students attending said elementary or secondary boarding school may enter their sleeping quarters and that such policies must include a provision that said attending students must enter their sleeping quarters during daylight hours in the accompaniment of the head housemaster or any other housed staff, whom shall after the student has vacated his/her sleeping quarters for the school day, shall by use of a walky talkie or cordless phone or a cell phone contact the head housemaster to come with the master key to lock up the student's sleeping quarters for the day until permitted back in to their sleeping quarters as designated by school policies. The locks on each student's bedroom shall consist of a lock on the doorknob itself, with on the other side of the door containing a latch in the inner doorknob that can be easily turned and opened in the event of a fire. The parents of each student attending said elementary or middle or secondary boarding school in the Commonwealth of Massachusetts shall

at the beginning of each academic year receive from the director or the president of said elementary or secondary boarding school a copy of the schools' policies regarding student entry and vacating of their sleeping quarters during school hours. The boarding school's administration shall also have the duty of promulgating policies as to when the students can and cannot be in the dorms or cottages and also must include in its policies provisions for inclement weather or when a student is sick. In the case of a student being sick, the elementary or middle or secondary boarding school shall have two rooms designated as the "infirmed room," which can only be entered by thoroughly CORIED or SORIED staff members, or the town's police department or the fire department in the district where the boarding school is located or trained EMT'S or ambulance crews to remove the "sick person to a hospital. A parent or family member 18 years of age or older, as designated by the parent as to who will be caring for the child in the event of the parent's death shall also have entry to the "designated infirmed" rooms in each dorm, which shall be monitored with updated video surveillance cameras in the hallways outside and within the areas of the "infirmed rooms so designated in each dorm to monitor for appropriate or inappropriate entrances and exits.

Upon receipt by the student's parents or in the case of a student being above the age of 18, a copy of the school's policies on molestation and sleeping quarters rules, including but not limited to the proscribed mandated expulsion or suspension code, each parent of a minor child attending said boarding school or a student, 18 years of age or older, shall have signed in the presence of a notary of the public a copy of the schools' policies regarding entrance and exiting the sleeping quarters, which shall include but not be limited in the above-mentioned mandated expulsion and suspension and molestation prevention training laws. And this copy of policies and procedures shall also include the school's dress code, which shall ban both female and male

students from wearing tank tops or any other apparel that exposes the chest area of the body and in the case of females, bans the wearing of mini skirts that are above the knees. Three repeated violations of the proscribed dress code and in addition to, dress codes set forth by either a public or private day or boarding elementary or middle or secondary school, shall result in a suspension period lasting 3 days, with in the case of a suspension being handed down on Friday, shall be said to commence on the Monday of the preceding weekend and shall be said to have been served upon the third consecutive school day. Said proscribed signature requirements of the school's policies and including but not limited to the statutory anti student molestation and molestation prevention training, shall be completed within 10 days prior to each academic year.

In the case that a suspension or expulsion is handed down under this anti student molestation and molestation prevention statute, the parents of the student so suspended or expelled shall bare the full costs of transportation to and from wherever the student attends school on the elementary or middle or secondary level in the Commonwealth of Massachusetts. This shall be accomplished by either the parents coming to pick up the student him/herself or providing transportation to either the student's home or wherever the parents are located at the time of issuance of suspension or expulsion unless, criminal proceedings has commenced against the student alleged to have either engage in acts of rape, indecent assault or sexual abuse. In the case where criminal action is to be taken, said student who is the subject of said criminal action shall be detained in the office of a security guard until the police has arrived to take the student into custody. At the time the police has arrived to take the student into custody, the head administrator of the school, which the student is attending at the time of said arrest, shall be notified by the security officer to come down to the security office.

Upon the entry of any new student, no matter what their age or disabilities may be, the school, whether a public or private or boarding school shall within the first month of enrollment hold molestation prevention training to instruct their students as to the difference between molestation and what is not considered molestation under applicable state laws. As part of these instructions, a student shall also be informed of the right to confide in their teacher or trusting staff member whether they have been molested by another student or staff member of the school or think the same might be molesting them. These instructions shall include but not be limited to the proscribed mandated expulsion of a student who engages in acts of rape, indecent assault or sexual abuse onto another student. A notarized signature of the parent who is enrolling their son or daughter for the fist time, agreeing to molestation prevention training must be obtain, along with a notarized, signed envelope shall be returned back to the principal of an elementary or middle or secondary public or private day school and in the case of an elementary or middle or secondary boarding school, the director or the president of said boarding school, 10 days prior to the first day of school of the newly enrolled school. A newly enrolled student shall not be officially enrolled into any school in the Commonwealth of Massachusetts until the school in which the student is enrolled to attend has received a notarized signature and notarized envelope with the parent's signature consenting to molestation prevention training. Age or inability to provide the proscribed legal required signature allowing for their son or daughter attending any elementary or middle or secondary school system in the Commonwealth of Massachusetts shall be barred as a defense to any truancy proceedings brought by the school district which the child 5 years or older, and until the school aged minor child reaches their 16'th birthday for failing to adhere to the proscribed enrollment requirements as deemed by applicable state truancy laws. The enrollment requirements shall also include but not be limited to the requirements as set forth

in proscribed requirement of molestation prevention training. In the case where a parent providing said signature for their son or daughter to fulfill the requirements, upon enrollment into a molestation prevention instruction is either elderly or disabled, may bring along with him/her to a notary of the public, an assisting person to aid in providing the requisite signature agreeing to the proscribed molestation prevention instruction at the school their son or daughter is to be enrolled in. For the purposes of this section, the term “parent” shall be defined as the biological parents of the minor child, the foster parents of the minor child, the adoptive parents of the minor child, whether in or outside of the biological family setting, which shall include but not be limited to; grandparents as parents, aunts, uncle, cousins, brothers, sisters or any other relative deemed the foster or adoptive parent of said minor child, or in the case of a divorce, the court ordered custodial parent who has custody of the minor child during the first academic year, which their son or daughter is enrolled. The same signature requirements shall also be legal and binding to any new student 18 or older, except that parental signature shall not be required and that said adult entering a new secondary school for the first time, must provide the proscribed notarized signature agreeing to molestation prevention instructions.

In the case where a former student, later on in adulthood opens up for the first time to either the current director or the president of said elementary or middle or secondary boarding school and to a mental health professional or a rape crisis center and their family that they had been sexually abused as a student by the offender who attended the same school as the victim, said disclosure of such event shall be reported to the department of Social Services, as though the victim was a minor at the time of first disclosure of said sexual abuse, which shall include but not be limited to rape, or indecent assault or sexual abuse perpetrated by 1 or more of the former students who were 10 years or older at the time of said sexual incident and who had attended said

elementary or middle or secondary boarding school, where both victim and offender had attended at the time said acts of sexual abuse had occurred. Upon first disclosure by said former student of said elementary or middle or secondary boarding school to the director or president who is currently serving at the time of said first disclosure, the head administrator of said elementary or middle or secondary boarding school shall refer the names, addresses, if can be obtained of the perpetrators allegeabley involved and the name and address of the victim alleging said sexual abuse to the board of directors of said elementary or middle or secondary boarding school's alumni association who shall in turn inform the offenders of such allegations of sexual abuse and to schedule a hearing on the matter before the board of directors of said alumni association. Upon finding by the board of directors of the elementary or middle or secondary school's alumni association that said incidents of sexual abuse had been perpetrated onto the victim, the offender of said acts shall be permanently banned as a member of said elementary or middle or secondary boarding schools' alumni association. The same shall hold true for any honorary member and who was a staff member in the dorm or cottage where said incident took place shall be permanently banned as an honorary member of said elementary or middle or secondary schools' alumni association. The same shall apply to any alumni association of an elementary or middle or secondary public or private day schools. For the purposes of this section of this act, the honorary member of the alumni association of the elementary or middle or secondary public or private day school or an elementary or middle or secondary boarding school must have either been in knowledge that said violent acts of rape, sexual abuse or any other kind of violent bullying or abuse of another student, whether the violent acts were physical or verbally done to produce a threatening manner of harm.

Failure of said head administer of any public or private or elementary or middle or secondary boarding school to report such allegations of rape or indecent assault or other forms of sexual abuse by a student 10 years of age or older onto another student, to the Department of Social Services shall be fined no more than $1,000.00 or imprisonment in a house of correction for a mandatory two-year sentence or both. The same shall hold true for any psychologist, physician, or psychiatrist, or teacher or anyone who has contact with minor children as part of either their profession or employment, unless the person going to the above-mentioned professionals who are in the mental health profession and who are mandated reporters of such acts is the offender, who shall be afforded treatment for by said mental health professionals without penalty or threat of a report being made, when the offender himself voluntarily admits guilt to a mental health professional, and also does so to receive treatment for their actions on a voluntary basis.

A victim of rape or sexual abuse committed by a minor who is 10 year or older than the offender and the offender is 10 years or older shall have a right to civil damages under tort feaser laws up to no more than $10,000.00, whether the incident was reported and opened up to at the time the original incident occurred or becomes disclosed for the first time by the victim of said act later on in adulthood. The statute of limitations for such actions brought under tort feaser liability for rape or indecent assault or other forms of sexual abuse or other forms of violent acts committed onto another minor shall be said to toe in 7 years from the date it was first disclosed either at the time of the incident by the victim of such incident or when the victim first discloses that said incident happened to them, later on in adulthood.

Any public, or private elementary or middle or secondary school or elementary or middle or secondary boarding school and or their alumni association who fails to expel or permanently

ban any member of their alumni association or any honorary member for lack of supervision from their alumni association may be held civilly liable for failure to take such action against said offender in an amount not to exceed $50,000.00. The statute of limitations for failure of a public elementary or middle or secondary school or private elementary or middle or secondary school or elementary or middle or secondary boarding school or its alumni association to take action against the perpetrator of such sexual abuse shall be said to toe in 5 years from time of first disclosure, whether the disclosure of sexual abuse by the victim of such discloses such incidents of sexual abuse by another student at the time of the sexual abuse or the victim first discloses said incident(s) later on in adulthood. In both cases, the aforementioned statute of limitations shall be said to begin to toe from date of first disclosure to both a mental health professional and the members of the victim's family.

For the purposes of this act, in the case of an elementary middle or secondary boarding school, the head housemaster or head houseparent, in the dorm or cottage to which the sexual abuse by another student who is 10 years or older onto another student, shall be presumed responsible as though he/she is the parent of the student(s), who is under the age of 18 and is the alleged offender. Said head housemaster or head houseparent shall by reason of his/her designated job title, be held criminally liable and shall be charged as an accessory after the fact to rape and shall face the penalties as outlined by applicable state laws.

Upon an action brought against a student, for rape, indecent assault or other forms of sexual abuse, that has been committed, whether in a public, or private elementary or middle or secondary school or an elementary or middle or secondary boarding school and in the case of an elementary or middle or secondary boarding school against the head housemaster or head houseparent as an accessory after the fact for rape of a minor who is the perpetrator of such acts,

whether brought to the attention of school authorities or law enforcement or any kind of civil actions for said acts of rape, indecent assault or other forms of sexual abuse, the offender, nor his friends nor his family, nor the staff member, nor his/her family or friends nor any officials of the school where such offense occurred shall be barred from engaging in any kind of retaliation or embarrassment or any other form of emotional abuse in connection with said rape, indecent assault or other forms of sexual abuse. Whoever engages in any form of retaliation, embarrassment or other forms of emotional abuse or humiliation in connection with said rape, indecent assault or other forms of sexual abuse shall be fined no more than $2,000.00 or imprisonment in a house of correction for no less than 3 years or both and shall also face tort liability in an amount not to exceed $25,000.00. The same shall hold true for any member of the board of directors of the alumni association to whom an action is brought before them against a member or members of the schools' alumni association to have said member or members or honorary members of said schools' alumni association to have said member or members or staff honorary members permanently banned from said schools' alumni association in connection with any incidents of rape, indecent assault or other forms of sexual abuse committed by said member or members thereof, or in the case of lack of supervision, honorary staff members, who were head housemaster or head houseparent in the dorm or cottage where said incidents of sexual abuse occurred by any member or members of said schools' alumni association.

Acts of retaliation shall be defined to include but not be limited to; banning a rape or sexual abuse victim from all of his/her rights and privileges to either his educational program or that as a member of the schools' alumni association, when the allegation of rape, or sexual abuse is first being presented to the aforementioned authorities or board of directors of said schools' alumni association, whether the incident is first reported at the time said acts occurred or is first

disclosed by the victim later on in adulthood or once the incidents of said rape, indecent assault or other forms of sexual abuse has been proven to be true and did in fact occur.

Records of such proceedings, including its finding by either the schools' authorities or that of the board of directors of the schools' alumni association shall be kept in a confidential, locked file and such records of said proceedings and findings shall be held in said locked confidential files for a period no less 40 years from time of conclusion of said proceedings or until the school and its alumni association has been dissolved and had been declared bankrupt under applicable federal laws by a federal bankruptcy court.

A victim of rape, or indecent assault or other forms of sexual assault, in order to take legal action against said student offender, including action taken on the school level shall have said to had disclosed for the first time, with the aforementioned authorities and including but not limited to a mental health professional and that of their family within the first 50 years since such abuse had occurred. Upon disclosure to the aforementioned school authorities where the incidents of sexual abuse, and a mental health professional and that of their family members, whom they can confide in, said victim shall have up to 7 years to pursue any criminal or civil actions against the offender and that of his/her parent, as at the original time of the offense, the offender was still a minor under the age of 18 years and was 10 years or older. The statute of limitations for said criminal and or civil actions resulting from said sexual abuse shall begin to toll upon first disclosure by said victim to all of the aforementioned parties, including but not limited to the current administrative authorities who are currently employed at the school where said incident is alleged to take place, a mental health provider, treating the victim of said abuse and that of a family member the victim of said acts has confided in.

For the purposes of this act, with regards to the aforementioned statute of limitations, any disclosures made prior to the passage of this act shall begin to toll when this act is signed into law by the governor of the Commonwealth of Massachusetts or becomes law by way of override by both the house and senate of the legislature of the Commonwealth of Massachusetts, otherwise known as the General Court.

Upon first disclosure of said sexual abuse by a victim thereof, he/she shall once disclosed by said victim, the names of the offender or offenders, said victim shall have the right to know, in the case, where the victim has first disclosed of the alleged acts to the school authorities of the school which the incidents took place at, and in the case, where it has been disclosed later on in adulthood by said victim and that both the victim and the offender or offenders had graduated or left in good standing, the school where the offense took place, whether or not the offender or offenders are members of the schools' alumni association whether or not the offender or offenders of said acts, which happened 50 years prior to first disclosure, are still being invited to participate in on-campus alumni activities.

Said victim of sexual abuse committed shall not use the aforementioned disclosed information as a means of retaliation, harassment or committing a crime against the offender or acts of discrimination, except for bringing such offender or offenders before the board of directors of the schools' alumni association for the purposes of having them permanently banned from the schools' alumni association, in connection with the sexual abuse itself. In the case of a boarding elementary or middle or secondary boarding school, the same anti-retaliation or other forms of criminal activity or discrimination against the honorary member, who was at the time of the offense the head housemaster or head houseparent in the dorm or cottage where said incident of sexual misconduct occurred.

Any victim who uses the above-mentioned information to engage in retaliatory or criminal acts or acts of discrimination against both the former student offender and the former head housemaster or head houseparent shall be fined no more than $1,000.00 or imprisonment in a house of correction for no more than 2 years or both said fine or imprisonment.

Any staff members, including but not limited to teacher's aids, house staff or school guidance counselors or student advocates or case managers who either come into knowledge that a sexual abuse might had been perpetrated onto another student attending the same school as the victim and offender, by way of confidence or are witnesses thereof, shall have the legal obligation to report said acts of sexual abuse or bullying or any other incidents that involve either physical or verbal violence or both to the school's administration. Failure of said staff to report the above-mentioned incidents to said school administrative officials shall be deemed automatically terminated from their respected professions and shall also be held criminally liable under applicable state and federal laws for obstruction of justice.

Any head administrator who fails to terminate the employment of any teacher, teacher's aid, school guidance counselor, advocate or case manager shall face fines of no more than $10,000.00 and imprisonment for no less than 5 years in a state prison or both said fine or imprisonment.

The failure of a school administrator to terminate an employee who does not report such acts of sexual abuse, violent acts, whether physical or verbal or both onto another student under the age of 18 shall also hold said school liable under tort liability in an amount not to exceed $20,000.00.

Upon termination of employment of an employee of an elementary or middle or secondary school for failure to report such acts of sexual abuse committed onto another student or violent abuse onto another student, shall bar said employee from applying for a position of either teacher, teacher's aid, school guidance counselor, student advocate or case manager in another school or school district within the Commonwealth of Massachusetts.