

**HOUSE . . . . . No. 4265**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michelle M. DuBois and Carmine L. Gentile***

*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:	DATE ADDED:
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>3/3/2016</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>3/3/2016</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>3/8/2016</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>3/8/2016</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>	<i>3/14/2016</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>	<i>3/14/2016</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>3/8/2016</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>3/11/2016</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>7/9/2019</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>3/9/2016</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/9/2016</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>3/9/2016</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>3/8/2016</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/13/2016</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>3/11/2016</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>3/8/2016</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>	<i>3/10/2016</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>3/10/2016</i>

<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>3/11/2016</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>3/9/2016</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/10/2016</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>	<i>3/9/2016</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	<i>3/10/2016</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>3/16/2016</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>3/8/2016</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>3/8/2016</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>	<i>3/11/2016</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/14/2016</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>3/8/2016</i>

**HOUSE . . . . . No. 4265**

By Representatives DuBois of Brockton and Gentile of Sudbury, a petition (subject to Joint Rule 12) of Michelle M. DuBois, Carmine L. Gentile and others for legislation to protect victims of rape and children conceived during the commission of said offense. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Eighty-Ninth General Court  
(2015-2016)

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

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect rape victims and their children and to ensure that convicted rapists cannot use the court system to further assault said rape victim, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

*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, the court that maintained jurisdiction for the adjudication where a defendant

10 was convicted of, was granted a continuance without a finding for or otherwise pleaded guilty to  
11 said offense shall hold a hearing to determine if a child was conceived during the commission of  
12 said offense.

13 In these matters when the court finds upon a showing by a preponderance of evidence  
14 that pregnancy was caused by unwanted sexual conduct, no parental rights can be presumed,  
15 adjudicated or established, nor can the probate and family court assert jurisdiction to determine  
16 the rights or interests of any person with regard to said pregnancy or child born from said  
17 pregnancy.

18 (2) If the court finds upon a showing by a preponderance of evidence that a child was  
19 conceived during the commission of said offense and the defendant is the biological source of  
20 the child's conception: (1) a rebuttable presumption shall be established that the defendant is  
21 unfit and it is not in the best interests of the child to be placed in sole custody, shared legal  
22 custody, or shared physical custody with the defendant; provided that, this presumption may be  
23 overcome with regard to shared legal custody or shared physical custody but not sole custody by  
24 clear and convincing evidence substantiated by the Judge's written finding of facts that the  
25 defendant is a fit parent and as such shared legal custody or shared physical custody is by the  
26 Judge's written finding of facts in the best interests of the child and the other parent of the child  
27 conceived during the commission of that offense consents to such shared legal custody or shared  
28 physical custody; (2) the court may make a new custody order as to the legal and physical  
29 custodial rights of the defendant; and (3) the court may modify any previous award granted to the  
30 defendant for sole custody, shared legal custody or shared physical custody of the child.

31 (b) Notwithstanding section 10, no court shall make an order providing visitation rights  
32 to a person who is the biological source of a child's conception if that person was convicted of,  
33 was granted a continuance without a finding for or otherwise pleaded guilty to an assault or rape  
34 under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or  
35 section 2, 3, 4 or 17 of chapter 272 and is seeking to obtain visitation with the child who was  
36 conceived during the commission of that offense, unless the judge makes an independent  
37 determination substantiated by the Judge's written finding of facts that visitation is in the best  
38 interests of the child and the other parent of the child conceived during the commission of that  
39 offense consents to such visitation.

40 (c) Notwithstanding section 3 of chapter 215, the court that maintained jurisdiction for  
41 the proceeding in which the defendant was convicted of, was granted a continuance without a  
42 finding for or otherwise pleaded guilty to section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to  
43 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272 shall possess exclusive  
44 jurisdiction over: (i) a proceeding pursuant to this section or any modification of an order made  
45 hereunder; (ii) any action or order related to the defendant's physical and legal custodial of the  
46 child conceived during the commission of the offense, regardless of when any such action or  
47 order was filed or adjudicated; and (iii) an action to require the convicted defendant to pay  
48 monetary restitution for the consequences of conception during unwanted sexual conduct  
49 (pursuant to MGL Ch 119A) and any modification of an order or judgment resulting from such  
50 support action.