

SENATE No. 836

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

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 establishing a Bill of Rights for victims of sexual assault and related purposes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>

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By Ms. Gobi, a petition (accompanied by bill, Senate, No. 836) of Anne M. Gobi, Barbara L'Italien, Carolyn C. Dykema, Tricia Farley-Bouvier and other members of the General Court for legislation to establish a Bill of Rights for victims of sexual assault and related purposes. The Judiciary.

The Commonwealth of Massachusetts

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

An Act establishing a Bill of Rights for victims of sexual assault and related purposes.

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 258F of the General Laws is hereby established by inserting after
2 Chapter 258E the following chapter:—

3 Chapter 258F. Bill of Rights for Victims of Sexual Assault

4 Section 1. Definitions.

5 As used in this chapter, the following words shall have the following meanings, unless
6 the context otherwise requires:—

7 “Crime Laboratory,” the State Police Crime Laboratory or, for crimes that occurred in the
8 City of Boston, the Boston Crime Laboratory.

9 “Law enforcement official,” any officer of a city, town, or regional police agency, or
10 deputy sheriff of a county, or officer of the State Police.

11 “Rape kit,” any forensic medical, evidentiary, or physical examination of a victim of
12 sexual assault, as provided for in section 97B of chapter 41, including both a sexual assault
13 evidence collection kit and, when circumstances indicate the need, a toxicology kit.

14 “Sexual assault counsellor,” the same definition provided in section 20J of chapter 233.

15 “Victim of sexual assault,” any natural person who identifies as a victim of the crimes of
16 rape, assault with intent to rape, or indecent assault and battery under sections 13B, 13B1/2,
17 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, inclusive, of chapter 265, or the
18 family member of such person if the victim is younger than 16 years of age, incompetent, or
19 deceased, provided that in no instance does this include a family member identified by the victim
20 as the perpetrator.

21 “Victim’s advocate,” the same definition provided in section 20J of chapter 233.

22 Section 2. Attachment and duration of rights

23 The rights provided to victims of sexual assault in this chapter attach when a victim seeks
24 the assistance of a law enforcement official or medical professional. A victim of sexual assault is
25 under no obligation to report the crime to a law enforcement official or participate in a criminal
26 prosecution of the assailant, and retains all the rights of this chapter regardless of whether a
27 criminal report is made or made and at any point not pursued. A victim of sexual assault is under
28 no obligation to seek medical attention or have administered a rape kit, and retains all the rights
29 of this chapter regardless of whether the victim receives a medical examination or administration
30 of a rape kit.

31 Section 3. Right to a victim’s advocate or sexual assault counsellor

32 (a) A victim of sexual assault has the right to be accompanied by a victim's advocate or
33 sexual assault counsellor during any administration of a rape kit, interview by a law enforcement
34 official, and at all times when present in a hospital or other healthcare facility.

35 (b) A victim of sexual assault retains the right to be accompanied by a victim's advocate
36 or sexual assault counsellor even if the victim has waived the right in a previous examination or
37 interview.

38 (c) As codified in section 20J of chapter 233, conversations with a victim's advocate or
39 sexual assault counsellor are confidential and privileged, and the presence of a victim's advocate
40 or sexual assault counsellor does not operate to defeat any privilege otherwise guaranteed by
41 law.

42 Section 4. Rape kit administration

43 (a) No hospital or healthcare provider shall bill or otherwise request or accept payment
44 from a victim of sexual assault for the administration of a rape kit.

45 (b) If the victim of sexual assault is female, whoever administers a rape kit must inform
46 the victim of her right to receive emergency contraception immediately at no cost to her. If a
47 female victim elects to receive emergency contraception, the administering party must, within
48 four hours of administering the rape kit, provide contraception at no cost or facilitate the
49 provision of contraception at no cost.

50 (c) Whoever administers a rape kit shall ensure that:

51 (i) the victim of sexual assault receives notification in writing of his or her rights as a
52 victim, including the rights codified in this chapter, in a document to be developed by the

53 Massachusetts Office of Victim Assistance, which document shall be signed by the victim of
54 sexual assault to confirm receipt ;

55 (ii) the victim of sexual assault is provided with the opportunity to request a sexual
56 assault counsellor or victim's advocate, to be summoned by the person administering the rape
57 kit, the administration of which shall not commence until the arrival of the sexual assault
58 counsellor or victim's advocate;

59 (iii) the victim of sexual assault is informed, in the event that a sexual assault counsellor
60 or victim's advocate cannot be summoned in a timely manner, of the ramifications of delaying
61 administration of the rape kit;

62 (iv) any victim of sexual assault who declines the opportunity to have a sexual assault
63 counsellor or victim's advocate present, for whatever reason including that they cannot be
64 summoned in a timely manner, does so in a signed writing; and

65 (v) the victim of sexual assault receives the opportunity to shower at no cost, if showering
66 facilities are available.

67 Section 5. Interviews with law enforcement officials

68 (a) Before a law enforcement official begins an interview with a victim of sexual assault,
69 the law enforcement official shall ensure that:

70 (i) the victim of sexual assault receives a written notification of his or her rights as a
71 victim, including the rights codified in this chapter, in a document to be developed by the
72 Massachusetts Office of Victim Assistance, which document shall be signed by the victim of
73 sexual assault to confirm receipt;

74 (ii) the victim of sexual assault is provided with the opportunity to request a sexual
75 assault counsellor or victim's advocate, to be summoned by the law enforcement official, whose
76 interview shall not commence until the arrival of the sexual assault counsellor or victim's
77 advocate;

78 (iii) any victim of sexual assault who declines the opportunity to have a sexual assault
79 counsellor or victim's advocate present does so in a signed writing; and

80 (iv) the victim of sexual assault has the opportunity to request a law-enforcement officer
81 of the same sex as the victim, as provided for by section 97B of chapter 41.

82 Section 6. Rape kit processing

83 (a) A victim of sexual assault has the right to prompt analysis of a rape kit.

84 (i) Whoever administers the rape kit shall, within four hours of its administration, notify
85 the police department with jurisdiction under section 98 of chapter 41 over the location of the
86 commission of the crime. The notified police department shall, within 24 hours of receiving
87 notification, retrieve and deliver the sexual assault evidence collection kit and the toxicology kit,
88 if any, to the Crime Laboratory.

89 (ii) The Crime Laboratory shall process all sexual assault evidence collection kits and
90 toxicology kits with all due speed upon receipt.

91 (iii) The failure of the police department or Crime Laboratory to expeditiously retrieve,
92 deliver, or process a rape kit does not affect the Commonwealth's ability to introduce the kit as
93 evidence for in a criminal trial, or the victim's ability to introduce the kit as evidence in a civil
94 trial.

95 (b) A victim of sexual assault has the right to receive in writing from the Crime
96 Laboratory the results and findings of his or her sexual assault evidence collection kit and, if
97 administered, toxicology kit.

98 (c) A victim of sexual assault has the right not to have the results of a rape kit used to
99 prosecute the victim.

100 (i) No evidence acquired from a rape kit, including DNA evidence and the results of a
101 toxicology screen, shall be used to prosecute the victim of sexual assault for any misdemeanor
102 crimes or any crime defined under the Controlled Substances Act, chapter 94C.

103 (ii) No evidence from a rape kit may be used as a basis to search for further evidence of
104 any unrelated misdemeanor crimes or any crime under the Controlled Substance Act, chapter
105 94C, that may have been committed by the victim of sexual assault.

106 Section 7. Creation of tracking system for rape kits

107 There shall be established by the Massachusetts Office of Victim Assistance, within one
108 year of passage of this act, a system for tracking rape kits that permits a victim of sexual assault
109 to track, by telephone or internet, the location and status of his or her rape kit. Once established,
110 the person who administers the rape kit shall furnish the victim of sexual assault with written
111 information, created by the Massachusetts Office of Victim Assistance, about how to use and
112 access the tracking system.

113 Section 8. Reporting on backlog of rape kits

114 The State Police Forensic Services Group shall issue an annual report detailing the
115 number of sexual assault evidence collection kits taken statewide and the number of sexual

116 assault evidence collection kits processed by the State Police Crime Laboratory and the Boston
117 Crime Laboratory, including the time required for each kit to be processed.

118 Section 9. Information provided to victims of sexual assault

119 The Massachusetts Office of Victim Assistance shall develop a document, readable by a
120 person proficient in English at the fifth grade level, that explains the rights provided by this
121 chapter and further contains: a clear assurance that a victim of sexual assault is not required to
122 report the crime to law enforcement or to participate in criminal proceedings against an assailant
123 in order to retain the rights set out in this legislation; telephone and internet means for contacting
124 rape crisis centers and victim's advocates; instructions for tracking a rape kit through the
125 tracking system established by section 7 of this chapter; information on state and federal victim
126 compensation funds for medical and other costs associated with the sexual assault; and
127 information on the federal right to restitution for victims in the event of a criminal trial.

128 Section 10. Creation of the Rights of Victims of Sexual Assault Task Force

129 (a) There is hereby established a victim and witness assistance board, whose members
130 shall serve without compensation. Notwithstanding any provision of section 6 of chapter 268A to
131 the contrary, the board shall be selected, unless otherwise indicated, and staffed by the
132 Massachusetts Office of Victim Assistance ("MOVA") and shall consist of:

133 (i) the Executive Director of MOVA or his designee;

134 (ii) two representatives of rape crisis centers, as defined by section 20J of chapter 233;

135 (iii) the Superintendent of the Massachusetts State Police or his designee;

136 (iv) a law enforcement official working for a city or town police department;

137 (v) two representative of Massachusetts-based colleges or universities whose
138 occupational duties include the provision of direct services to victims of sexual assault and
139 whose employers are not under investigation by the Department of Education for alleged
140 violations of the federal Clery Act or Title IX of the United States Education Amendment Act of
141 1972;

142 (vi) two representatives of organizations that provide services, education, or outreach to
143 communities of color or immigrant communities;

144 (vii) a representative of an organization that provides services, education, or outreach to
145 lesbian, gay, bisexual, and transgender individuals;

146 (viii) a certified sexual assault nurse examiner; and

147 (ix) other individuals or representatives selected by MOVA, with the total task force not
148 to exceed 15 members.

149 (b) The Task Force shall study nationally recognized best practices and make
150 recommendations regarding:

151 (i) the development and implementation of an effective mechanism for submitting,
152 tracking, and investigating complaints regarding the handling of, or response to, a sexual assault
153 report or investigation by any agency or organization involved in the response;

154 (ii) whether a need exists for additional victim's advocates for victims of sexual assault,
155 and if such a need does exist, the Task Force shall:

156 (A) develop criteria to certify sexual assault victim advocates;

157 (B) create a plan for how the Commonwealth can provide, in conjunction with rape crisis
158 centers, victim's advocatess organization, and MOVA's existing SAFEPLAN program,
159 additional sexual assault victim advocates to meet the needs identified; and

160 (C) determine the cost of funding such a plan;

161 (iii) whether a need exists to expand the right to a victim's advocate beyond the hospital
162 and law enforcement interview settings, such as meetings and conversations with prosecutors,
163 and if such a need does exist, the Task Force shall:

164 (A) identify the scope and nature of the need; and

165 (B) make recommendations on how best to fill that need, whether legislatively or
166 otherwise;

167 (iv) whether a need to exists to provide for ongoing evaluation of the implementation of
168 these rights, and if such a need does exist, the Task Force shall:

169 (A) identify the scope and nature of the need; and

170 (B) make recommendations on how best to fill that need, whether legislatively or
171 otherwise; and

172 (v) whether there is an on-going need to maintain the Task Force after it issues its final
173 report, pursuant to subsection (c) of this chapter.

174 (c) No later than 18 months after passage of this act, the Task Force shall produce a
175 report that includes the result of the assessments, developments, and recommendations
176 completed pursuant to subsection (b) of this section. This Task Force shall transmit the report to

177 the legislature, the Governor, the Attorney General, the Superintendent of the Massachusetts
178 State Police, and victims' rights organizations and rape crisis centers. If the Task Force
179 determines that there is no on-going need to remain established, it shall disband upon the
180 issuance of the report.

181 (d) In undertaking its duties, the Task Force shall be empowered to retain independent
182 experts who may:

183 (i) request files and records from any law enforcement official, but all such information
184 shall be kept strictly confidential and reported on only as aggregated or anonymized;

185 (ii) conduct confidential interviews with law enforcement officials, medical examiners,
186 victim's advocates, and others with direct knowledge of how the sexual assault response process
187 is functioning; and

188 (iii) within the bounds of confidentiality, provide advice and recommendations to the
189 Task Force.

190 SECTION 2. Section 97B of chapter 41 is hereby amended by deleting the final sentence
191 and replacing it as follows:—

192 A hospital licensed pursuant to the provisions of chapter 111 shall inform a victim of
193 sexual assault that the evidence preserved in an unprocessed rape kit shall be stored indefinitely
194 by the Crime Laboratory, as those terms are defined in section 1 of chapter 258F, unless the
195 victim of sexual assault requests its destruction in writing. In the absence of a written request
196 from the victim of sexual assault, a rape kit may be destroyed only after it has been fully
197 processed and tested. If, due to unforeseen and extraordinary circumstances, the Crime

198 Laboratory is unable to retain an unprocessed kit indefinitely, the Crime Laboratory must notify
199 the victim in writing, immediately and before the planned destruction of the kit, of the reason for
200 the impending destruction, the planned date, and of the options that remain available for
201 retention and processing, if any.

202 SECTION 3. Section 20J of chapter 233 is hereby amended by:

203 (a) adding the following two new sentences between the current second sentence defining
204 “Sexual assault counsellor” and the current third sentence defining “Victim”:—

205 “Victim’s rights organization,” an organization or association that works to support
206 victims of sexual assault and is certified as such by the Massachusetts Office of Victim
207 Assistance, which shall develop criteria for certifying victim’s rights organizations and maintain
208 a public listing of victim’s rights organizations.

209 “Victim’s Advocate,” a person who is a psychologist, social worker, employee, or
210 volunteer with a victim’s rights organization and who has been certified as a victim’s advocate
211 by the Massachusetts Office of Victim Assistance, which shall develop criteria for training,
212 certifying, and maintaining certification of victim’s advocates and maintain a public listing of
213 victim’s advocates.

214 (b) deleting the current fourth sentence defining “Confidential communication” and
215 replacing it as follows:—

216 “Confidential communication”, information transmitted in confidence by and between a
217 victim of sexual assault and a sexual assault counsellor or by and between a victim of sexual
218 assault and a victim’s advocate by a means that does not disclose the information to a person

219 other than a person present for the benefit of the victim, or to those to whom disclosure of such
220 information is reasonably necessary to the counseling and assisting of such victim. The term
221 includes all information received by the sexual assault counsellor or victim’s advocate that arises
222 out of and in the course of such counseling or advocating, including, but not limited to reports,
223 records, working papers, or memoranda.

224 (c) deleting the current fifth sentence, which begins “A sexual assault counsellor shall not
225 disclose . . .,” and replacing it as follows:—

226 Sexual assault counsellors and victim’s advocates shall not disclose such confidential
227 communication without the prior written consent of the victim; provided, however, that nothing
228 in this chapter shall be construed to limit the defendant’s right of cross-examination of such
229 counsellor in a civil or criminal proceeding if such counsellor testifies with such written consent.
230 No existing forms of privilege under Massachusetts law are waived by the presence of a victim’s
231 advocate or a sexual assault counsellor or by communications with a victim’s advocate, sexual
232 assault counsellor, or victim’s rights organization. This extends to all records kept thereby.

233 SECTION 4. Sections 1, 2, and 3 shall take effect upon their passage.