HOUSE DOCKET, NO. 1404 FILED ON: 1/18/2017

HOUSE . . . . . No. 773

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:
Michelle M. DuBois	*10th Plymouth*	*1/18/2017*
Carmine L. Gentile	*13th Middlesex*	*1/19/2017*
Michael J. Moran	*18th Suffolk*	*3/14/2018*
Elizabeth A. Poirier	*14th Bristol*	*3/14/2018*
Cory Atkins	*14th Middlesex*	*1/30/2017*
Christine P. Barber	*34th Middlesex*	*2/2/2017*
F. Jay Barrows	*1st Bristol*	*2/2/2017*
Michael D. Brady	*Second Plymouth and Bristol*	*2/1/2017*
Kate D. Campanale	*17th Worcester*	*2/3/2017*
David F. DeCoste	*5th Plymouth*	*2/2/2017*
James J. Dwyer	*30th Middlesex*	*1/26/2017*
Tricia Farley-Bouvier	*3rd Berkshire*	*1/25/2017*
Paul K. Frost	*7th Worcester*	*2/2/2017*
Colleen M. Garry	*36th Middlesex*	*2/2/2017*
Kenneth I. Gordon	*21st Middlesex*	*1/27/2017*
Jonathan Hecht	*29th Middlesex*	*2/3/2017*
Paul R. Heroux	*2nd Bristol*	*2/1/2017*
Natalie Higgins	*4th Worcester*	*2/3/2017*

Randy Hunt	*5th Barnstable*	*2/2/2017*
Bradley H. Jones, Jr.	*20th Middlesex*	*1/31/2017*
Kay Khan	*11th Middlesex*	*1/27/2017*
Jason M. Lewis	*Fifth Middlesex*	*1/25/2017*
David Paul Linsky	*5th Middlesex*	*1/30/2017*
James J. Lyons, Jr.	*18th Essex*	*2/3/2017*
Michael O. Moore	*Second Worcester*	*2/2/2017*
David K. Muradian, Jr.	*9th Worcester*	*2/2/2017*
Mathew Muratore	*1st Plymouth*	*2/2/2017*
Keiko M. Orrall	*12th Bristol*	*2/2/2017*
Denise Provost	*27th Middlesex*	*1/30/2017*
David M. Rogers	*24th Middlesex*	*2/3/2017*
Bruce E. Tarr	*First Essex and Middlesex*	*2/3/2017*
Chris Walsh	*6th Middlesex*	*1/30/2017*
Timothy R. Whelan	*1st Barnstable*	*2/2/2017*
Susannah M. Whipps	*2nd Franklin*	*2/2/2017*

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By Representatives DuBois of Brockton and Gentile of Sudbury, a petition (accompanied by bill, House, No. 773) 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.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *4265* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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:

SECTION 1. Subsection (a) of section 3 of chapter 209C of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the last sentence.

SECTION 2. The first paragraph of subsection (e) of section 10 of said chapter 209C, as so appearing, is hereby amended by striking out the last sentence.

SECTION 3. Said chapter 209C is hereby amended by inserting after section 10 the following section:-

Section 10A. (a) (1) Upon or after the adjudication of an assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272, a court in which the defendant in any such matter files a petition to determine paternity or for any matters related to the custody of or visitation with a child shall hold a hearing to determine if the child was conceived during the commission of said offense.

(2) If the court finds upon a showing by a preponderance of evidence that a child was conceived during the commission of said offense and the defendant is the biological source of the child's conception: (1) a presumption shall be established that the defendant is unfit and it is not in the best interests of the child to be placed in sole custody, shared legal custody, or shared physical custody with the defendant; provided that, the only way such presumption may be overcome with regard to shared legal custody or shared physical custody but not sole custody only upon petition by the rape victim and a written finding by the Judge on a clear and convincing evidence standard that the defendant is a fit parent and as such shared legal custody or shared physical custody is by the Judge's written finding of facts in the best interests of the child.; (2) the court may require the convicted defendant to pay monetary restitution for the consequences of conception during nonconsensual sexual conduct (pursuant to MGL Ch 119A) and any modification of an order or judgment resulting from such support action; (3)

the court may make a new custody order as to the legal and physical custodial rights of the defendant; and (4) the court may modify any previous award granted to the defendant for sole custody, shared legal custody or shared physical custody of the child.

(b) Notwithstanding section 10, no court shall make an order providing visitation rights to a person who is the biological source of a child's conception if that person was convicted of, was granted a continuance without a finding for or otherwise pleaded guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272 and is seeking to obtain visitation with the child who was conceived during the commission of that offense.

(c) In cases where there has been no conviction, continuance without a finding for or otherwise a plea of guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272, upon any complaint to establish paternity and any request for custody or visitation under said complaint, the court shall consider evidence that such conduct occurred that would constitute a crime under said sections. If a court finds by clear and convincing evidence that such conduct occurred and a preponderance of evidence that the child that is the subject of the complaint was conceived during the commission of such conduct, (1) a presumption shall be established that the defendant is unfit and it is not in the best interests of the child to be placed in sole custody, shared legal custody, or shared physical custody with the defendant; provided that, the only way such presumption may be overcome with regard to shared legal custody or shared physical custody but not sole custody only upon petition by the rape victim and a written finding by the Judge on a clear and convincing evidence standard that the defendant is a fit parent and as such shared legal custody or shared physical custody is (by the Judge's written finding of facts) in the best interests

of the child; (2) the court may require the convicted defendant to pay monetary restitution for the consequences of conception during nonconsensual sexual conduct (pursuant to MGL Ch 119A) and any modification of an order or judgment resulting from such support action; (3)

the court may make a new custody order as to the legal and physical custodial rights of the defendant; and (4) the court may modify any previous award granted to the defendant for sole custody, shared legal custody or shared physical custody of the child and (5) visitation may only be ordered upon petition by the rape victim and a written finding by the Judge that such visitation is in the best interest of the child.

SECTION 4. Chapter 215 is hereby amended by inserting in section 3 the following section (d) and renaming the current section (d) section (e):

In consideration of a petition to dispense with parental rights to consent to an adoption, if that person was convicted of, was granted a continuance without a finding for or otherwise pleaded guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272 or if after a hearing the court finds by clear and convincing evidence that conduct occurred that would constitute a crime under said sections and the court finds by a preponderance of the evidence that the child that is the subject of the petition to dispense with need for the consent of said parent was conceived during the commission of such offense or conduct, there shall be an irrebuttable presumption that said parent is unfit and that it is in the best interests of the child to dispense with the need for consent to adoption by the parent who committed such offense or conduct.