

**HOUSE . . . . . No. 781**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*James J. Dwyer*

*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 relative to visitation and family court matters in domestic violence cases.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>1/18/2017</i>

**HOUSE . . . . . No. 781**

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By Mr. Dwyer of Woburn, a petition (accompanied by bill, House, No. 781) of James J. Dwyer relative to conditions of release visitation rights in domestic violence cases. The Judiciary.

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**The Commonwealth of Massachusetts**

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

An Act relative to visitation and family court matters in domestic violence cases.

*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 276 of the General Laws is hereby amended by inserting after  
2 section 42A the following section:-

3           Section 42B. conditions of release visitation rights.

4           (a) This section applies to defendants who are:

5           (1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4,  
6 inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or  
7 the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the  
8 assault and battery of a pregnant person under section 13A of chapter 265; and

9           (2) where the victim of the crime is pregnant at the time of the crime or becomes  
10 pregnant as a result of the crime; or where the victim and the defendant have a child in common;  
11 or where a child is the victim or witness to the crime.

12 (b) For a defendant as described in subsection (a), the criminal court in which the  
13 defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining  
14 visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of  
15 subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of  
16 a sentence as described in subsection (c).

17 (1) The adult victim, or the mother of a child victim or witness, may waive the right to  
18 have a visitation ban issue.

19 (2) A child of suitable age, or a guardian ad litem acting on their behalf, may request that  
20 the ban issue or not issue.

21 (3) Where a mother and a child of suitable age disagree about whether to waive the  
22 visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a  
23 determination regarding visitation based on the best interests of the child.

24 (4) Decisions by victims and any involved children regarding visitation bans are not  
25 necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time  
26 during the pendency of the case leading to the time when a visitation ban would terminate as  
27 described in section (3).

28 (5) Nothing in this section precludes the Commonwealth or the victim from asking for a  
29 stay away or no contact order as a post-conviction condition pursuant to sentencing.

30 (c) The visitation ban shall terminate after the completion of the defendant's sentence,  
31 following a conviction or plea of guilty to the offenses listed in (1)(a), or after one year of the  
32 defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation

33 through the probate courts, the defendant must complete a psychological evaluation, a domestic  
34 violence education program, a parenting program and any other treatment the probate court  
35 deems necessary prior to being allowed visitation.

36 (1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if  
37 the case is terminated, the ban prohibiting visitation shall be immediately lifted.

38 (d) For defendants for whom there is a ban prohibiting visitation as described in this  
39 section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic  
40 Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to  
41 continue until the visitation ban is lifted.

42 SECTION 2. Chapter 276 of the General Laws is hereby amended by inserting after  
43 section 87A the following section:-

44 Section 87B. conditions of probation visitation rights.

45 (a) This section applies to defendants who are:

46 (1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4,  
47 inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or  
48 the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the  
49 assault and battery of a pregnant person under section 13A of chapter 265; and

50 (2) where the victim of the crime is pregnant at the time of the crime or becomes  
51 pregnant as a result of the crime; or where the victim and the defendant have a child in common;  
52 or where a child is the victim or witness to the crime.

53 (b) For a defendant as described in subsection (a), the criminal court in which the  
54 defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining  
55 visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of  
56 subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of  
57 a sentence as described in subsection (c).

58 (1) The adult victim, or the mother of a child victim or witness, may waive the right to  
59 have a visitation ban issue.

60 (2) A child of suitable age, or a guardian ad litem acting on their behalf, may request that  
61 the ban issue or not issue.

62 (3) Where a mother and a child of suitable age disagree about whether to waive the  
63 visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a  
64 determination regarding visitation based on the best interests of the child.

65 (4) Decisions by victims and any involved children regarding visitation bans are not  
66 necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time  
67 during the pendency of the case leading to the time when a visitation ban would terminate as  
68 described in section (3).

69 (5) Nothing in this section precludes the Commonwealth or the victim from asking for a  
70 stay away or no contact order as a post-conviction condition pursuant to sentencing.

71 (c) The visitation ban shall terminate after the completion of the defendant's sentence,  
72 following a conviction or plea of guilty to the offenses listed in (1)(a), or after one year of the  
73 defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation

74 through the probate courts, the defendant must complete a psychological evaluation, a domestic  
75 violence education program, a parenting program and any other treatment the probate court  
76 deems necessary prior to being allowed visitation.

77 (1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if  
78 the case is terminated, the ban prohibiting visitation shall be immediately lifted.

79 (d) For defendants for whom there is a ban prohibiting visitation as described in this  
80 section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic  
81 Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to  
82 continue until the visitation ban is lifted.