HOUSE DOCKET, NO. 1157 FILED ON: 1/18/2017

HOUSE . . . . . No. 781

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:
James J. Dwyer	*30th Middlesex*	*1/18/2017*

HOUSE DOCKET, NO. 1157 FILED ON: 1/18/2017

HOUSE . . . . . No. 781

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.

The Commonwealth of Massachusetts

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:

SECTION 1. Chapter 276 of the General Laws is hereby amended by inserting after section 42A the following section:-

Section 42B. conditions of release visitation rights.

(a) This section applies to defendants who are:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 87B. conditions of probation visitation rights.

(a) This section applies to defendants who are:

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

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

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

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

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

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

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

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

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

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

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

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