

SENATE No. 875

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/3/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/3/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>

SENATE No. 875

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 875) of Patricia D. Jehlen, Michael O. Moore, Bruce E. Tarr and Sal N. DiDomenico 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 Ninetieth General Court
(2017-2018)**

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

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, a court in which the defendant in any such matter files a petition to determine
10 paternity or for any matters related to the custody of or visitation with a child shall hold a hearing
11 to determine if the child was conceived during the commission of said offense.

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

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

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

33 (c) In cases where there has been no conviction, continuance without a finding for or
34 otherwise a plea of guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F,
35 13H, or 22 to 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272, upon any
36 complaint to establish paternity and any request for custody or visitation under said complaint,
37 the court shall consider evidence that such conduct occurred that would constitute a crime under
38 said sections. If a court finds by clear and convincing evidence that such conduct occurred and
39 a preponderance of evidence that the child that is the subject of the complaint was conceived
40 during the commission of such conduct, (1) a presumption shall be established that the defendant
41 is unfit and it is not in the best interests of the child to be placed in sole custody, shared legal
42 custody, or shared physical custody with the defendant; provided that, the only way such
43 presumption may be overcome with regard to shared legal custody or shared physical custody
44 but not sole custody only upon petition by the rape victim and a written finding by the Judge on a
45 clear and convincing evidence standard that the defendant is a fit parent and as such shared legal
46 custody or shared physical custody is (by the Judge's written finding of facts) in the best interests
47 of the child; (2) the court may require the convicted defendant to pay monetary restitution for the
48 consequences of conception during nonconsensual sexual conduct (pursuant to MGL Ch 119A)
49 and any modification of an order or judgment resulting from such support action; (3)

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

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

57 In consideration of a petition to dispense with parental rights to consent to an adoption, if
58 that person was convicted of, was granted a continuance without a finding for or otherwise
59 pleaded guilty to an assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, or 22 to
60 23B, inclusive, of chapter 265, or section 2, 3, 4 or 17 of chapter 272 or if after a hearing the
61 court finds by clear and convincing evidence that conduct occurred that would constitute a crime
62 under said sections and the court finds by a preponderance of the evidence that the child that is
63 the subject of the petition to dispense with need for the consent of said parent was conceived
64 during the commission of such offense or conduct, there shall be an irrebuttable presumption that
65 said parent is unfit and that it is in the best interests of the child to dispense with the need for
66 consent to adoption by the parent who committed such offense or conduct.