HOUSE DOCKET, NO. 2895 FILED ON: 1/17/2019

HOUSE . . . . . No. 3295

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine Lawrence Gentile and Michelle M. DuBois

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 protecting survivors of rape and their children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Carmine Lawrence Gentile	*13th Middlesex*	*1/17/2019*
Michelle M. DuBois	*10th Plymouth*	*1/20/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/18/2019*
Andres X. Vargas	*3rd Essex*	*1/29/2019*
Tram T. Nguyen	*18th Essex*	*1/30/2019*
Tricia Farley-Bouvier	*3rd Berkshire*	*2/1/2019*
Brian M. Ashe	*2nd Hampden*	*2/1/2019*
Shaunna L. O'Connell	*3rd Bristol*	*2/1/2019*

HOUSE DOCKET, NO. 2895 FILED ON: 1/17/2019

HOUSE . . . . . No. 3295

By Representatives Gentile of Sudbury and DuBois of Brockton, a petition (accompanied by bill, House, No. 3295) of Carmine Lawrence Gentile, Michelle M. DuBois and others relative to survivors of rape and children of rape survivors. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act protecting survivors of rape and their children.

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. Section 3(a) of Chapter 209C, as appearing in the 2016 Official Edition, is hereby amended by striking out the third sentence and inserting in place thereof the following sentences:-

No court shall make an order providing visitation rights to a parent who was convicted of a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H, 22, 22A, 22B, 22C, 23A, 23B of chapter 265 or sections 2, 3 of chapter 272, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime as defined in said chapters, and is seeking to obtain visitation with a child who was conceived during the commission of that rape. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself constitute proof that such a crime did not occur. Provided, however, such visitation rights may be granted if and only if such visitation is found to be in the best interests of the child and the

mother of the child affirmatively consents to such visitation action. Termination of these rights shall not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right of the child to inherit through or from the perpetrator of the crime.

Further, no court shall make an order providing visitation rights to a parent who was convicted of a crime under Sections 13 A and 15D, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime as defined in said chapters, and is seeking to obtain visitation with a child where the victim of the crime was 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. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself constitute proof that such a crime did not occur. Provided, however, such visitation rights may be granted if and only if such visitation is found to be in the best interests of the child and the mother of the child affirmatively consents to such visitation. Termination of these rights shall not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right of the child to inherit through or from the perpetrator of the crime.

SECTION 2. Section 10 of Chapter 209C, as appearing in the 2016 Official Edition, is hereby amended by inserting at the end of the current statute the following section:-

(f) No court shall make an order providing custody rights to a parent who was convicted of a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H, 22, 22A, 22B, 22C, 23A, 23B of chapter 265 or sections 2, 3 of chapter 272, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to

have committed a crime as defined in said chapters, and is seeking to obtain any form of custody of a child who was conceived during the commission of that rape. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself constitute proof that such a crime did not occur. Provided, however, such custody rights may be granted if and only if such custody is found to be in the best interests of the child and the mother of the child affirmatively consents to such custody. Termination of these rights shall not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right of the child to inherit through or from the perpetrator of the rape.

Further, no court shall make an order providing custody rights to a parent who was convicted of a crime under Sections 13 A and 15D, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime as defined in said chapters, and is seeking to obtain visitation with a child where the victim of the crime was 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. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself constitute proof that such a crime did not occur. Provided, however, such visitation or custody rights may be granted if and only if such custody is found to be in the best interests of the child and the mother of the child affirmatively consents to such visitation or custody action. Termination of these rights shall not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right of the child to inherit through or from the perpetrator of the crime.

SECTION 3. Chapter 208, as appearing in the 2016 Official Edition, is hereby amended by inserting the following section:-

Section 31B. No court shall make an order providing custody or visitation rights to a parent who was convicted of a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H, 22, 22A, 22B, 22C, 23A, 23B of chapter 265 or sections 2, 3 of chapter 272, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime as defined in said chapters, and is seeking to obtain custody or visitation rights with a child who was conceived during the commission of that rape. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself constitute proof that such a crime did not occur. Provided, however, such custody or visitation rights may be granted if and only if such custody or visitation is found to be in the best interests of the child and the mother of the child affirmatively consents to such custody or visitation. Termination of these rights shall not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right of the child to inherit through or from the perpetrator of the crime.

Further, no court shall make an order providing custody or visitation rights to a parent who was convicted of a crime under Sections 13 A and 15D, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime as defined in said chapters, and is seeking to obtain custody or visitation right with a child where the victim of the crime was 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. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes

shall not in and of itself constitute proof that such a crime did not occur. Provided, however, such custody or rights may be granted if and only if such custody or visitation is found to be in the best interests of the child and the mother of the child affirmatively consents to such custody or visitation. Termination of these rights shall not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right of the child to inherit through or from the perpetrator of the crime.

SECTION 4. Chapter 210, as appearing in the 2016 Official Edition, is hereby amended by striking in section 3 the subsection (d) and inserting in place thereof:-

(d) In consideration of a petition to dispense with parental rights to consent to an adoption if that person was convicted of a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H, 22, 22A, 22B, 22C, 23A, 23B of chapter 265 or sections 2, 3 of chapter 272, against whom a charge under such statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime as defined in said chapters, then there shall be a 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. For purposes of this section the failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself constitute proof that such a crime did not occur. Provided, however, a termination petition may be denied if and only if there has been no conviction of the above enumerated crimes, such action is found to be contrary to the best interests of the child and the mother of the child opposes such termination.

(e) Nothing in this section shall be construed to prohibit the petitioner and a birth parent from entering into an agreement for post-termination contact or communication. The court

issuing the termination decree under this section shall have jurisdiction to resolve matters concerning the agreement. Such agreement shall become null and void upon the entry of an adoption or guardianship decree.

Notwithstanding the existence of any agreement for post-termination or post-adoption contact or communication, the decree entered under this section shall be final.

Nothing in this section shall be construed to prohibit a birth parent who has entered into a post-termination agreement from entering into an agreement for post-adoption contact or communication pursuant to section 6C once an adoptive family has been identified.