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# SENATE . . . . . No. 2227

## The Commonwealth of Massachusetts


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*May 23, 2019*

To the Honorable Senate and House of Representatives,

Earlier this month, the Supreme Judicial Court issued its decision in the case of Wayne Chapman. Chapman has been in one form of state custody or another since the late 1970s. Last year, the Superior Court ruled that, despite the fact that experts disagree as to whether Chapman remains so dangerous that he should remain in custody, the Commonwealth was not entitled to a trial on the issue. The Supreme Judicial Court affirmed that decision, ruling that our civil commitment statute does not permit a trial if two of these experts, referred to as "qualified examiners," whom the Superior Court orders to examine the person agree that he no longer remains sexually dangerous.

In view of this decision, I am submitting for your consideration "An Act Relative to Child Predators," legislation that I originally filed almost a year ago. This legislation reforms our civil commitment process so that any disagreement among experts will result in a trial at which a judge or jury can hear all of the evidence about whether a person remains sexually dangerous and make a fully informed decision regarding release.

This legislation also enhances the criminal penalties for serial rapists of children. Ensuring that these dangerous criminals receive a sentence of life in prison removes the chance that someone who has already sexually assaulted multiple children will be released and reoffend.

While these reforms will not impact Chapman's case, they will help keep child predators in custody in the future. I urge your prompt and favorable review of this legislation.

Respectfully submitted

Charles D. Baker,
*Governor*

# SENATE . . . . . No. 2227

Senate, May 28, 2019 -- Message from His Excellency the Governor recommending legislation to protect children from serial rapists.

## The Commonwealth of Massachusetts

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

An Act relative to child predators.

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is to Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect children from serial rapists, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, safety and convenience., 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. Section 1 of chapter 123A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the definitions of "Community Access Board" and "Community Access Program".

SECTION 2. Said section 1 of said chapter 123A, as so appearing, is hereby further amended by inserting after the definition of "Qualified examiner," the following definition:-

"Sexual dangerousness review board," a board consisting of five members appointed by the commissioner of correction, consistent with the policies and procedures of the department of correction. Each member shall be a psychologist or psychiatrist who meets the requirements for being a qualified examiner. Membership shall include at least two persons who are not

department of correction employees, but who may be independent contractors or consultants. The board's functions shall be to evaluate sexual dangerousness, to provide expert evidence and testimony in connection with proceedings under this chapter, and to make recommendations for the treatment of sexually dangerous persons committed to the treatment center.

SECTION 3. Section 2 of said chapter 123A, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, persons adjudicated as sexually dangerous persons and committed to the treatment center shall have no expectation of privacy, privilege or confidentiality in any records or communications regarding treatment, including without limitation, medical, psychiatric and psychological records of any type.

SECTION 4. Section 2A of said chapter 123A, as so appearing, is hereby amended by striking out, in lines 27 to 28, the words "considered for participation in the community access program" and inserting in place thereof the following words:- until released pursuant to section 9.

SECTION 5. Section 6A of said chapter 123A, as so appearing, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following 4 paragraphs:-

The department of correction shall establish a board known as the sexual dangerousness review board, as defined in section 1, referred to in this section as the board. The board shall, 9 months before the release of a sex offender from his criminal sentence, evaluate each such prisoner under sentence in the custody of the department of correction to make a recommendation to the district attorney or the attorney general about the present sexual

dangerousness of such prisoner. In the case of a prisoner who is sentenced to prison for no more than 9 months, such review shall be conducted as soon as practicable following such person's admission to prison. The board shall set forth its recommendations about the present sexual dangerousness of said prisoner in a written report which report shall be admissible in evidence in any proceeding under this chapter. In the event of dissenting opinions, two written reports shall be prepared, one representing the majority opinion and one representing the minority opinion.

The board shall conduct examinations, including personal interviews, of each sexually dangerous person committed to the treatment center for the purpose of opining whether the person remains sexually dangerous. The board shall prepare written reports of its examinations and diagnoses and the recommendations for the disposition of any petition filed pursuant to this chapter, which reports shall be filed with the court.

Such examinations shall be conducted at least annually and on such additional basis as determined by the department of correction or order of the court in connection with any petition under section 9 of this chapter. The board shall also annually make recommendations for treatment for each sexually dangerous person committed to the treatment center, which recommendations shall be included in the board's written report.

For all evaluations conducted under this chapter, the board shall have access to all records of the person being evaluated.

SECTION 6. The second paragraph of section 9 of said chapter 123A, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following 2 sentences:-

The court shall also order the petitioner to be examined by the sexual dangerousness review board, including personal interviews, as set forth in section 6A of this chapter. Said reports of the qualified examiners and the sexual dangerousness review board shall be admissible in a hearing pursuant to this section.

SECTION 7. Said section 9 of said chapter 123A, as so appearing, is hereby further amended by inserting after the word “section,” in line 31, the following words:- or by the sexual dangerousness review board.

SECTION 8. Said section 9 of said chapter 123A, as so appearing, is hereby further amended by inserting after the word “examiners,” in line 34, the following words:- and the sexual dangerousness review board.

SECTION 9. The second paragraph of said section 9 of said chapter 123A, as so appearing, is hereby further amended by striking out the sixth and seventh sentences.

SECTION 10. Said section 9 of said chapter 123A, as so appearing, is hereby further amended by inserting after the word “center,” in line 46, the following words:- ; provided, however, that such order shall not require discharge sooner than 48 hours from when it is issued.

SECTION 11. Said section 9 of said chapter 123A, as so appearing, is hereby further amended by striking out, in line 46, the words “such discharge” and inserting in place thereof the following words:- receipt of such discharge order.

SECTION 12. Section 13 of said chapter 123A, is hereby amended by inserting after the word “examiners,” in lines 5 to 6, 10 and 25, in each instance, the following words:- and the sexual dangerousness review board.

SECTION 13. Section 14 of said chapter 123A, as so appearing, is hereby amended by inserting after the word “examiners,” in line 7, the following words:- and the sexual dangerousness review board.

SECTION 14. Said section 14 of said chapter 123A, as so appearing, is hereby further amended by striking out subsection (c).

SECTION 15. Said chapter 123A is hereby amended by adding the following section:-

Section 17.

Evidence of the person's juvenile and adult court and probation records, medical, psychiatric and psychological records and reports regarding the person named in the petition prepared under this chapter, including the report of any qualified examiner and the sexual dangerousness review board or any member thereof, the report of an expert retained by a party, police reports relating to such person’s prior sexual offenses and other offenses, incident reports arising out of such person’s incarceration or custody, oral or written statements prepared for and to be offered at the trial by the victims of sexual misconduct by the person who is the subject of the petition, parole records and reports, and any other evidence that tends to indicate that he is or is not a sexually dangerous person shall be admissible in a trial under this chapter if such written information has been provided to opposing counsel reasonably in advance of trial. A qualified examiner, any member of the sexual dangerousness review board, an expert retained by a party, any victim of sexual misconduct by the person who is the subject of the petition, and the chief administrative officer of the treatment center or his designee may testify at the trial of a petition brought under this chapter.

If a person who is the subject of a petition under this chapter seeks to present expert opinion at a probable cause hearing or trial and said expert has conducted a personal interview of the person, the court shall order the person to submit to a personal interview with the sexual dangerousness review board and such other expert as designated by the commonwealth. If the person refuses to participate in the personal interview with the sexual dangerousness review board or such other expert as is designated by the commonwealth, the court shall exclude the person's expert from testifying at such hearing or trial.

Evidence of the opinion of a single qualified examiner, any member of the sexual dangerousness review board or any person meeting the requirements of a qualified examiner that the subject of a petition brought under sections 9 or 14 is a sexually dangerous person, shall be deemed sufficient for the commonwealth to meet its burden of proof.

SECTION 16. Section 133A of chapter 127 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word "degree," in line 5, the following words:- or rape of a child through use of force or threat of bodily injury.

SECTION 17. Said section 133A of said chapter 127, as so appearing, is hereby further amended by inserting after the word "murder," in line 6, the words:- or rape.

SECTION 18. Section 22C of chapter 265 of the General Laws, as so appearing, is hereby amended by striking out, in line 17, the words "or any term of years, but not less than 20 years" and inserting in place thereof the following words:- and shall not be eligible for parole pursuant to section 133A of chapter 127.

SECTION 19. Said section 22C of said chapter 265, as so appearing, is hereby further amended by striking out the second sentence.

SECTION 20. Said chapter 265 is hereby amended by adding the following section:-

Section 59. Whoever, having been convicted upon a single indictment of two or more rapes of a child through use of force or threat of bodily injury in violation of section 22A in which the victims were different children, shall be adjudged a child predator, and shall be punished by imprisonment in the state prison for life and shall not be eligible for parole pursuant to section 133A of chapter 127, and such indictment shall neither be continued without a finding nor placed on file.

SECTION 21. Sections 3, 9 through 11, inclusive, 14 and 15 shall apply to all petitions brought pursuant to chapter 123A of the General Laws pending on the effective date of this act and to all such petitions filed after the effective date of this act.

SECTION 22. Sections 5 through 8, inclusive, 12 and 13 shall apply to all petitions brought under chapter 123A of the General Laws pending 90 days after the effective date of this act and to all such petitions filed 90 days after the effective date of this act.

SECTION 23. Sections 5 through 8, inclusive, 12 and 13 shall take effect 90 days after the effective date of this act.