SENATE DOCKET, NO. 1480 FILED ON: 1/17/2019

SENATE . . . . . No. 914

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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:	
Sal N. DiDomenico	*Middlesex and Suffolk*	
Michael O. Moore	*Second Worcester*	*1/31/2019*
Mark C. Montigny	*Second Bristol and Plymouth*	*2/1/2019*
Elizabeth A. Malia	*11th Suffolk*	*1/31/2019*
Carmine Lawrence Gentile	*13th Middlesex*	*1/18/2019*
Daniel J. Hunt	*13th Suffolk*	*1/29/2019*
David Allen Robertson	*19th Middlesex*	*2/1/2019*
Mike Connolly	*26th Middlesex*	*7/9/2019*

SENATE DOCKET, NO. 1480 FILED ON: 1/17/2019

SENATE . . . . . No. 914

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 914) of Sal N. DiDomenico, Carmine Lawrence Gentile, Daniel J. Hunt, Michael O. Moore and other members of the General Court for legislation to protect survivors of rape and their children. 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

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

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

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

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

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

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

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

59 Section 31B. No court shall make an order providing custody or visitation rights to a
60 parent who was convicted of a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H, 22, 22A,
61 22B, 22C, 23A, 23B of chapter 265 or sections 2, 3 of chapter 272, against whom a charge under
62 such statutes has been continued without a finding, or who after a hearing is found by clear and
63 convincing evidence to have committed a crime as defined in said chapters, and is seeking to
64 obtain custody or visitation rights with a child who was conceived during the commission of that
65 rape. For purposes of this section the failure to seek or obtain a conviction of the above
66 enumerated crimes shall not in and of itself constitute proof that such a crime did not occur.
67 Provided, however, such custody or visitation rights may be granted if and only if such custody
68 or visitation is found to be in the best interests of the child and the mother of the child
69 affirmatively consents to such custody or visitation. Termination of these rights shall not prevent
70 a court from ordering the perpetrator of the crime to pay child support nor shall it limit the right
71 of the child to inherit through or from the perpetrator of the crime.

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

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

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

88 (d) In consideration of a petition to dispense with parental rights to consent to an
89 adoption if that person was convicted of a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H,
90 22, 22A, 22B, 22C, 23A, 23B of chapter 265 or sections 2, 3 of chapter 272, against whom a
91 charge under such statutes has been continued without a finding, or who after a hearing is found
92 by clear and convincing evidence to have committed a crime as defined in said chapters, then
93 there shall be a irrebuttable presumption that said parent is unfit and that it is in the best interests
94 of the child to dispense with the need for consent to adoption by the parent who committed such
95 offense or conduct. For purposes of this section the failure to seek or obtain a conviction of the
96 above enumerated crimes shall not in and of itself constitute proof that such a crime did not
97 occur. Provided, however, a termination petition may be denied if and only if there has been no
98 conviction of the above enumerated crimes, such action is found to be contrary to the best
99 interests of the child and the mother of the child opposes such termination.

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

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

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

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