

**HOUSE . . . . . No. 1600**

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**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:
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/26/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/26/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/25/2021</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/26/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/18/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/18/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/7/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>9/14/2021</i>

**HOUSE . . . . . No. 1600**

By Representatives Gentile of Sudbury and DuBois of Brockton, a petition (accompanied by bill, House, No. 1600) of Carmine Lawrence Gentile, Michelle M. DuBois and others relative to survivors of rape and children of rape survivors. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3295 OF 2019-2020.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

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:*

1           SECTION 1. Section 3(a) of Chapter 209C, as appearing in the 2016 Official Edition, is  
2 hereby amended by striking out the third sentence and inserting in place thereof the following  
3 sentences:-

4           No court shall make an order providing visitation rights to a parent who was convicted of  
5 a crime under Sections 13B, 13B1/2, 13B ¾, 13 F, 13H, 22, 22A, 22B, 22C, 23A, 23B of chapter  
6 265 or sections 2, 3 of chapter 272, against whom a charge under such statutes has been  
7 continued without a finding, or who after a hearing is found by clear and convincing evidence to  
8 have committed a crime as defined in said chapters, and is seeking to obtain visitation with a  
9 child who was conceived during the commission of that rape. For purposes of this section the  
10 failure to seek or obtain a conviction of the above enumerated crimes shall not in and of itself

11 constitute proof that such a crime did not occur. Provided, however, such visitation rights may  
12 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  
25 be 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  
27 not prevent a court from ordering the perpetrator of the crime to pay child support nor shall it  
28 limit 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,  
81 such custody or rights may be granted if and only if such custody or visitation is found to be in  
82 the best interests of the child and the mother of the child affirmatively consents to such custody  
83 or visitation. Termination of these rights shall not prevent a court from ordering the perpetrator  
84 of 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.