

SENATE No. 1078

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 establishing a bill of rights for survivors of sexual assault and related purposes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/26/2023</i>

SENATE No. 1078

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1078) of Michael O. Moore and Jack Patrick Lewis for legislation to establish a bill of rights for survivors of sexual assault and related purposes. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act establishing a bill of rights for survivors of sexual assault and related purposes.

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. The General Laws are hereby amended by inserting after chapter 258E the
2 following chapter:-

3 Chapter 258F. Bill of Rights for Survivors of Sexual Assault

4 Section 1. Definitions

5 As used in this chapter, the follow words shall have the following meanings, unless the
6 context otherwise requires:-

7 “Crime Laboratory”, the State Police Crime Laboratory or, for the crimes that occurred in
8 the City of Boston, the Boston Crime Laboratory.

9 “Law enforcement official”, any officer of a city, town, or regional police agency, or
10 deputy sheriff of a country, or officer of the State Police.

“Medical provider”, any qualified health care professional, hospital, other emergency medical facility, or other facility conducting a medical evidentiary or physical examination of the survivor.

“Sexual assault forensic evidence”, “SAEC Kit”, or “kit”, any forensic medical, evidentiary, or physical examination of a victim of sexual assault, as provided for in section 97B of chapter 41, including both a sexual assault evidence collection kit and, when circumstances indicate the need, a toxicology kit.

“Sexual assault counselor”, as defined in section 20J of chapter 233.

“Sexual assault survivor”, “survivor”, any natural person who identifies as a victim of the crimes of rape, assault with intent to rape, or indecent assault and battery under sections 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, inclusive, of chapter 265, or the family member of such person if the victim is younger than 16 years of age, incompetent, or deceased, provided that in no instance does this include a family member identified by the victim as the perpetrator.

Section 2. Attachment and duration of rights

The rights provided to survivors in this chapter attach when a survivor seeks a medical evidentiary or physical examination, as provided in section 97B of chapter 41; and whenever a survivor is subject to an interview by a law enforcement official, prosecutor, or defense attorney. A survivor is under no obligation to report the crime to a law enforcement official or participate in a criminal prosecution of the assailant, and retains all the rights of this chapter regardless of whether a criminal report is made or made and at any point not pursued. A survivor of sexual assault is under no obligation to seek medical attention or have administered a rape kit, and

retains all the rights of this chapter regardless of whether the survivor receives a medical examination or administration of a SAEC kit.

Section 3. Right to a sexual assault counselor and a support person

(a) A survivor has the right to consult with a sexual assault counselor during any medical evidentiary or physical examination, as well as the right to have a support person of the survivor's choosing present; and during any interview by a law enforcement official, prosecutor, or defense attorney. A survivor retains this right even if the survivor has waived the right in a previous examination or interview.

(b) As codified in section 20J of chapter 233, communications between a survivor and a sexual assault counselor are confidential and privileged, including information disclosed in the presence of any third persons during a medical evidentiary or physical examination or during any interview by a law enforcement official, prosecutor, or defense attorney. The presence of a sexual assault counselor does not operate to defeat any existing privilege otherwise guaranteed by law.

(c) A survivor's waiver of the right to a sexual assault counselor is privileged.

(d) Notwithstanding any waiver of privilege, a survivor's communications with a sexual assault counselor, or waiver of the right to a sexual assault counselor, shall not be admissible into evidence for any purpose except with the consent of the survivor.

Section 4. Collection of sexual assault forensic evidence

(a) No costs incurred by a medical provider for the medical evidentiary examination portion of the examination of a survivor shall be charged directly or indirectly to the survivor.

(b) If the survivor of sexual assault is capable of becoming pregnant, whoever administers a SAEC kit must inform the survivor of their right to receive emergency contraception immediately at no cost to them. If a survivor elects to receive emergency contraception, the administering party must, within four hours of administering the kit, provide contraception at no cost or facilitate the provision of contraception at no cost.

(c) Before a medical provider commences a medical evidentiary or physical examination of a survivor, the medical provider shall inform the survivor of the following:

(i) the survivor's rights pursuant to this act and other relevant law in a document to be developed by the Massachusetts Office of Victim Assistance, which shall be signed by the survivor of sexual assault to confirm receipt;

(ii) the survivor's right to consult with a sexual assault counselor, to be summoned by the medical provider before the commencement of the medical evidentiary or physical examination, and to have present at least one support person of the survivor's choosing;

(iii) if a sexual assault counselor and/or support person cannot be summoned in a timely manner, the ramifications of delaying the medical evidentiary or physical examination; and

(iv) after the medical evidentiary or physical examination, the survivor's right to shower at no cost, unless showering facilities are not available.

Section 5. Interview with a law enforcement official, prosecutor, or defense attorney

(a) Before commencing an interview of a survivor, a law enforcement official, prosecutor, or defense attorney shall inform the survivor of the following:

(i) the survivor's rights pursuant to this act and other relevant law by providing the survivor with a document to be developed by the Massachusetts Office of Victim Assistance, which document shall be signed by the survivor of sexual assault to confirm receipt;

(ii) the survivor's right to consult with a sexual assault counselor during any interview by a law enforcement official, prosecutor, or defense attorney, to be summoned by the interviewer before the commencement of the interview, unless no sexual assault counselor can be summoned in a reasonably timely manner;

(iii) the survivor's right to have a support person of the survivor's choosing present during any interview by a law enforcement official, prosecutor, or defense attorney, unless the law enforcement official, prosecutor, or defense attorney determines in his or her good faith professional judgment that the presence of that individual would be detrimental to the purpose of the interview; and

(iv) for interviews by a law enforcement official, the survivor's right to be interviewed by a law enforcement official of the gender of the survivor's choosing. If no law enforcement official of that gender is reasonably available, the survivor may be interviewed by an available law enforcement official only upon the survivor's consent.

(b) A law enforcement official, prosecutor, or defense attorney shall not, for any reason, discourage a survivor from receiving a medical evidentiary or physical examination.

Section 6. Right to counsel

A survivor retains the right to have counsel present during all stages of any medical examination, interview, investigation, or other interaction with representatives from the legal or

criminal justice systems within the state as delineated in Section 4 and Section 5 of this bill.
Treatment of the survivor should not be affected or altered in any way as a result of the
survivor's decision to exercise this right to have counsel present during any interaction with the
legal or criminal justice systems within the state.

Section 7. Analysis of sexual assault forensic evidence

(a) A survivor has the right to prompt analysis of sexual assault forensic evidence.

(i) A medical provider shall, upon conducting a medical evidentiary examination to
collect sexual assault forensic evidence, inform the survivor that:

(A) the sexual assault forensic evidence shall be transported to the crime laboratory and
analyzed within 90 days, unless the survivor requests in writing at any time prior to analysis for
the crime laboratory to defer analysis of the sexual assault forensic evidence;

(B) the crime laboratory shall retain the sexual assault forensic evidence for a minimum
of 15 years before it is destroyed, or until the survivor reaches 40 years of age if the survivor was
a minor when the assault occurred; and

(C) if the survivor has requested deferred analysis, as described in subsection (A), the
survivor can request the crime laboratory to analyze the sexual assault forensic evidence at any
later date before the expiration of the retention period defined in subsection (B).

(ii) A medical provider who administers the SAEC Kit shall, within four hours of its
administration, notify the law enforcement agency with jurisdiction under section 98 of chapter
41 over the location of the alleged assault.

(iii) A law enforcement agency that receives notice under subsection (2) shall take possession of the sexual assault forensic evidence from the medical provider within 24 hours of receiving notification. Upon taking such possession, the law enforcement agency shall:

(A) Submit it to the crime laboratory with all due speed upon receipt, but no later than 5 days; and assign a criminal complaint number to that evidence after receiving that notice; or,

(B) If the law enforcement agency determines that it does not have jurisdiction over the alleged assault, it shall notify the law enforcement agency having proper jurisdiction of that fact within with all due speed, but no later than 5 days after taking possession of the sexual assault forensic evidence. After receiving such notice, the law enforcement agency having proper jurisdiction shall take possession of the sexual assault forensic evidence and submit it to the crime laboratory with all due speed, but no later than 5 days upon receipt.

(iv) Any law enforcement agency that submits sexual assault forensic evidence to a crime laboratory shall, immediately following such submission, notify the survivor of the name, address, and telephone number of the crime laboratory. The law enforcement agency shall also notify the survivor of the information listed in subsection (1)(A) – (C) of this section.

(v) A crime laboratory that receives sexual assault forensic evidence shall analyze that evidence and upload any available DNA profiles into CODIS, as provided under as provided under section 97B1/2 of chapter 41, within 90 days of receipt of that evidence, unless the survivor has requested in writing for the crime laboratory to defer analysis of that evidence.

(vi) The failure of a law enforcement agency to take possession of any sexual assault forensic evidence as provided in this act or to submit that evidence for analysis within the time prescribed under this act does not alter the authority of a law enforcement agency to take

possession of that evidence or to submit that evidence to the crime laboratory, and does not alter the authority of the crime laboratory to accept and analyze the evidence or to upload the DNA profile obtained from that evidence into CODIS. The failure to comply with the requirements of this act does not constitute grounds in any criminal or civil proceeding for challenging the validity of a database match or of any database information, and any evidence of that DNA record shall not be excluded by a court on those grounds.

(b) A crime laboratory shall retain all sexual assault forensic evidence for a minimum of 15 years; or until the alleged survivor reaches 40 years of age, if the survivor was a minor when the alleged assault occurred.

(c) A survivor has the right to be informed, upon the survivor's request, of the results of the analysis of the survivor's sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in CODIS. The survivor has the right to receive this information through a secure and confidential message in writing from the Crime Laboratory. This message must include the telephone number of the Crime Laboratory so that the survivor can call regarding the results.

(d) A defendant or person accused or convicted of a crime against a survivor shall have no standing to object to any failure to comply with this section, and the failure to provide a right or notice to a survivor under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

(e) A survivor of sexual assault has the right not to have the results of the rape kit used to prosecute the victim. No sexual assault forensic evidence shall be used:

(1) to prosecute a survivor for any misdemeanor crimes or any crime defined under the Controlled Substances Act, chapter 94C; or

(2) as a basis to search for further evidence of any unrelated misdemeanor crimes or any crime under Controlled Substances Act, chapter 94C, that may have been committed by the survivor.

Section 8. Notice to survivors

(a) Upon initial interaction with a survivor, a law enforcement officer or medical provider shall provide the survivor with a document to be developed by the Massachusetts Office of Victim Assistance that explains the rights of survivors, pursuant to this act and other relevant law, in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages of the state. This document shall include, but is not limited to:

(i) a clear statement that a survivor is not required to participate in the criminal justice system or to receive a medical evidentiary or physical examination in order to retain the rights provided by this chapter and other relevant law;

(ii) telephone and internet means of contacting nearby rape crisis centers and sexual assault counselors;

(iii) forms of law enforcement protection available to the survivor, including temporary protection orders, and the process to obtain such protection;

(iv) instructions for requesting the results of the analysis of the survivor's sexual assault forensic evidence; and

(v) state and federal compensation funds for medical and other costs associated with the sexual assault; and information on any municipal, state, or federal right to restitution for survivors in the event of a criminal trial.

(b) A law enforcement official shall, upon written request by a survivor, furnish [within [x] business days of receiving such request] a free, complete, and unaltered copy of all law enforcement reports concerning the sexual assault, regardless of whether the report has been closed by the law enforcement agency.

(c) A prosecutor shall, upon written request by a survivor, provide

(i) timely notice of any pretrial disposition of the case;

(ii) timely notice of the final disposition of the case, including the conviction, sentence, and place and time of incarceration;

(iii) timely notice of a convicted defendant's location, including whenever the defendant receives a temporary, provisional, or final release from custody; escapes from custody; is moved from a secure facility to a less-secure facility; or re-enters custody; and

(iv) a convicted defendant's information on a sex offender registry, if any.

Section 9. Creation of the Rights of Victims of Sexual Assault Task Force

(a) There is hereby established a Rights of Victims of Sexual Assault Task Force, whose members shall serve without compensation. Notwithstanding any provision of section 6 of chapter 268A to the contrary, the task force shall be selected, unless otherwise indicated, and staffed by the Massachusetts Office of Victim Assistance ("MOVA") and shall consist of:

200 (i) the Executive Director of MOVA or their designee;

201 (ii) a survivor who is a citizen or lawful resident of Massachusetts;

202 (iii) two representatives of rape crisis centers, as defined by section 20J of chapter 233;

203 (iv) the Superintendent of the Massachusetts State Police or his designee;

204 (v) a law enforcement official working for a city or town police department;

205 (vi) two representatives of Massachusetts-based colleges or universities whose

206 occupational duties include the provision of direct services to survivors of sexual assault and

207 whose employers are not under investigation by the Department of Education for alleged

208 violations of the federal Clery Act or Title IX of the United States Education Amendment Act of

209 1972;

210 (vii) two representatives of organizations that provide services, education, or outreach to

211 communities of color or immigrant;

212 (viii) a representative of an organization that provides services, education, or outreach to

213 lesbian, gay, bisexual, and transgender individuals;

214 (ix) a certified sexual assault nurse examiner;

215 (x) a representative of the Crime Laboratory;

216 (xi) other individuals or representatives selected by MOVA, with the total task force not

217 to exceed 15 members.

218 (b) The Task Force shall study nationally recognized best practices and make
219 recommendations regarding:

220 (i) the development and implementation of an effective mechanism for submitting,
221 tracking, and investigating complaints regarding the handling of, or response to, a sexual assault
222 report or investigation by any agency or organization involved in the response;

223 (ii) whether a need exists for additional sexual assault counselors for survivors of sexual
224 assault, and if such a need does exist, the Task Force shall:

225 (A) develop criteria to certify sexual assault counselors;

226 (B) create a plan for how the Commonwealth can provide, in conjunction with rape crisis
227 centers, victims' advocates organizations, and MOVA's existing SAFEPLAN program,
228 additional sexual assault counselors to meet the needs identified; and

229 (C) determine the cost of funding such a plan;

230 (iii) whether a need exists to expand the right to a sexual assault counselor beyond the
231 medical examination and law enforcement interview settings, and if such a need does exist, the
232 Task Force shall:

233 (A) identify the scope and nature of the need; and

234 (B) make recommendations on how best to fill that need, whether legislatively or
235 otherwise; and

236 (iv) whether a need exists to provide for ongoing evaluation of the implementation of
237 these rights, and if such a need does exist, the Task Force shall:

238 (A) identify the scope and nature of the need; and

239 (B) make recommendations on how best to fill that need, whether legislatively or

240 otherwise; and

241 (v) whether there is an ongoing need to maintain the Task Force after it issues its final

242 report, pursuant to subsection (e) of this section.

243 (c) In fulfilling its requirements under subsection (b) of this chapter, the Task Force shall

244 collect data regarding sexual assault reporting, arrest, prosecution rates, access to sexual assault

245 victims services, and any other data important for its deliberations and recommendations. If such

246 data does not exist, then the Task Force shall encourage its creation and maintenance by MOVA.

247 (d) In fulfilling its requirements under subsection (b) of this chapter, the Task Force shall

248 collect feedback from stakeholders, practitioners, and leadership throughout the state and local

249 law enforcement, victim services, forensic science practitioners, and health care communities to

250 inform development of future best practices or clinical guidelines regarding the care and

251 treatment of survivors.

252 (e) No later than 18 months after passage of this Act, the Task Force shall produce a

253 report that includes the result of the assessments, developments, and recommendations

254 completed pursuant to subsections (b), (c), and (d) of this section. This Task Force shall transmit

255 the report to the legislature, the Governor, the Attorney General, the Superintendent of the

256 Massachusetts State Police, and victims' advocates organizations and rape crisis centers.

257 (f) This Task Force shall be reconvened on an ongoing basis every 5 years in perpetuity,

258 or until it is determined that all rights contained within this bill have been effectively

implemented to ensure the rights of all survivors in Massachusetts. A determination of effective implementation of the rights contained in this act such that the Task Force is no longer needed shall only be made by a majority vote of the current members of the Task Force at the completion of their duties as delineated in subsections (b), (c), and (d) of this section.

(g) In undertaking its duties, the Task Force shall be empowered to retain independent experts who may:

(1) request files and records from any law enforcement official, but all such information shall be kept strictly confidential and reported on only as aggregated or anonymized;

(2) conduct confidential interviews with law enforcement officials, medical providers, sexual assault counselors, and others with direct knowledge of the sexual assault response process; and

(3) within the bounds of confidentiality, provide advice and recommendations to the Task Force.

SECTION 2. Section 20J of chapter 233 is hereby amended by inserting after the definition of "Sexual Assault Counselor" the following definitions:-

"Victim's rights organization", an organization or association that works to support survivors of sexual assault and is certified as such by the Massachusetts Office of Victim Assistance, which shall develop criteria for certifying victim's rights organizations and maintain a public listing of victim's rights organizations.

"Victim's Advocate", a person who is a psychologist, social worker, employee, or volunteer with a victim's rights organizations and who has been certified as a victim's advocate

by the Massachusetts Office of Victim Assistance, which shall develop criteria for training, certifying, and maintaining certification of victim's advocates and maintain a public listing of victim's advocates.

SECTION 3. Said section 20J of chapter 233, as so appearing, is further amended by striking the definition of "Confidential communication" and inserting in place thereof the following:-

"Confidential communication", information transmitted in confidence by and between a survivor of sexual assault and a sexual assault counselor or by and between a survivor of sexual assault and a victim's advocate by a means that does not disclose the information to a person other than a person present for the benefit of the survivor, or to those to whom disclosure of such information is reasonably necessary to the counselor and assisting of such survivor. The term includes all information received by the sexual assault counselor or victim's advocate that arises out of and in the course of such counseling or advocating, including, but not limited to reports, records, working papers, or memoranda.

SECTION 4. Said section 20J of chapter 233, as so appearing, is further amended in lines 26 through 31 striking the sixth paragraph and inserting in place thereof the following paragraph:-

Sexual assault counselors and victim's advocates shall not disclose such confidential communication without the prior written consent of the survivor; provided, however, that nothing in this chapter shall be construed to limit the defendant's right of cross-examination of such counselor in a civil or criminal proceeding if such counselor testifies with such written consent. No existing forms of privilege under Massachusetts law are waived by the presence of a

302 victim's advocate or sexual assault counselor or by communications with the victim's advocate,
303 sexual assault counselor, or victim's rights organization. This extends to all records kept thereby.

304 SECTION 5. Sections 1 and 2 shall take effect upon their passage.