

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

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 An act relative to justice for survivors.

PETITION OF:

NAME:

Michael F. Rush

DISTRICT/ADDRESS:

Norfolk and Suffolk

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act An act relative to justice for survivors.

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. Chapter 263 of the General Laws is hereby amended by inserting after
2 Section 9 the following section:

3 Section 10. Massachusetts Survivors Act

4 a) Definitions.

5 For the purpose of this section, the following words shall have the following meanings:-

6 i. “Survivor”, an adult or child who has experienced any of the following, as
7 defined below: abuse, sexual assault, post-traumatic stress disorder, or human trafficking.

8 ii. “Abuse”, as defined under section 1 of chapter 209A of the General Laws

9 iii. “Sexual Assault”, causing another to engage involuntarily in sexual relations by
10 force, threat or duress

11 iv. “Family or household members”, as defined under section 1 of chapter 209A of
12 the General Laws

13 v. “Posttraumatic stress disorder”, a mental health condition that is developed after
14 an experience or being witness to a traumatic event that is either life-threatening or pose a
15 significant threat to your physical, emotional or spiritual well-being

16 vi. “Human Trafficking”, conduct prohibited under sections 50 and 51 of chapter 265
17 of the General Laws or defined under 22 U.S.C. 7102.

18 vii. “Documentary evidence”, any evidence corroborating that the defendant is a
19 survivor of abuse. Documentary evidence may include, but is not limited to a court record; a
20 presentence report; a social services record; a hospital record; a sworn statement corroborating
21 the abuse, sexual assault, post-traumatic stress disorder, or human trafficking from someone
22 who is not the defendant; a law enforcement record; a domestic incident report; a protective
23 order; a sworn statement by the defendant; local jail records or records of the Department of
24 Correction; documentation—including written documents, photographs, text messages, emails,
25 videos, and audio recordings—tending to support the claims of the defendant; verification of
26 consultation with a licensed medical care provider or mental health care provider, employee of a
27 court acting within the scope of his or her employment, member of the clergy, attorney, social
28 worker, rape crisis counselor, or other advocate acting on behalf of an agency that assists
29 survivors.

30 viii. “Prima facie showing”, a defendant produces facts that establish that there is a
31 substantial likelihood that they are a survivor who is eligible for relief under this Act. For
32 purposes of this section, a

33 ix. “Defendant”, any adult or child charged with a crime. A child shall be considered
34 a defendant for the purposes of this Act regardless of whether they were adjudicated as a
35 “delinquent child” or “youthful offender” as defined under sections 52 through 84 of chapter 119
36 of the General Laws

37 x. “substantial likelihood”, requires more than a mere possibility, but less than a standard
38 of more likely than not.

39 b) Any adult or child charged with a crime may file a motion alleging that they are
40 subject to relief pursuant to the Massachusetts Survivors Act because (1) they are a survivor of
41 abuse, sexual assault, post-traumatic stress disorder, or human trafficking and (2) their alleged
42 offenses were related to their experiences of abuse, sexual assault, post-traumatic stress-disorder,
43 or human trafficking.

44 c) A motion requesting relief pursuant to this Act may be filed at any time after an
45 adult or child has been charged or adjudicated as delinquent. The motion may seek pretrial
46 diversion, a reduced sentence, or postconviction relief. In their motion or at a hearing, the
47 defendant may present evidence including:

48 i. documentary evidence corroborating that the defendant is a survivor of abuse,
49 sexual assault, post-traumatic stress disorder, or human trafficking.

50 ii. expert testimony from a psychiatrist, psychologist, or mental health professional
51 showing that the defendant has been diagnosed with post-traumatic stress disorder as a result of
52 the violence or abuse at issue;

53 iii. testimony from the petitioner;

54 iv. testimony from other witnesses;

55 v. any other relevant evidence.

56 d) The court shall issue a written order including findings of fact and reasons for its
57 determination regarding the accused's eligibility for relief under this Act and the sentence
58 imposed.

59 e) An appeal may be taken as of right regarding any determination of eligibility or
60 sentence imposed pursuant to this Act. Counsel shall be appointed upon request for those who
61 seek to appeal.

62 f) At any point, the parties may stipulate to the terms of requested relief under this
63 Act.

64 g) The court shall determine the defendant's eligibility for relief pursuant to this Act
65 regardless of whether the defendant raised an affirmative defense at any point in the proceedings
66 against them.

67 h) No evidence presented in a motion or hearing pursuant to this Act may be used
68 for the purpose of prosecution.

69 i) The Office of the Attorney General shall collect information regarding each
70 motion filed pursuant to this Act. The Office of the Attorney General shall annually, not later
71 than December 31, report to the joint committee on the judiciary. The report must include the
72 following information:

73 (1) the number of motions filed;

- 74 (2) the number of motions granted;
- 75 (3) the sentence requested by the prosecuting agency at sentencing, where applicable;
- 76 (4) the sentence or diversion order imposed;
- 77 (5) the county in which the petitioner was prosecuted;
- 78 (6) the race and ethnicity of the defendant;
- 79 (7) the gender and gender identity of the defendant;

80 SECTION 2. Chapter 263 of the General Laws is hereby amended by inserting after
81 Section 10, the following section

82 Section 10A: Diversion Pursuant to the Massachusetts Survivors Justice Act

83 a) A defendant may bring a motion seeking pretrial diversion under this Act wherein
84 criminal or delinquency proceedings are suspended without a plea of guilty for a period of not
85 less than 3 months and not more than 24 months. The motion shall include 1) a statement that the
86 defendant is a survivor as defined in Section 2 of this Act and 2) the defendant's plan for the
87 diversion period, which may include programs, services, restorative justice activities,
88 employment, and/or community service. If such a motion has been filed, the court shall not
89 proceed with pre-trial hearings until it issues a decision on the motion. Where the defendant
90 requests a hearing and has made a prima facie showing that they meet the requirements of this
91 Act, the court shall order a hearing.

92 b) Within 60 days of receiving a motion pursuant to this Act or holding a hearing on
93 such a motion, the court shall make written findings as to 1) whether the defendant has

94 established by a preponderance of the evidence that they are a Survivor as defined in Section 2
95 above and that their alleged criminal offense was related to their experiences as a Survivor such
96 that they are eligible for relief pursuant to this Act and 2) whether the conditions of diversion are
97 feasible and will contribute to the well-being of the defendant and their community.

98 c) No consent by the defendant to the stay of proceedings or any act done or
99 statement made in fulfillment of the terms and conditions of such stay of proceedings shall be
100 admissible as an admission, implied or otherwise, against the defendant, should the stay of
101 proceedings be terminated and criminal or delinquency proceedings resumed on the original
102 charge or charges;

103 d) If the defendant has performed satisfactorily in diversion, at the end of the period
104 of diversion, the court shall enter a dismissal of the underlying case. A court may conclude that
105 the defendant has performed satisfactorily if the defendant has substantially complied with the
106 conditions of diversion and not willfully violated any other conditions set by the court. If the
107 defendant does not perform satisfactorily in diversion, the court may extend the period of
108 diversion and modify the conditions; or the court may reinstate criminal or delinquency
109 proceedings.

110 e) Motions filed under this Section are subject to the provisions set forth in Section 2
111 of this Act.

112 SECTION 3. Chapter 263 of the General Laws is hereby amended by inserting after
113 Section 10A, the following section

114 Section 10B: Sentencing Relief Pursuant to the Massachusetts Survivors Act

115 a) During a hearing to impose a sentence or accept a plea of guilty, the court shall
116 consider a motion for relief pursuant to Section 2 of this Act. If the court finds by a
117 preponderance of the evidence that the defendant is a survivor of abuse, sexual assault,
118 posttraumatic stress disorder, or human trafficking and that their criminal offense or delinquent
119 behavior was related to their experience as a survivor, the court shall depart from the applicable
120 sentence to the ranges provided as follows, or as provided in subsection B of this Section.

121 i. Sentences of life without the possibility of parole shall be reduced to 10 years or
122 less;

123 ii. Sentences of life with the possibility of parole shall be reduced to 7 years or less;

124 iii. Sentences of 25 years or more shall be reduced to 5 years or less;

125 iv. Sentences between 20 and 25 years shall be reduced to 4 years or less;

126 v. Sentences between 15 and 20 years shall be reduced to 3 years or less;

127 vi. Sentences between 8 and 15 years shall be reduced to 2 years or less; and

128 vii. Sentences between 2.5 and 8 years shall be reduced by 1 year;

129 viii. Sentences of 2.5 years or less shall be suspended or imposed as probation.

130 b) The court may impose a sentence that does not include incarceration, or may
131 direct that the execution of the sentence, or any part thereof, be suspended and that the defendant
132 be placed on probation for such time and on such terms and conditions as it shall fix, as set forth
133 in Chapter 279 of the Massachusetts General Laws, Sections 1-2.

134 c) A child adjudicated as a youthful offender and prosecuted as an adult is subject to
135 the sentences set forth in subsection A of this section. A child adjudicated as delinquent shall not
136 be committed to the Department of Youth Services.

137 d) The court shall determine the defendant's eligibility for relief pursuant to this Act
138 regardless of whether the defendant raised an affirmative defense at the time of their pre-trial,
139 trial, or plea proceedings.

140 SECTION 4. Chapter 263 of the General Laws is hereby amended by inserting after
141 Section 10B the following section:

142 Section 10C. Postconviction Relief Pursuant to the Massachusetts Survivors Justice Act

143 a) Any person who is (1) confined in an institution under the custody and control of
144 the Department of Correction or the Department of Youth Services and (2) eligible for a reduced
145 sentence pursuant to the provisions of this Act may file a petition for relief pursuant to this Act.

146 b) The administrative justices of the superior court, district court, juvenile court and
147 the Boston municipal court departments shall jointly promulgate a motion form for use under this
148 section that allows petitioners to provide:

149 i. A declaration by the petitioner that they are eligible for relief under this Act;

150 ii. The petitioner's case number and year of conviction or adjudication of
151 delinquency; and

152 iii. Whether the petitioner requests appointment of counsel.

153 c) The Department of Correction, Department of Youth Services, and courts with
154 criminal or delinquency jurisdiction will make the petition form available to all incarcerated
155 people free of cost. The petition form will be available for download on a publicly available
156 court website and the Department of Correction website. The petition form will be available by
157 phone or in-person request to a designated clerk at each state trial and appellate court with
158 criminal or delinquency jurisdiction.

159 d) Petitioners shall file their petitions in the county court where the petitioner was
160 convicted or adjudicated as delinquent and sentenced. Petitions shall be randomly assigned by
161 the administrative judge designated by the office of court administration with jurisdiction over
162 the county where the application is filed to any trial court judge with criminal or delinquency
163 jurisdiction other than the judge who first sentenced the applicant unless the judge who first
164 sentenced the applicant is the only judge in that county.

165 e) If the court finds that the petitioner has alleged the factors listed in subsection B
166 of this section, the court shall (1) notify the petitioner that they may submit a motion to be
167 resentenced; (2) send the petition to the district attorney where the petitioner was convicted, and
168 (3) appoint counsel, if petitioner requested appointment of counsel. If the court finds that the
169 petitioner has not alleged the factors listed in subsection B of this section, the court shall notify
170 the petitioner and deny their request without prejudice.

171 f) A motion for resentencing pursuant to this Act shall be filed and adjudicated
172 subject to the procedures set forth in Sections 2 and 4 of this Act.

173 g) If the court determines that the petitioner should be resentenced, the court shall
174 notify the applicant that, unless they withdraw their application for resentencing or appeal the

175 order of the court, the court shall enter an order vacating the sentence originally imposed and
176 shall impose a new sentence as set forth in Section 4 of this Act.

177 h) This Section does not diminish or abrogate any rights or remedies otherwise
178 available to the petitioner.

179 i) A person who is resentenced pursuant to this section shall be given credit for time
180 served toward the sentence originally imposed. A person whose time served exceeds the period
181 of incarceration required by their reduced sentence shall be released.

182 j) All granted motions will provide notification to all interested parties under
183 M.G.L. Ch. 258B.

184 SECTION 5. Section 100E of chapter 276 of the General Laws is hereby amended by
185 adding the definition “survivors of abuse, sexual assault, post-traumatic stress disorder, or human
186 trafficking” as follows “a survivor of (i) abuse as defined in section 1 of chapter 209A (ii) sexual
187 assault, defined as causing another to engage involuntarily in sexual relations by force, threat or
188 duress (iii) Posttraumatic stress disorder as defined in the Diagnostic and Statistical Manual of
189 Mental Disorders, Fifth Edition (DSM-5, 2013); and/or (iv) human trafficking as defined by
190 section 20M of chapter 233 or a victim of trafficking in persons under 22 U.S.C. 7102.”

191 SECTION 6. Section 100K of chapter 276 of the General Laws, as so appearing, is
192 hereby amended by striking the word “or” at the end of paragraph (a)(5).

193 SECTION 7. Section 100K of chapter 276 of the General Laws, as so appearing, is
194 hereby amended by inserting after the sixth paragraph of subsection (a), the following
195 paragraph:-

196 (7) an offense that was related to the petitioner being a victim of abuse, sexual assault,
197 post-traumatic stress disorder, or human trafficking.

198 SECTION 8. Section 100K of chapter 276 of the General Laws, as so appearing, is
199 hereby amended by inserting after the first sentence of subsection (b), the following sentences:-

200 In determining eligibility for relief, a judge shall consider any credible evidence of the
201 defendant's status as a survivor of abuse, sexual assault, post-traumatic stress disorder, or human
202 trafficking. Credible evidence shall include the testimony of the petitioner as well as
203 documentary evidence including, but not limited to: a court record; a presentence report; a social
204 services record; a hospital record; a sworn statement corroborating the abuse, sexual assault,
205 post-traumatic stress disorder, or human trafficking from someone who is not the defendant; a
206 law enforcement record; a domestic incident report; a protective order; a sworn statement by the
207 defendant; local jail records or records of the Department of Correction; documentation—
208 including written documents, photographs, text messages, emails, videos, and audio
209 recordings—tending to support the claims of the defendant; verification of consultation with a
210 licensed medical care provider or mental health care provider, employee of a court acting within
211 the scope of his or her employment, member of the clergy, attorney, social worker, rape crisis
212 counselor, or other advocate acting on behalf of an agency that assists survivors.

213 SECTION 9. Chapter 276 of the General Laws is hereby amended by striking out section

214 100Q, as inserted by section 195 of said chapter 69, and inserting in place thereof the
215 following section:-

216 Section 100Q. Unless otherwise provided by law, no person shall make records sealed
217 pursuant to section 100A, 100B, or 100C or expunged pursuant to section 100F, 100G, section
218 100H, or section 100K available for inspection in any form by any person.

219 SECTION 10. Section 100C of chapter 276 of the General Laws, as so appearing, is
220 hereby amended by inserting after the second paragraph, the following paragraphs:-

221 Notwithstanding other provisions in section 100A—100C, a judge may without a waiting
222 period seal any court appearance or disposition where the offense occurred as a result of the
223 petitioner being a victim of abuse, sexual assault, post-traumatic stress disorder, or human
224 trafficking.

225 A judge shall consider any credible evidence including testimony of the petitioner in
226 determining eligibility for relief under this section.

227 SECTION 11. Sections 100A, 100B, and 100C of chapter 276 of the General Laws, as so
228 appearing, are hereby amended by inserting the following language at the end of each section:
229 “The clerk’s office of any division of the trial court, the commissioner of probation, or any other
230 criminal justice agency, upon request of a person whose offense or offenses are sealed, or the
231 person’s legal representative, shall provide access to the information contained in the sealed
232 records to the individual or the individual’s legal representative without first obtaining a court
233 order.”

234 Chapter 279 of the General Laws is hereby amended by inserting after Section 6B, the
235 following section:

236 “Section 6C: Special Sentence of Imprisonment for Survivors. A person who is eligible
237 for a reduced or alternative sentence pursuant to the Massachusetts Survivors Act shall be
238 sentenced in accordance with the procedure set forth in in M.G.L. Ch. 263 §§ 10-10A.”

239 SECTION 12. Chapter 279 of the General Laws is hereby amended by inserting after
240 Section 6B, the following paragraphs

241 The right to file a motion and obtain relief under this Act shall not be waivable and is not
242 barred by any plea agreement.

243 The right to file a motion and obtain relief under this Act shall not be waivable and is not
244 barred by any plea agreement.

245 Notwithstanding any other provision of law concerning postconviction relief, a district
246 attorney in the jurisdiction in which a person was convicted of an offense may file a motion in
247 the district court to vacate or set aside a judgment of conviction at any time if clear and
248 convincing evidence exists establishing that the defendant was convicted of an offense that the
249 defendant did not commit. The district court shall have jurisdiction and authority to consider,
250 hear, and decide the motion.

251 A conviction, adjudication as of delinquent or youthful offender, or continuance without
252 a finding vacated under this section shall be deemed to have been vacated on the merits.

253 SECTION 13. Sections 57 and 59 of Chapter 265 of the Mass. General. Laws is repealed
254 and replaced with the following language:

255 Survivor of abuse, sexual assault, post-traumatic stress disorder, or human trafficking as
256 affirmative defense to criminal or delinquency charges.

257 In any prosecution or juvenile delinquency proceeding of a person who is a survivor of (i)
258 abuse as defined in section 1 of chapter 209A (ii) sexual assault, defined as causing another to
259 engage involuntarily in sexual relations by force, threat or duress (iii) Posttraumatic stress
260 disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition
261 (DSM-5, 2013); and/or (iv) human trafficking as defined by section 20M of chapter 233 or a
262 victim of trafficking in persons under 22 U.S.C. 7102, it shall be an affirmative defense to the
263 charge that such person was under duress or coerced into committing the offenses for which such
264 person is being prosecuted or against whom juvenile delinquency proceedings have commenced.