

HOUSE No. 1278

The Commonwealth of Massachusetts

PRESENTED BY:

Tricia Farley-Bouvier

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 victims of sexual assault and related purposes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>

<i>Leah Cole</i>	<i>12th Essex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>

HOUSE No. 1278

By Ms. Farley-Bouvier of Pittsfield, a petition (accompanied by bill, House, No. 1278) of Tricia Farley-Bouvier and others relative to rendering the criminal and civil justice systems accessible to victims of sexual violence. The Judiciary.

The Commonwealth of Massachusetts

—————
**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
—————

An Act establishing a bill of rights for victims 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. Chapter 258F of the General Laws is hereby established by inserting after
2 Chapter 258E the following chapter:—

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

4 Section 1. Definitions.

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

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

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

14 “Sexual assault counselor,” the same definition provided in section 20J of chapter 233.

15 “Victim of sexual assault,” any natural person who identifies as a victim of the crimes of
16 rape, assault with intent to rape, or indecent assault and battery under sections 13B, 13B1/2,
17 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, inclusive, of chapter 265, or the
18 family member of such person if the victim is younger than 16 years of age, incompetent, or
19 deceased, provided that in no instance does this include a family member identified by the victim
20 as the perpetrator.

21 “Victim’s advocate,” the same definition provided in section 20J of chapter 233.

22 Section 2. Attachment and duration of rights

23 The rights provided to victims of sexual assault in this chapter attach when a victim seeks
24 the assistance of a law enforcement official or medical professional. A victim of sexual assault is
25 under no obligation to report the crime to a law enforcement official or participate in a criminal
26 prosecution of the assailant, and retains all the rights of this chapter regardless of whether a
27 criminal report is made or made and at any point not pursued. A victim of sexual assault is under
28 no obligation to seek medical attention or have administered a rape kit, and retains all the rights
29 of this chapter regardless of whether the victim receives a medical examination or administration
30 of a rape kit.

31 Section 3. Right to a victim’s advocate or sexual assault counselor

32 (a) A victim of sexual assault has the right to be accompanied by a victim's advocate or
33 sexual assault counselor during any administration of a rape kit, interview by a law enforcement
34 official, and at all times when present in a hospital or other healthcare facility.

35 (b) A victim of sexual assault retains the right to be accompanied by a victim's advocate
36 or sexual assault counselor even if the victim has waived the right in a previous examination or
37 interview.

38 (c) As codified in section 20J of chapter 233, conversations with a victim's advocate or
39 sexual assault counselor are confidential and privileged, and the presence of a victim's advocate
40 or sexual assault counselor does not operate to defeat any privilege otherwise guaranteed by law.

41 Section 4. Rape kit administration

42 (a) No hospital or healthcare provider shall bill or otherwise request or accept payment
43 from a victim of sexual assault for the administration of a rape kit.

44 (b) If the victim of sexual assault is female, whoever administers a rape kit must inform
45 the victim of her right to receive emergency contraception immediately at no cost to her. If a
46 female victim elects to receive emergency contraception, the administering party must, within
47 four hours of administering the rape kit, provide contraception at no cost or facilitate the
48 provision of contraception at no cost.

49 (c) Whoever administers a rape kit shall ensure that:

50 (i) the victim of sexual assault receives notification in writing of his or her rights
51 as a victim, including the rights codified in this chapter, in a document to be developed by the

52 Massachusetts Office of Victim Assistance, which document shall be signed by the victim of
53 sexual assault to confirm receipt ;

54 (ii) the victim of sexual assault is provided with the opportunity to request a
55 sexual assault counselor or victim's advocate, to be summoned by the person administering the
56 rape kit, the administration of which shall not commence until the arrival of the sexual assault
57 counselor or victim's advocate;

58 (iii) the victim of sexual assault is informed, in the event that a sexual assault
59 counselor or victim's advocate cannot be summoned in a timely manner, of the ramifications of
60 delaying administration of the rape kit;

61 (iv) any victim of sexual assault who declines the opportunity to have a sexual
62 assault counselor or victim's advocate present, for whatever reason including that they cannot be
63 summoned in a timely manner, does so in a signed writing; and

64 (v) the victim of sexual assault receives the opportunity to shower at no cost, if
65 showering facilities are available.

66 Section 5. Interviews with law enforcement officials

67 (a) Before a law enforcement official begins an interview with a victim of sexual assault,
68 the law enforcement official shall ensure that:

69 (i) the victim of sexual assault receives a written notification of his or her rights as
70 a victim, including the rights codified in this chapter, in a document to be developed by the
71 Massachusetts Office of Victim Assistance, which document shall be signed by the victim of
72 sexual assault to confirm receipt;

73 (ii) the victim of sexual assault is provided with the opportunity to request a
74 sexual assault counselor or victim's advocate, to be summoned by the law enforcement official,
75 whose interview shall not commence until the arrival of the sexual assault counselor or victim's
76 advocate;

77 (iii) any victim of sexual assault who declines the opportunity to have a sexual
78 assault counselor or victim's advocate present does so in a signed writing; and

79 (iv) the victim of sexual assault has the opportunity to request a law-enforcement
80 officer of the same sex as the victim, as provided for by section 97B of chapter 41.

81 Section 6. Rape kit processing

82 (a) A victim of sexual assault has the right to prompt analysis of a rape kit.

83 (i) Whoever administers the rape kit shall, within four hours of its administration,
84 notify the police department with jurisdiction under section 98 of chapter 41 over the location of
85 the commission of the crime. The notified police department shall, within 24 hours of receiving
86 notification, retrieve and deliver the sexual assault evidence collection kit and the toxicology kit,
87 if any, to the Crime Laboratory.

88 (ii) The Crime Laboratory shall process all sexual assault evidence collection kits
89 and toxicology kits with all due speed upon receipt.

90 (iii) The failure of the police department or Crime Laboratory to expeditiously
91 retrieve, deliver, or process a rape kit does not affect the Commonwealth's ability to introduce
92 the kit as evidence for in a criminal trial, or the victim's ability to introduce the kit as evidence in
93 a civil trial.

94 (b) A victim of sexual assault has the right to receive in writing from the Crime
95 Laboratory the results and findings of his or her sexual assault evidence collection kit and, if
96 administered, toxicology kit.

97 (c) A victim of sexual assault has the right not to have the results of a rape kit used to
98 prosecute the victim.

99 (i) No evidence acquired from a rape kit, including DNA evidence and the results
100 of a toxicology screen, shall be used to prosecute the victim of sexual assault for any
101 misdemeanor crimes or any crime defined under the Controlled Substances Act, chapter 94C.

102 (ii) No evidence from a rape kit may be used as a basis to search for further
103 evidence of any unrelated misdemeanor crimes or any crime under the Controlled Substance Act,
104 chapter 94C, that may have been committed by the victim of sexual assault.

105 Section 7. Creation of tracking system for rape kits

106 There shall be established by the Massachusetts Office of Victim Assistance, within one
107 year of passage of this act, a system for tracking rape kits that permits a victim of sexual assault
108 to track, by telephone or internet, the location and status of his or her rape kit. Once established,
109 the person who administers the rape kit shall furnish the victim of sexual assault with written
110 information, created by the Massachusetts Office of Victim Assistance, about how to use and
111 access the tracking system.

112 Section 8. Reporting on backlog of rape kits

113 The State Police Forensic Services Group shall issue an annual report detailing the
114 number of sexual assault evidence collection kits taken statewide and the number of sexual

115 assault evidence collection kits processed by the State Police Crime Laboratory and the Boston
116 Crime Laboratory, including the time required for each kit to be processed.

117 Section 9. Information provided to victims of sexual assault

118 The Massachusetts Office of Victim Assistance shall develop a document, readable by a
119 person proficient in English at the fifth grade level, that explains the rights provided by this
120 chapter and further contains: a clear assurance that a victim of sexual assault is not required to
121 report the crime to law enforcement or to participate in criminal proceedings against an assailant
122 in order to retain the rights set out in this legislation; telephone and internet means for contacting
123 rape crisis centers and victim's advocates; instructions for tracking a rape kit through the
124 tracking system established by section 7 of this chapter; information on state and federal victim
125 compensation funds for medical and other costs associated with the sexual assault; and
126 information on the federal right to restitution for victims in the event of a criminal trial.

127 Section 10. Creation of the Rights of Victims of Sexual Assault Task Force

128 (a) There is hereby established a victim and witness assistance board, whose members
129 shall serve without compensation. Notwithstanding any provision of section 6 of chapter 268A to
130 the contrary, the board shall be selected, unless otherwise indicated, and staffed by the
131 Massachusetts Office of Victim Assistance ("MOVA") and shall consist of:

132 (i) the Executive Director of MOVA or his designee;

133 (ii) two representatives of rape crisis centers, as defined by section 20J of chapter
134 233;

135 (iii) The Superintendent of the Massachusetts State Police or his designee;

136 (iv) A law enforcement official working for a city or town police department;

137 (v) two representative of Massachusetts-based colleges or universities whose
138 occupational duties include the provision of direct services to victims of sexual assault and
139 whose employers are not under investigation by the Department of Education for alleged
140 violations of the federal Clery Act or Title IX of the United States Education Amendment Act of
141 1972;

142 (vi) Two representatives of organizations that provide services, education, or
143 outreach to communities of color or immigrant communities;

144 (vii) a representative of an organization that provides services, education, or
145 outreach to lesbian, gay, bisexual, and transgender individuals;

146 (viii) A certified sexual assault nurse examiner; and

147 (ix) Other individuals or representatives selected by MOVA, with the total task
148 force not to exceed 15 members.

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

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

154 (ii) Whether a need exists for additional victim's advocates for victims of sexual
155 assault, and if such a need does exist, the Task Force shall:

156 (A) Develop criteria to certify sexual assault victim advocates;
157 (B) create a plan for how the Commonwealth can provide, in conjunction
158 with rape crisis centers, victim's advocates organization, and MOVA's existing SAFEPLAN
159 program, additional sexual assault victim advocates to meet the needs identified; and

160 (C) Determine the cost of funding such a plan;

161 (iii) Whether a need exists to expand the right to a victim's advocate beyond the
162 hospital and law enforcement interview settings, such as meetings and conversations with
163 prosecutors, and if such a need does exist, the Task Force shall:

164 (A) Identify the scope and nature of the need; and

165 (B) Make recommendations on how best to fill that need, whether
166 legislatively or otherwise;

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

169 (A) Identify the scope and nature of the need; and

170 (B) Make recommendations on how best to fill that need, whether
171 legislatively or otherwise; and

172 (v) Whether there is an on-going need to maintain the Task Force after it issues its
173 final report, pursuant to subsection (c) of this chapter.

174 (c) No later than 18 months after passage of this act, the Task Force shall produce a
175 report that includes the result of the assessments, developments, and recommendations

176 completed pursuant to subsection (b) of this section. This Task Force shall transmit the report to
177 the legislature, the Governor, the Attorney General, the Superintendent of the Massachusetts
178 State Police, and victims' rights organizations and rape crisis centers. If the Task Force
179 determines that there is no on-going need to remain established, it shall disband upon the
180 issuance of the report.

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

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

185 (ii) conduct confidential interviews with law enforcement officials, medical
186 examiners, victim's advocates, and others with direct knowledge of how the sexual assault
187 response process is functioning; and

188 (iii) Within the bounds of confidentiality, provide advice and recommendations to
189 the Task Force.

190 SECTION 2. Section 97B of chapter 41 is hereby amended by deleting the final sentence
191 and replacing it as follows:—

192 A hospital licensed pursuant to the provisions of chapter 111 shall inform a victim of
193 sexual assault that the evidence preserved in an unprocessed rape kit shall be stored indefinitely
194 by the Crime Laboratory, as those terms are defined in section 1 of chapter 258F, unless the
195 victim of sexual assault requests its destruction in writing. In the absence of a written request
196 from the victim of sexual assault, a rape kit may be destroyed only after it has been fully

197 processed and tested. If, due to unforeseen and extraordinary circumstances, the Crime
198 Laboratory is unable to retain an unprocessed kit indefinitely, the Crime Laboratory must notify
199 the victim in writing, immediately and before the planned destruction of the kit, of the reason for
200 the impending destruction, the planned date, and of the options that remain available for
201 retention and processing, if any.

202 SECTION 3. Section 20J of chapter 233 is hereby amended by:

203 (a) adding the following two new sentences between the current second sentence defining
204 “Sexual assault counselor” and the current third sentence defining “Victim”:—

205 “Victim’s rights organization,” an organization or association that works to support
206 victims of sexual assault and is certified as such by the Massachusetts Office of Victim
207 Assistance, which shall develop criteria for certifying victim’s rights organizations and maintain
208 a public listing of victim’s rights organizations.

209 “Victim’s Advocate,” a person who is a psychologist, social worker, employee, or
210 volunteer with a victim’s rights organization and who has been certified as a victim’s advocate
211 by the Massachusetts Office of Victim Assistance, which shall develop criteria for training,
212 certifying, and maintaining certification of victim’s advocates and maintain a public listing of
213 victim’s advocates.

214 (b) Deleting the current fourth sentence defining “Confidential communication” and
215 replacing it as follows:—

216 “Confidential communication”, information transmitted in confidence by and between a
217 victim of sexual assault and a sexual assault counselor or by and between a victim of sexual

218 assault and a victim’s advocate by a means that does not disclose the information to a person
219 other than a person present for the benefit of the victim, or to those to whom disclosure of such
220 information is reasonably necessary to the counseling and assisting of such victim. The term
221 includes all information received by the sexual assault counselor or victim’s advocate that arises
222 out of and in the course of such counseling or advocating, including, but not limited to reports,
223 records, working papers, or memoranda.

224 (c) Deleting the current fifth sentence, which begins “A sexual assault counselor shall not
225 disclose . . .,” and replacing it as follows:—

226 Sexual assault counselors and victim’s advocates shall not disclose such confidential
227 communication without the prior written consent of the victim; provided, however, that nothing
228 in this chapter shall be construed to limit the defendant’s right of cross-examination of such
229 counselor in a civil or criminal proceeding if such counselor testifies with such written consent.
230 No existing forms of privilege under Massachusetts law are waived by the presence of a victim’s
231 advocate or a sexual assault counselor or by communications with a victim’s advocate, sexual
232 assault counselor, or victim’s rights organization. This extends to all records kept thereby.

233 SECTION 4. Sections 1, 2, and 3 shall take effect upon their passage.