

HOUSE No. 1644

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Higgins and 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 survivors of sexual assault and related purposes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/18/2021</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/18/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/23/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/25/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/25/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/25/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/25/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/26/2021</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>3/3/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/3/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/3/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>3/3/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/3/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>3/8/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>3/22/2021</i>

HOUSE No. 1644

By Representatives Higgins of Leominster and Farley-Bouvier of Pittsfield, a petition (accompanied by bill, House, No. 1644) of Natalie M. Higgins, Tricia Farley-Bouvier and others 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-Second General Court
(2021-2022)**

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. 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 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.

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

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

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

19 “Sexual assault survivor”, “survivor”, any natural person who identifies as a victim of the
20 crimes of rape, assault with intent to rape, or indecent assault and battery under sections 13B,
21 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, inclusive, of chapter 265,
22 or the family member of such person if the victim is younger than 16 years of age, incompetent,
23 or deceased, provided that in no instance does this include a family member identified by the
24 victim as the perpetrator.

25 Section 1. Attachment and duration of rights

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

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

35 Section 2. Right to a sexual assault counselor and a support person

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

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

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

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

51 Section 3. Collection of sexual assault forensic evidence

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

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

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

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

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

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

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

71 Section 4. Interview with a law enforcement official, prosecutor, or defense attorney

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

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

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

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

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

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

92 Section 5. Right to counsel

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

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

99 Section 6. Analysis of sexual assault forensic evidence

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

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

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

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

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

112 (ii) A medical provider who administers the SAEC Kit shall, within four hours of its
113 administration, notify the law enforcement agency with jurisdiction under section 98 of chapter
114 41 over the location of the alleged assault.

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

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

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

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

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

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

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

143 (b) A crime laboratory shall retain all sexual assault forensic evidence for a minimum of
144 15 years; or until the alleged survivor reaches 40 years of age, if the survivor was a minor when
145 the alleged assault occurred.

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

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

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

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

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

164 Section 7. Notice to survivors

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

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

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

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

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

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

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

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

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

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

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

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

195 Section 8. Creation of the Rights of Victims of Sexual Assault Task Force

196 (a) There is hereby established a Rights of Victims of Sexual Assault Task Force, whose
197 members shall serve without compensation. Notwithstanding any provision of section 6 of
198 chapter 268A to the contrary, the task force shall be selected, unless otherwise indicated, and
199 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

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

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

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

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

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

272 SECTION 2. Section 20J of chapter 233 is hereby amended by:

273 (a) adding the following two new sentences between the current second sentence defining
274 “Sexual assault counselor” and the current third sentence defining “Victim”:-

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

279 “Victim’s Advocate”, a person who is a psychologist, social worker, employee, or
280 volunteer with a victim’s rights organizations and who has been certified as a victim’s advocate
281 by the Massachusetts Office of Victim Assistance, which shall develop criteria for training,
282 certifying, and maintaining certification of victim’s advocates and maintain a public listing of
283 victim’s advocates.

284 (b) Deleting the fourth sentence defining “Confidential communication” and replacing it
285 as follows:-

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

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

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

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

303 SECTION 3. Sections 1 and 2 shall take effect upon their passage.