

By Ms. Jacques, a petition (accompanied by bill, Senate, No. 1063) of Cheryl A. Jacques, Ruth B. Balser, Gale D. Candaras, Richard T. Moore and other members of the General Court for legislation to establish a bill of rights for victims of rape and sexual assault. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT ESTABLISHING A BILL OF RIGHTS FOR VICTIMS OF RAPE & SEXUAL ASSAULT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 9 of chapter 15A of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the words "indexing system", in line 196, the following:—

“(dd) and create a campus rape and sexual assault prevention advisory council. Notwithstanding the provision of section 5 or any other general or special law to the contrary, the advisory council on campus rape and sexual assault prevention shall affirm support for campus organizations which assist rape and sexual assault victims and provide that rights shall be accorded to victims of rape and sexual assaults that occur on the campus of any public or independent institution of higher education in the Commonwealth and where the victim or alleged perpetrator is a student at the institution or where the victim is a student involved in an off-campus rape or sexual assault. Such rights shall include, but not be limited to, the following:

- a) The right to be informed of the opportunity to notify appropriate civil or criminal authorities including municipal or state law enforcement, and to be given all necessary contact information to facilitate such notification.
b) The right to have any allegation of rape or sexual assault investigated and adjudicated by the appropriate criminal and civil

23 authorities of the jurisdiction in which the crime occurred, and the
24 right to the full and prompt cooperation and assistance of campus
25 personnel in notifying the proper authorities. The provisions of
26 this subsection shall be in addition to any campus disciplinary
27 proceedings, which may take place.

28 c) The right to be free from pressure from campus personnel to
29 refrain from reporting crimes, or to report crimes as lesser
30 offenses than the victims perceive the crimes to be.

31 d) The right to have any allegation of rape or sexual assault
32 treated seriously; the right to be treated with dignity; and the right
33 to be notified of existing medical, counseling, mental health or
34 student services for victims of rape and sexual assault, both on
35 campus and in the community whether or not the crime is
36 reported to campus or civil authorities.

37 e) The same right to legal assistance, and the right to have
38 others present, in any campus disciplinary proceeding, that the
39 institution permits to the accused; and the right to be notified of
40 the outcome of any disciplinary proceeding against the accused.

41 f) The right to full, prompt, and victim-sensitive cooperation of
42 campus personnel in obtaining, securing, and maintaining evi-
43 dence, including a medical examination.

44 g) The right to be informed of, and assisted in exercising, any
45 rights to be confidentially or anonymously tested for sexually
46 transmitted diseases or human immunodeficiency virus; the right
47 to be informed of, and assisted in exercising any rights that may
48 be provided by law to compel and disclose the results of testing of
49 sexual assault suspects for communicable diseases.

50 h) The right to require campus personnel to take reasonable and
51 necessary action to prevent further unwanted contact of victims
52 with their alleged assailants, including but not limited to, noti-
53 fying the victim of the options for and available assistance in
54 changing academic and living situations after an alleged rape or
55 sexual assault incident if so requested by the victim."

56 For the purposes of this section, "rape or sexual assault" shall
57 mean the commission of any act as set forth in sections 13H, 22
58 or 24 of chapter 265 or section 2, 3, 7, 8, 13, 17 of chapter 272 as
59 appears in the Massachusetts General Laws 2000 Official Edition
60 or for conspiracy to commit any of said offenses or as an acces-
61 sory thereto. For the purposes of this section, "campus personnel"

62 shall mean any individuals or organizations specified in an institu-
63 tion's statement of campus security policy as the individuals or
64 organizations to which students and employees should report
65 criminal offenses.

1 SECTION 2. Section 20J of chapter 233 of the General Laws,
2 as so, is hereby amended by inserting after the word "counselor",
3 in line 25, the following words:—

4 , or any interpreter or translator that assists with communica-
5 tion between the counselor and victim.,.

1 SECTION 3. Section 20K of said chapter 233, as so appearing,
2 is hereby amended by inserting after the word "counselor", in line
3 29, the following words:—

4 , or any interpreter or translator that assists with communica-
5 tion between the counselor and victim.,.

1 SECTION 4. Chapter 233 of the General Laws is hereby
2 amended by inserting after section 20L, as appearing in the 1996
3 Official Edition, the following section:—

4 Section 20M.

5 (a) In a criminal or delinquency proceeding, no person shall be
6 required to provide information as to whether such person has sought
7 or received counseling services unless, after a hearing, the court
8 determines that such information is discoverable under the provisions
9 of Rule 14 of the Massachusetts Rules of Criminal Procedure.

10 (b) In a criminal or delinquency proceeding, prior to the
11 issuance of a subpoena or court order for the production of mate-
12 rial which pertains to another and is sought by the defendant, if
13 there are reasonable grounds to believe that such material may
14 contain information protected by law from disclosure pursuant to
15 section 3 of chapter 71B, sections 135A and 172 of chapter 112,
16 sections 36 and 36A of chapter 123, section 17 of chapter 123B or
17 sections 20A, 20B, 20J or 20K of this chapter, the requesting
18 party shall file a written motion specifically identifying the mate-
19 rial sought.

20 (c) If the court finds that the material sought is discoverable
21 under Rule 14 of the Massachusetts Rules of Criminal Procedure,
22 the court shall determine whether the material sought is protected

23 against disclosure pursuant to any of the sections of the General
24 Laws specified in subsection (b). Such determination shall be
25 made prior to, and without reliance on, the production of such
26 material to the court. The requesting party shall give notice of
27 such request and of the right to be heard in opposition to such
28 request to the keeper or holder of the material sought and to all
29 parties not less than seven days prior to consideration of such
30 request by the court. Upon receipt of such notification, the prose-
31 cutor shall immediately notify the subject of the material being
32 sought of such request and such person's right to be heard in
33 opposition thereto. The court shall base its determination on
34 written materials and affidavits only, unless the court finds that
35 such determination cannot be made without oral testimony; pro-
36 vided, however, that the holder of the privilege shall not be com-
37 pelled to testify. Any person entitled to notice pursuant to this
38 paragraph, shall have the right to provide the court with written
39 material, affidavits or, subject to the provisions of the preceding
40 sentence, oral testimony. Following the proceeding required by
41 this paragraph, if the court determines that any of the material
42 sought is protected against disclosure pursuant to any of the sec-
43 tions of the General Laws specified in subsection (b), the court
44 shall reduce its decision, and the reasons therefore, to writing
45 with specific reference to the privilege or privileges found.

46 (d) A defendant who has received notice of the court's written
47 finding that all or a portion of such materials is privileged or con-
48 fidential and who continues to seek disclosure of such materials
49 shall file a written motion seeking such disclosure. The defendant
50 shall give notice of the motion, and of the right to be heard in
51 opposition to such motion, to the keeper or holder of the material
52 sought, and to all parties. Upon receipt of such notification by the
53 defendant the prosecutor shall immediately notify the person who
54 is the subject of the material being sought of the motion and of
55 the right to be heard in opposition thereto. The court shall hold a
56 hearing to determine whether a court order shall issue for the pro-
57 duction of such material to the court for an in camera inspection.
58 The court shall base its determination on written materials and
59 affidavits only, unless the court finds that such determination
60 cannot be made without oral testimony; provided, however, that
61 the holder of the privilege shall not be compelled to testify. If the

62 court orders disclosure, the court shall make written findings iden-
63 tifying the facts and law upon which its decision is based. The
64 court shall issue an order accompanying its written findings,
65 which order shall identify, with specificity, the material to be pro-
66 duced. Such order shall be narrowly drawn to identify the indi-
67 vidual whose privileged or confidential materials are to be
68 produced, the keeper of such material, the subject matter and the
69 dates of the records for which such production is required. Such
70 material shall be produced solely to the court for an in camera
71 inspection. The court shall review the records in camera, out of
72 the presence of all other persons, to determine whether such
73 records, or any portions thereof, must be disclosed to counsel.

74 (e) If the court, after in camera review, finds that all or a por-
75 tion of the records shall be disclosed to counsel, it shall allow
76 counsel for the defendant and the commonwealth to review such
77 portions of such records for the sole purpose of determining
78 whether disclosure to the trier of fact is required. Prior to any dis-
79 closure to counsel, or at any subsequent time, the court shall
80 redact references to other persons if such redaction is necessary to
81 protect the interests of third parties and such redaction will not
82 deny the defendant a fair trial. If the production of materials to
83 counsel is ordered pursuant to this section, the court shall issue an
84 order that such records be produced subject to terms and condi-
85 tions that prevent unauthorized disclosure including, but not lim-
86 ited to, the following terms and conditions:

87 (1) Counsel shall have access to the records solely in such
88 attorney's capacity as an officer of the court. Counsel shall not
89 disclose or disseminate any portion of the contents of the records
90 to another, including the defendant, without prior application to
91 and order of the court:

92 (2) The records shall be made available to counsel in the court-
93 house during regular business hours under arrangements to be
94 made by the clerk. Counsel may read and make notes concerning
95 the records, but no portion shall be photocopied or reproduced
96 without prior application to and order of the court. Furthermore,
97 no portion shall be removed from the courthouse.

98 (3) Counsel shall not refer to, offer or adduce any portion of the
99 records in evidence at trial or in connection with any other pro-
100 ceeding without prior application to and order of the court.

101 (4) At the conclusion of any trial or other disposition of the
102 matter, counsel shall deliver to the clerk, under seal, all originals
103 and all copies of any records produced to counsel pursuant to any
104 order of the court; and

105 (5) Any person, who knowingly violates any protective order
106 of the court issued pursuant to this section, shall be subject to
107 sanctions for contempt and to a fine of not more than \$10,000 or
108 imprisonment for not more than two and one-half years, or by
109 both such fine and imprisonment.

110 (f) After having an opportunity to examine such records,
111 counsel for all parties shall submit written motions to the court to
112 determine whether or not any portions of such records shall be
113 disclosed. The court may hold an in camera hearing, if it deems it
114 necessary. The burden shall be on the defendant to demonstrate
115 that disclosure of the records to the trier of fact is required. If the
116 court orders disclosure of any portion of the records, the court
117 shall set forth in writing the reasons for its decision in a memo-
118 randum of decision. Such order of disclosure shall be subject to
119 terms and conditions that place reasonable conditions on the use
120 of such materials to prevent the production of materials not
121 required and the unauthorized disclosure of such materials.

122 (g) The court shall specifically identify, seal and retain any
123 materials that it has determined, at any stage of proceeding pur-
124 suant to the provisions of this section, are not subject to disclo-
125 sure until the conclusion of the trial and, in the event of a
126 conviction, until the time for appeal has expired.

127 (h) The holder of any right to confidentiality or privilege with
128 regard to any material protected from disclosure pursuant to any of
129 the sections of the General Laws listed in subsection (b), the
130 keeper of such material and the commonwealth shall have the right
131 to petition for interlocutory review of any order requiring produc-
132 tion of such material for in camera inspection. The petitioner may
133 file, within ten days from the date of the receipt of notice of such
134 order, a petition in the appropriate appellate court seeking relief
135 from such order. A single justice of the appellate court may, in his
136 discretion, grant the same relief from such order as the appellate
137 court is authorized to grant. Such holder and the commonwealth
138 shall have the right to petition for interlocutory review of an order
139 requiring further disclosure of such material to any other person.

140 The petitioner may file, within ten days from the date of receipt of
141 notice of such order, a petition in the appropriate appellate court
142 seeking relief from such order. A single justice of the appellate
143 court may, in his discretion, grant the same relief from such order
144 as the appellate court is authorized to grant. Any order requiring
145 production or disclosure of such material shall be stayed pending
146 the resolution of any such petition for interlocutory review; pro-
147 vided, however, that notice of intent to pursue such relief is filed
148 with the lower court within three days from the date the petitioner
149 receives notice of the entry of such order. A petitioner aggrieved
150 by an interlocutory order of a single justice of the appellate court
151 denying relief from such order, may appeal therefrom pursuant to
152 the procedures in the second paragraph of section 118 of chapter
153 231. The court may enter an order staying the order requiring pro-
154 duction or disclosure pending any such appeal. Any stay granted
155 pursuant to this subsection shall constitute excluded delay for pur-
156 poses of a defendant's right to speedy trial.

1 SECTION 5. Chapter 260 of the General Laws, as so
2 appearing, is hereby amended by striking out section 4C and
3 inserting in place thereof the following two sections:—

4 Section 4C. Actions for assault and battery alleging the defendant
5 sexually abused a person under the age of 18 may be commenced at
6 any time. For purposes of this section, "sexual abuse" shall mean
7 the commission of any act against a minor as set forth in section
8 13B, 13H, 22, 22A, 23, 24 or 24B of chapter 265 or section 2, 3, 4,
9 4A, 4B, 7, 8, 13, 17, 29A, 34, 35 or 35A of chapter 272.

10 Section 4D.

11 (a) Actions for rape or sexual assault of a person 18 years of age
12 or older at the time of the offense shall be commenced within 3
13 years of the acts alleged to have caused an injury or condition or, if
14 law enforcement was notified of such assault within 1 year of its
15 occurrence and the commonwealth is unable to determine the iden-
16 tity of the perpetrator of such assault during this 3-year period, 1
17 year from the date on which the identity of the alleged perpetrator
18 is established by DNA analysis, whichever date is later.

19 (b) For the purposes of this section, "rape or sexual assault"
20 shall mean the commission of any act as set forth in sections 13H,
21 22 or 24 of chapter 265 or section 2, 3, 7, 8, 13, 17 of chapter 272,

22 or for conspiracy to commit any of said offenses or as an acces-
23 sory thereto.

1 SECTION 6. Section 63 of chapter 277 of the General Laws, as
2 so appearing, is hereby amended by striking out the second sen-
3 tence and inserting in place thereof the following sentence:—

4 An indictment for an offense set forth in sections 22, 22A, 23,
5 24, and 24B of chapter 265, or for conspiracy to commit any of
6 said offenses or as an accessory thereto or any one or more of
7 them may be found and filed at any time, if the victim is under the
8 age of sixteen at the time such crime is committed; otherwise 15
9 years from the date of the commission of such offense or, if law
10 enforcement was notified of such assault within 1 year of its
11 occurrence and the commonwealth is unable to determine the
12 identity of the perpetrator of such assault during this 15-year
13 period, an indictment may be found and filed within 1 year from
14 the date on which the identity of the alleged perpetrator is estab-
15 lished by DNA analysis, whichever date is later.

1 SECTION 7. This act shall apply to any civil or criminal action
2 filed based on an act or acts which took place on or after the
3 effective date of this act and to any pending civil action or prose-
4 cution for which the statute of limitations had not expired on or
5 before the effective date of this act.