

# SENATE . . . . . No. 870

By Ms. Jacques, a petition (accompanied by bill, Senate, No. 870) of Cheryl A. Jacques, Barbara E. Gray, Lois G. Pines, Mary Jeanette Murray and other members of the General Court for legislation to protect the privacy rights of victims of sexual assault and domestic violence. The Judiciary.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

### AN ACT PROTECTING THE PRIVACY RIGHTS OF VICTIMS OF SEXUAL ASSAULT AND DOMESTIC VIOLENCE.

*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 233 of the General Laws is hereby  
2 amended by inserting after section 19, as appearing in the 1992  
3 Official Edition, the following section:—

4 Section 19A. In a criminal proceeding, prior to the issuance of  
5 a subpoena or court order for the production of records which may  
6 contain privileged or confidential material, the court shall hold an  
7 in camera hearing to determine whether some or all of the materi-  
8 al sought contains privileged or confidential communications and  
9 to what extent such materials may be subpoenaed; provided, how-  
10 ever, that this section shall not apply to any materials where the  
11 privilege at issue belongs to the defendant. The court shall deter-  
12 mine the extent and nature of privileged or confidential communi-  
13 cations contained in the records sought considering the nature of  
14 the privilege claimed, the date or dates of the alleged offenses and  
15 the nature of the crimes charged. For the purposes of this section,  
16 “confidential communications” shall mean a confidential commu-  
17 nication as defined in section twenty J or twenty K. The common-  
18 wealth, defendant, holder of the purported privilege and those  
19 bound by such privilege may be afforded an opportunity to be  
20 heard at such hearing to assist the court in its determination. The

21 commonwealth shall notify the holder of the purported privilege  
22 and those bound by such privilege of their right to be present and  
23 to be heard; provided, however, that if the holder of the purported  
24 privilege is a witness for the defendant, the defendant or his counsel  
25 shall provide such notice.

26 If a court determines that any or all of the materials sought contain  
27 privileged or confidential communications, the court shall issue an order  
28 indicating which such materials, specifically by subject matter and date,  
29 may be subpoenaed. Such order shall state:

30  
31 (a) the identity of the individuals authorized to review the materials  
32 which are the subject of the subpoena or court order and their relationship  
33 to the parties;

34 (b) that such materials shall be impounded by the court and made  
35 available only to individuals authorized to review such materials;

36  
37 (c) that such materials shall not be removed from the courthouse,  
38 shall not be photocopied or otherwise reproduced and shall not be  
39 reviewed by unauthorized individuals;

40 (d) that no person shall disclose or disseminate any portion of the  
41 contents of such records to unauthorized persons without prior  
42 authorization of the court.

43 (e) that no counsel or party shall offer or attempt to offer into  
44 evidence any portion of the materials or information derived from  
45 such materials without prior authorization of the court following  
46 an in camera hearing.

47 The court shall permit any person previously identified pursuant  
48 to paragraph (a) of this section to appear before the court at  
49 such hearing.

50 The court order may deviate from the restrictions contained in  
51 paragraphs (a) to (e) inclusive upon a showing, by a preponderance  
52 of the evidence, that such deviation is required by the United States  
53 Constitution or the Constitution of the Commonwealth.

54 The court shall maintain a record indicating who has reviewed  
55 such material, to whom such material has been delivered, and the  
56 date thereof. A person or party who violates any of the provisions  
57 of this section shall be punished by a fine of not less than five  
58 thousand dollars nor more than fifty thousand dollars.

1 SECTION 2. Paragraph 3 of section 20J of chapter 233 of the  
2 General Laws, as appearing in the 1992 Official Edition, is hereby  
3 amended by inserting in line 12 after the words “sexual assault” a  
4 comma and the following words:— or a licensed psychotherapist,  
5 social worker, or nurse.

1 SECTION 3. Paragraph 8 of section 20J of chapter 233 of the  
2 General Laws, as appearing in the 1992 Official Edition, is hereby  
3 amended by inserting in line 32 after the words “Such confidential  
4 communications shall,” the following words:— be entitled to the  
5 same protections as communications defined in section twenty A  
6 of chapter two hundred and thirty three and shall.

1 SECTION 4. Paragraph 4 of section 20K of chapter 233 of the  
2 General Laws, as appearing in the 1992 Official Edition, is hereby  
3 amended by inserting in line 24 after the words “victims of abuse”  
4 a comma and the following words:— or a licensed psychothera-  
5 pist, social worker, or nurse.

1 SECTION 5. Paragraph 7 of section 20K of chapter 233 of the  
2 General Laws, as appearing in the 1992 Official Edition, is hereby  
3 amended by inserting in line 36 after the word “Shall,” the  
4 following words:— be entitled to the same protections as commu-  
5 nications defined in section twenty A of chapter two hundred and  
6 thirty-three and shall.

1 SECTION 6. Paragraph 7 of section 20K of chapter 233 of the  
2 General Laws, as appearing in the 1992 Official Edition, is hereby  
3 amended by striking the third sentence beginning on line 38.

The following is a list of the names of the persons who were members of the committee on the subject of the proposed amendment to the constitution of the State of New York, as passed by the Senate on the 15th day of March, 1945, and by the Assembly on the 15th day of March, 1945, and who were present at the meeting of the committee on the 15th day of March, 1945, at the State Capitol, Albany, New York.

SENATE

Chairman: *[Name]*

Members: *[List of names]*

ASSEMBLY

Chairman: *[Name]*

Members: *[List of names]*

Attest: *[Name]*, Secretary