

SENATE No. 933

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 933) of Bruce E. Tarr and Anthony J. Verga for legislation to further 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-Seven.

AN ACT FURTHER 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 Massachusetts General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 inserting after section 19, the following new section: —

4 Section 19A. Prior to the issuance of a subpoena or court order
5 for any confidential communications as defined by sections 20J or
6 20K of this chapter, a notice shall be provided by the
7 Commonwealth to:

8 (1) any person whose privacy rights may be affected by such
9 disclosure including the victim of the alleged crime and any third
10 party data subjects reasonably ascertainable;

11 (2) any keeper or holder of said confidential or privileged
12 material.

13 (b) parties receiving and notice of request for disclosure shall
14 be granted a reasonable period of time to be heard in regard to the
15 disclosure of such material.

16 (c) For the purposes of this section the term “confidential or
17 privileged material” shall include but not be limited to, oral com-
18 munication, reports, records, working papers or any other written
19 material.

20 (d) For the purposes of this section the term “confidential com-
21 munications” shall mean information transmitted in confidence by
22 and between a victim of sexual assault or a victim of domestic

23 abuse as defined in section I of chapter 209A, and; a sexual
24 assault counselor as defined in section 20J of this chapter, a
25 domestic violence counselor as defined in section 20K of this
26 chapter, a psychotherapist as defined in section 20B of this
27 chapter, a spiritual counselor as defined in section 20A of this
28 chapter, and a social worker as defined in section 135A of
29 chapter 112.

30 (3) All matters or motions related to this section shall be heard
31 in a closed session or hearing.

1 SECTION 2. Section 20B of chapter 233 of the Massachusetts
2 General Laws, as appearing in the 1990 Official Edition, is hereby
3 amended by inserting after subsection (f), the following new sub-
4 sections: —

5 (g) Notwithstanding the provisions of this section, if the patient
6 is a victim of sexual assault or domestic violence, and the commu-
7 nications relate to said sexual assault or domestic violence, such
8 communications shall be protected to the same extent as confiden-
9 tial communications under section 20J or 20K of this chapter, as
10 the case may be.

11 (h) Psychotherapists as defined in this section, conducting
12 domestic violence or sexual assault counseling or both, shall not
13 be required to comply with the training requirements set forth in
14 section 20J or 20K of this chapter.

1 SECTION 3. Section 135A of chapter 112 of the Massachu-
2 setts General Laws, as appearing in the 1990 Official Edition, is
3 hereby amended by inserting after the second paragraph, the
4 following new paragraph: —

5 Notwithstanding the provisions of this section, if the client is a
6 victim of sexual assault or domestic violence, and the communica-
7 tions relate to said sexual assault or domestic violence, such com-
8 munications shall be protected to the same extent as confidential
9 communications under section 20J or 20K of chapter 233, as the
10 case may be.

1 SECTION 4. Section 70E of chapter 111 of the Massachusetts
2 General Laws, as appearing in the 1990 Official Edition, is hereby
3 amended by inserting after subsection (b) of the fifth paragraph,

4 the following: — provided further that if the patient is a victim of
5 sexual assault or domestic violence, and the communications or
6 records relate to said sexual assault or domestic violence, such
7 communications or records shall be protected to the same extent
8 as confidential communications under section 20J or 20K of
9 chapter 233.

1 SECTION 5. Chapter 123B of the Massachusetts General
2 Laws, as appearing in the 1990 Official Edition, is hereby
3 amended by inserting after section 17 the following new
4 section: —

5 17A. If department records contain communications involving
6 a patient who has been a victim of sexual assault or domestic vio-
7 lence, and the communications relate to said sexual assault or
8 domestic violence, such communications shall be protected to the
9 same extent as confidential communications under section 20J or
10 20K of chapter 233.

11 For the purposes of this section the term “communications”
12 shall include but not be limited to, oral communication, reports,
13 records, working papers, or any other written material.

1 SECTION 6. Chapter 233 of the Massachusetts General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 inserting after section 20M, the following new section: —

4 Section 20L. Whenever, in a criminal proceeding, a defendant
5 is entitled by law to have his attorney review confidential or pri-
6 vate records or material, and such records or material are obtained
7 under a court order or subpoena for review by counsel, the
8 following requirements shall be met:

9 (1) All records and material shall be impounded by the Court.
10 Counsel or authorized party shall have access to records or mate-
11 rial solely in his capacity as an officer of the court and shall
12 review such records solely in the courthouse under the supervision
13 of the session clerk during regular business hours.

14 No portion of the records or materials shall be photocopied or
15 reproduced without prior application to and an order of the Court.

16 (2) Counsel or authorized person shall not disclose or dissemi-
17 nate any portion of the contents of the records to anyone including
18 the defendant, without prior application to and an order of the

19 court. Any person receiving such records, materials or information
20 shall not further disclose, photocopy or reproduce any portion of
21 the records or materials without prior application to and an order
22 of the Court.

23 (3) Counsel or authorized party shall not offer or adduce any
24 portion of said material or records into evidence at trial or in con-
25 nection with any other proceeding without prior application to and
26 an order of the Court.

27 (4) Counsel or authorized party shall notify all third party data
28 subjects referred to in said material or records prior to making any
29 applications to the Court.

30 (5) Counsel or authorized party shall be required to show in an
31 in-camera submission that the information to be offered or
32 adduced in evidence is not available from any other source. The
33 Court shall conduct a closed session hearing concerning the
34 admissibility of any information in said records or material that
35 counsel or authorized party may wish to use at trial or in connec-
36 tion with any other proceeding. All related applications shall be
37 heard in a closed session or hearing.

38 Any person or party, who violates any provisions of this section
39 shall be punishable by a fine of not less than twenty-five thousand
40 dollars (\$25,000) and not more than fifty thousand dollars
41 (\$50,000).

42 For the purposes of this section the term "confidential or pri-
43 vate records or material" shall include but not be limited to oral
44 communication, reports, records, working papers or any other
45 written material.