

HOUSE No. 1687

The Commonwealth of Massachusetts

PRESENTED BY:

Kathi-Anne Reinstein

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 passage of the accompanying bill:
An Act Relative To Rape Of An Elder Or A Person With A Disability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kathi-Anne Reinstein	16th Suffolk
Pam Richardson	6th Middlesex
Benjamin B. Downing	Berkshire, Hampshire and Franklin
Thomas P. Kennedy	Second Plymouth and Bristol
Frederick E. Berry	Second Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO RAPE OF AN ELDER OR A PERSON WITH A DISABILITY.

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 Chapter 265 of the General Laws, as appearing in the **2006** Official Edition, is hereby amended by adding the following section after section 22B as so appearing:

Section 22C Rape of an elder or person with a disability; punishment

(1) Whoever has sexual intercourse or unnatural sexual intercourse with an elder, or with a person with a disability as those terms are defined in section 13K of chapter 265, and compels said elder or person with disability to submit by force and against his or her will or compels said elder or person with a disability to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for life or for any term of years. A prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

(2) Whoever has sexual intercourse or unnatural sexual intercourse with an elder or a person with a disability and compels said elder or person with disability to submit by force and against his or her will or compels said elder or person with a disability to submit by threat of bodily injury and:

(a) the sexual intercourse or unnatural sexual intercourse is committed during the commission or attempted commission of any of the following offenses: (1) armed burglary as set forth in section 14 of chapter 266; (2) unarmed burglary as set forth in section 15 of said chapter 266; (3) breaking and entering as set forth in section 16 of said chapter 266; (4) entering without breaking as set forth in section 17 of said chapter 266; (5) breaking and entering into a dwelling house as set forth in section 18 of said chapter 266; (6) kidnapping as set forth in section 26 of chapter 265; (7) armed robbery as set forth in section 17 of said chapter 265; (8) unarmed robbery as set forth in section 19 of said chapter 265; (9) assault and battery with a dangerous weapon or assault with a dangerous weapon as set forth in sections 15A and 15B of said chapter 265; or (10) home invasion as set forth in section 18C of said chapter 265;

(b) poses or exhibits the elder or person with a disability in a state of nudity or sexual conduct;

(c) the sexual intercourse or unnatural sexual intercourse results in or is committed by means of an act or acts resulting in bodily injury as defined in section 13K of chapter 265;

- (d) the sexual intercourse or unnatural sexual intercourse is committed while the victim is tied, bound or gagged;
- (e) the sexual intercourse or unnatural sexual intercourse is committed after the defendant administered or caused to be administered, alcohol or a controlled substance by injection, inhalation, ingestion or any other means to the victim without the victim's consent;
- (f) the sexual intercourse or unnatural sexual intercourse is committed by a joint enterprise; or
- (g) the sexual intercourse or unnatural sexual intercourse was committed in a manner in which the victim could contract a sexually transmitted disease or infection of which the defendant knew or should have known he/she was a carrier, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his/her sentence for good conduct until he/she shall have served 15 years of such sentence.

Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

- (3) Whoever has sexual intercourse or unnatural sexual intercourse with an elder or a person with a disability and compels such elder or person with a disability to submit by force and against his will or compels such elder or persons with a disability to submit by threat of bodily injury, and has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on an elder or person with a disability as set forth in section 13H of chapter 265; indecent assault and battery on a mentally retarded person as set forth in section 13F of chapter 265; assault and battery upon an elder or disabled person as set forth in section 13K of chapter 265; rape as set forth in section 22 of chapter 265; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years. The sentence imposed on such person shall not be reduced to less than 20 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his/her sentence for good conduct until he/she shall have served 20 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and information data from records of the department of probation, any jail or house of correction or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any another jurisdiction. Such documentation shall be self authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense,

as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

(4) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and abuses an elder or a person with a disability as defined in section 13K of chapter 265 shall be punished by imprisonment in the state prison for life or for any term of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

(5) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and abuses an elder or a person with a disability and at the time of such intercourse is a caretaker as defined in section 13K of chapter 265 or a mandated reporter as defined in section 15A of chapter 19A and section 10 of chapter 19C respectively shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecution commenced under this section shall neither be continued without a finding nor placed on file.

(6) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with and abuses an elder or a person with a disability as defined in section 13K of chapter 265 and has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on an elder or person with a disability as set forth in section 13H of chapter 265; indecent assault and battery on a mentally retarded person as set forth in section 13F of chapter 265; assault and battery upon an elder or disabled person as set forth in section 13K of chapter 265; rape as set forth in section 22 of chapter 265; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his/her sentence for good conduct until he/she shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and information data from records of the department of probation, any jail or house of correction or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any another jurisdiction. Such documentation shall be self authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense,

as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

(7) Notwithstanding any general or special law to the contrary, the chief justice for administration and management of the trial court shall establish and implement an annual reporting system that shall provide information to the joint committee on the judiciary relative to the prosecution and disposition of cases which involve offenses established under this act. The reporting system shall be established not later than December 31, 2010 and the first annual report shall be filed with the clerk of the house and the clerk of senate and the joint committee on the judiciary not later than December 31, 2011.