

**190<sup>th</sup> General Court of the Commonwealth**  
**2017-2018 Legislative Session**



**MDAO Legislative Filings**  
**Briefing Booklet**

**Office of Middlesex District Attorney Marian T. Ryan**

**15 Commonwealth Avenue**  
**Woburn, MA 01801**  
**(781) 897-8300**





## BRIEFING BOOKLET TABLE OF CONTENTS

		<u>Page</u>
An Act relative to victims' rights –	H. 709	1
An Act relative to synthetic drugs –	H. 710, S. 889	5
An Act relative to visitation and family court matters in domestic violence cases –	H. 781, S. 894	31
An Act promoting restorative justice practices –	H. 793, S. 847	45
An Act relative to the costs of appeals by the Commonwealth –	H. 874, S. 792	63
An Act relative to the intimidation of witnesses and interfering with justice –	H. 888	69
An Act to enhance the availability of immunity to witnesses in the courts of the Commonwealth –	H. 896	75
An Act regarding testimony after a grant of immunity to a witness –	H. 897	81
An Act relative to fires and explosions –	H. 898	87
An Act providing immunity for individuals under age 21 seeking medical assistance for an alcohol-related overdose –	H. 907, S. 111	93
An Act prohibiting gunfire directed at dwelling houses –	H. 908, S. 839	103
An Act to properly punish the solicitation of felony crimes –	H. 941	109
An Act to define inducing a minor into prostitution –	H. 942	115
An Act to clarify the definition of a “violent crime” in Chapter 140 –	H. 1282	119
An Act to increase safety on public ways –	H. 1819	123

		<u>Page</u>
An Act to clarify penalties for violations occurring while driving with a hardship license –	H. 1860	127
An Act to mandate domestic violence and sexual assault awareness education for aestheticians, barbers, cosmetologists and others –	H. 1973	133
An Act criminalizing sexual assault by fraud by a medical professional –	H. 2289, S. 835	139
An Act to extend the statute of limitations for incest –	H. 2314, S. 836	151
An Act providing protection from child enticement –	H. 3028, S. 888	157
An Act to protect the property of elder or disabled persons –	H. 3029	167
An Act to define abuse and neglect of a child –	H. 3030	173
An Act relative to driving under the influence of toxic vapors –	S. 1941	179

#### MDAO Contacts

District Attorney Marian T. Ryan  
 Elizabeth Conroy, Executive Assistant to the District Attorney  
 Telephone: (781) 897-8316 E-mail: [elizabeth.conroy@state.ma.us](mailto:elizabeth.conroy@state.ma.us)

MaryBeth Long, General Counsel  
 Telephone: (781) 897-8336 E-mail: [marybeth.long@state.ma.us](mailto:marybeth.long@state.ma.us)



**An Act Relative to Victims' Rights  
H. 709**

**Lead Sponsor: Representative Cory Atkins**

*Impetus*

John Salvi killed two women and wounded five others in attacks on two abortion clinics. He was found guilty and appealed his convictions. While the case was on appeal, he committed suicide in prison.

Father John Geoghan was convicted of indecent assault and battery on a child under the age of 14. While his conviction was on appeal, he was murdered in prison by another inmate.

These convictions were vacated because the doctrine of abatement ab initio in Massachusetts requires that convictions be set aside when a defendant dies while their direct appeal is under review.

---

*Need*

- Many victims feel a sense of validation and finality when a defendant is convicted. This feeling of justice is undermined when a conviction is vacated on the death of a defendant whose case is pending appeal.
  - This practice has a traumatic impact on the surviving victims of violent crime, as well as the family members of homicide victims.
- 

*Legislative Fix*

- Brings Massachusetts in line with many states that do not automatically vacate the defendant's conviction and dismiss the indictment (or other charging instrument) when the defendant dies during the pendency of a direct appeal. See, e.g. *Wheat v. State*, 907

So. 2d 461, 464 (Ala. 2005) (per curiam); State v. Trantolo, 209 Conn. 169, 169 (1988) (per curiam); Perry v. State, 575 A.2d 1154, 1156 (Del. 1990); State v. Clements, 668 So. 2d 980, 981–982 (Fla. 1996); Taylor v. State, 72 S.E. 898 (Ga. 1911) (per curiam); State v. Dodelin, 170 Ga. App. 836, 836 (1984); State v. Makaila, 79 Haw. 40, 45 (1995) (per curiam); State v. Korsen, 141 Idaho 445, 450 (2005); Whitehouse v. State, 266 Ind. 527, 529–530 (1977); State v. Jones, 220 Kan. 136, 137 (1976); Royce v. Commonwealth, 577 S.W.2d 615, 616 (Ky. 1979); Surland v. State, 392 Md. 17, 35 (2006); People v. Peters, 449 Mich. 515, 517 (1995); Gollott v. State, 646 So. 2d 1297, 1304 (Miss. 1994); State v. Bem, 364 Mont. 153, 156, 158 (2012); Brass v. State, 325 P.3d 1256, 1256 (Nev. 2014).

HOUSE . . . . . No. 709

The Commonwealth of Massachusetts

PRESENTED BY:

*Cory Atkins*

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 relative to victims rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Marian Ryan (District Attorney)</i>	

**HOUSE . . . . . No. 709**

By Ms. Atkins of Concord, a petition (accompanied by bill, House, No. 709) of Cory Atkins and others relative to victims rights. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1156 OF 2015-2016.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

An Act relative to victims rights.

*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 228 of the General Laws is hereby amended by inserting after  
2 section 14 the following section:-

3 Section 15. The death of a criminal defendant who is convicted of a criminal offense shall  
4 automatically terminate the right to appeal or any appeal pending of such conviction, and where  
5 such conviction has not been previously vacated or reversed by an order or decision of a court,  
6 the judgment of conviction shall stand.

7 This section shall not preclude the attorney general or district attorney from commencing  
8 an action to vacate the conviction judgment against a deceased defendant in the interest of  
9 justice.





**An Act Relative to Synthetic Drugs  
H. 710/ S. 889**

**Lead Sponsors: Representative Cory Atkins and Senator Jason Lewis**

*Impetus*

Currently in Massachusetts, individuals and businesses are able to legally possess and sell certain dangerous synthetic drugs that are illegal in our neighboring state of New Hampshire and are federally prohibited under the Controlled Substances Act.

These drugs, including synthetic marijuana, bath salts and NBOMe, are extremely dangerous to those who consume them and serve no legitimate purpose.

Even when there is a law prohibiting a particular synthetic compound, manufacturers and sellers of these substances are able to elude regulation and prosecution by making a simple modification of the chemical composition of the banned substance, thereby creating an analogue substance.

Federal authorities have a drug classification system-- based on a thorough scientific analysis and review process-- and regulate the most dangerous drugs under Schedules I and II of the Controlled Substances Act.

---

*Need*

- There is no law that prohibits synthetic marijuana—essentially, vegetation sprayed with dangerous chemicals—or NBOMe from being sold in Massachusetts.
- In 2015, following a spate of overdose deaths attributed to synthetic marijuana, New Hampshire declared a state of emergency and imposed regulations on possessing or selling synthetic drugs, including specifically identified drugs as well as possible chemical variations. These dangerous drugs are still legal in Massachusetts.
- Drugs found in synthetic marijuana, bath salts and NBOMe are prohibited federally as Schedule I and II drugs. Since the U.S. Attorney General has extensive resources to

analyze and schedule new dangerous synthetic drugs, and a comprehensive review process, these federally controlled substances should be incorporated into the laws of the Commonwealth.

---

*Legislative Fix*

- Incorporates Schedule I and II drugs prohibited under federal law into Massachusetts law, so long as they have not already been classified and prohibited under Massachusetts law as a Class A, B, C, D, or E substance.
- Adds a sixteen (16) page comprehensive synthetic drug list, adopted by New Hampshire and other states, to the definition of controlled substances.

HOUSE . . . . . No. 710

The Commonwealth of Massachusetts

PRESENTED BY:

*Cory Atkins*

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 relative to synthetic drugs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

**HOUSE . . . . . No. 710**

By Ms. Atkins of Concord, a petition (accompanied by bill, House, No. 710) of Cory Atkins and others relative to synthetic drugs. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4310 OF 2015-2016.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to synthetic drugs.

*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. Section 1 of chapter 94C of the General Laws as appearing in the 2014  
2 Official Edition is hereby amended by striking the words “controlled substance analogue” in  
3 lines 23-24 and inserting in place the words “synthetic drug.”

4 SECTION 2. Section 1 of chapter 94C is further amended by striking the definition for  
5 “Controlled substance analogue,” lines 26-52.

6 SECTION 3. Section 1 of chapter 94C is further amended by inserting the following  
7 definition at line 316:-

8 “Synthetic drug”, a drug with properties and effects similar to a known hallucinogen or  
9 narcotic but having an altered chemical structure, including any substance within a structural  
10 group listed in “CLASS D” subsection (c) of section 31 of this chapter.

11

12 SECTION 4. Section 31 of chapter 94C is further amended by adding to "CLASS D" at  
13 line 326:-

14 (c) Unless specifically excepted or unless listed in another class, any substance within the  
15 following structural groups:

16 1) Any compound containing an indole ring system with a substituent on the  
17 nitrogen atom and bearing an additional substituent at the 3-position of the indole ring system,  
18 with a linkage connecting the ring system to the substituent:

19 a) Where the linkage connecting the indole ring system to the substituent at its 3-  
20 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino,  
21 Amido, Alkylamido

22 b) Where the substituent at the 3-position of the indole ring system is, disregarding  
23 the linkage, any of the following groups: Naphthyl, Quinolinyl, Adamantyl, Phenyl, Cycloalkyl  
24 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido  
25 (limited to ethylamido, propylamido, butylamido, or pentylamido), Benzyl, Carboxylic acid,  
26 Ester, Ether, Phenylpropylamido, Phenylpropylamino.

27 c) Whether or not the substituent at the 3-position of the indole ring system,  
28 disregarding the linkage, is further substituted to any extent.

29 d) Whether or not further substituted on the indole ring system to any extent.

30           2)     Any compound containing an indazole ring system with a substituent at the 1-  
31 position nitrogen atom and bearing an additional substituent at the 3-position of the indazole ring  
32 system, with a linkage connecting the ring system to the substituent:

33           a)     Where the linkage connecting the indazole ring system to the substituent at its 3-  
34 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino,  
35 Amido, Alkylamido

36           b)     Where the substituent at the 3-position of the indazole ring system is, disregarding  
37 the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
38 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited  
39 to ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester,  
40 Ether, Phenylpropylamido, Phenylpropylamino

41           c)     Whether or not the substituent at the 3-position of the indazole ring system,  
42 disregarding the linkage, is further substituted to any extent.

43           d)     Whether or not further substituted on the indazole ring system to any extent.

44           3)     Any compound containing a pyrrole ring with a substituent on the nitrogen atom  
45 and bearing an additional substituent at the 3-position of the pyrrole ring, with a linkage  
46 connecting the ring to the substituent:

47           a)     Where the linkage connecting the pyrrole ring to the substituent at its 3-position is  
48 any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido,  
49 Alkylamido

50           b)     Where the substituent at the 3-position of the pyrrole ring is, disregarding the  
51 linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
52 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited  
53 to ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester,  
54 Ether, Phenylpropylamido, Phenylpropylamino

55           c)     Whether or not the substituent at the 3-position of the pyrrole ring, disregarding  
56 the linkage, is further substituted to any extent.

57           d)     Whether or not further substituted on the pyrrole ring to any extent.

58           4)     Any compound containing a pyrazole ring with a substituent at the 1-position  
59 nitrogen atom and bearing an additional substituent at the 3-position of the pyrazole ring with a  
60 linkage connecting the ring to the substituent:

61           a)     Where the linkage connecting the pyrazole ring to the substituent at its 3-position  
62 is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido,  
63 Alkylamido

64           b)     Where the substituent at the 3-position of the pyrazole ring is, disregarding the  
65 linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cyclopentyl, or  
66 cyclohexyl, Cycloalkyl (limited to cyclopropyl, cyclobutyl, or biphenyl), Alkylamido (limited to  
67 ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester, Ether,  
68 Phenylpropylamido, Phenylpropylamino

69           c)     Whether or not the substituent at the 3-position of the pyrazole ring, disregarding  
70 the linkage, is further substituted to any extent.

- 71 d) Whether or not further substituted on the pyrazole ring to any extent.
- 72 5) Any compound containing a pyrazole ring with a substituent at the 1-position  
73 nitrogen atom and bearing an additional substituent at the 3-position of the pyrazole ring with a  
74 linkage connecting the ring to the substituent:
- 75 a) Where the linkage connecting the pyrazole ring to the substituent at its 3 position  
76 is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido,  
77 Alkylamido
- 78 b) Where the substituent at the 3 position of the pyrazole ring is, disregarding the  
79 linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
80 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited  
81 to ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester,  
82 Ether, Phenylpropylamido, Phenylpropylamino
- 83 c) Whether or not the substituent at the 3 position of the pyrazole ring, disregarding  
84 the linkage, is further substituted to any extent.
- 85 d) Whether or not further substituted on the pyrazole ring to any extent.
- 86 6) Any compound containing a naphthalene ring system with a substituent on the 1  
87 position carbon atom and bearing an additional substituent at the 4 position of the naphthalene  
88 ring system, with a linkage connecting the ring system to the substituent:
- 89 a) Where the linkage connecting the naphthalene ring system to the substituent at its  
90 4 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino,  
91 Alkylamino, Amido, Alkylamido



92           b)     Where the substituent at the 4 position of the naphthalene ring system is,  
93     disregarding the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl,  
94     Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl,  
95     Alkylamido (limited to ethylamido, propylamido, butanamido, or pentanamido), Benzyl,  
96     Carboxylic acid, Ester, Ether, Phenylpropylamido, Phenylpropylamino

97           c)     Whether or not the substituent at the 4 position of the naphthalene ring system,  
98     disregarding the linkage, is further substituted to any extent.

99           d)     Whether or not further substituted on the naphthalene ring system to any extent.

100          7)     Any compound containing a carbazole ring system with a substituent on the  
101     nitrogen atom and bearing an additional substituent at the 1, 2, or 3 position of the carbazole ring  
102     system, with a linkage connecting the ring system to the substituent:

103          a)     Where the linkage connecting the carbazole ring system to the substituent at its 1,  
104     2, or 3 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino,  
105     Alkylamino, Amido, Alkylamido

106          b)     Where the substituent at the 1, 2, or 3 position of the carbazole ring system is,  
107     disregarding the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl,  
108     Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl,  
109     Alkylamido (limited to ethylamido, propylamido, butanamido, or pentanamido), Benzyl,  
110     Carboxylic acid, Ester, Ether, Phenylpropylamido, Phenylpropylamino

111          c)     Whether or not the substituent at the 1, 2, or 3 position of the carbazole ring  
112     system, disregarding the linkage, is further substituted to any extent.

- 113 d) Whether or not further substituted on the carbazole ring system to any extent.
- 114 8) Any substance which includes, but is not limited to the following:
- 115 a) QUCHIC/BB-22.
- 116 b) STS-135.
- 117 c) APICA/SDB-001.
- 118 d) ADBICA.
- 119 e) ADB-FUBINACA.
- 120 f) AB-001.
- 121 g) SDB-006.
- 122 h) EG-018.
- 123 i) CB-13.
- 124 j) 5-chloro-UR-144.
- 125 k) FUB-PB-22.
- 126 9) Any synthetic cathinone, which shall be defined as any of the following chemical  
127 structures, their salts, isomers and salts of isomers, whenever the existence of these is possible  
128 within the specific chemical designation, including any compound structurally derived from 2-  
129 aminopropanal by substitution at the 1-position with a monocyclic or fused polycyclic ring  
130 system, including compounds further modified by:

131 a) Substitution on the ring system to any extent (including, but not limited to alkyl,  
132 alkoxy, alkylendioxy, haloalkyl, or halide substituents), whether or not further substituted in the  
133 ring system by other substituents; and/or

134 b) Substitution at the 3-position with a saturated or unsaturated hydrocarbon  
135 substituent; and/or

136 c) Mono- or di- substitution at the 2-amino nitrogen atom with saturated or  
137 unsaturated hydrocarbon groups, or inclusion of the 2-amino nitrogen atom in a cyclic structure,  
138 whether or not that cyclic structure contains any further substitutions; This term shall not include  
139 substances that are otherwise scheduled under the Controlled Substances Act: (e.g. cathinone,  
140 methcathinone, methylone, mephedrone, MDPV, diethylpropion, pyrovalerone), are FDA-  
141 approved pharmaceutical products (i.e. bupropion) or are FDA-approved research products.

142 10) Any synthetic psychoactive compound or substance which shall be defined as  
143 substances and their salts, isomers, and salts of isomers, wherever the existence of these is  
144 possible, within the following specific chemical designation:

145 a) 2,5-dimethoxy-4-methyl-N-(2-methoxybenzyl)phenethylamine (also known as  
146 25D-NBOMe).

147 b) 2,5-dimethoxy-4-ethyl-N-(2-methoxybenzyl)phenethylamine (also known as 25E-  
148 NBOMe).

149 c) 2,5-dimethoxy-4-nitro-N-(2-methoxybenzyl)phenethylamine (also known as 25N-  
150 NBOMe).

- 151 d) 2,5-dimethoxy-4-n-propyl-N-(2-methoxybenzyl)phenethylamine (also known as  
152 25P-NBOMe).
- 153 e) 2,5-dimethoxy-4-ethylthio-N-(2-methoxybenzyl)phenethylamine (also known as  
154 25T2-NBOMe).
- 155 f) 2,5-dimethoxy-4-sec-propylthio-N-(2-methoxybenzyl)phenethylamine (also  
156 known as 25T4-NBOMe).
- 157 g) 2,5-dimethoxy-4-n-propylthio-N-(2-methoxybenzyl)phenethylamine (also known  
158 as 25T7-NBOMe).
- 159 h) N-(2-methoxybenzyl)-3,4-dimethoxyamphetamine (also known as 34-DMA  
160 NBOMe).
- 161 i) 1-(1-Benzofuran-2-yl)propan-2-amine (also known as 2-APB).
- 162 j) 5-(2-aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
- 163 k) ) 2-(2-ethylaminopropyl)benzofuran (also known as 2-EAPB).
- 164 l) 1-(Benzofuran-5-yl)-N-methylpropan-2-amine (also known as 5-MAPB).
- 165 m) 3,4-dichloromethylphenidate.
- 166 n) 5,6-methylenedioxy-2-aminoindan (also known as 5,6-MDAI).
- 167 o) 4-hydroxy-diethyltryptamine (also known as 4-hydroxy-DET).
- 168 p) 4-methoxyphencyclidine (also known as 4-methoxy-PCP or methoxydine).

- 169 q) 3,4-dichloro-N-([1-(dimethylamino)cyclohexyl]methyl)benzamide (also known  
170 as AH-7921).
- 171 r) Benocyclidine (also known as BTCP).
- 172 s) Methoxetamine (also known as MXE).
- 173 t) 3-Methyl-6-[3-trifluoromethyl]phenyl]-1,2,4-triazolo[4,3-b]pyridazine (also  
174 known as CL218872).
- 175 u) 1-(1,2-diphenylethyl)piperidine (also known as diphenidine).
- 176 v) 1-Cyclohexyl-4-(1,2-diphenylethyl)piperazine (also known as MT-45).
- 177 w) (3-diethylamino-2,2-dimethylpropyl)-4-nitrobenzoate (also known as nitrocaine  
178 or nitracaine).
- 179 x) (E)-4-chloro-N-1(phenylethyl)piperidin-2-ylidene)sulfonamide (also known as W-  
180 15).
- 181 y) (E)-4-chloro-N-(1-(4-nitrophenylethyl)piperidin-2-ylidene)sulfonamide (also  
182 known as W-18).
- 183 z) 4-fluoroamphetamine.
- 184 aa) 1-(thiophen-2-yl)-2-methylaminopropane (also known as methiopropamine).
- 185 11) This definition shall not include:
- 186 a) Endocannabinoids that are naturally found in the human body;

187           b)     Delta-9 Tetrahydrocannabinol (THC) or other marijuana-derived cannabinoids, in  
188 the form of marinol, dronabinol, or another generic pharmaceutical equivalent, provided the  
189 medication has been issued as the result of a valid prescription; or

190           c)     Any other drugs that have cannabinoid receptor activity that are currently  
191 approved by the United States Food and Drug Administration for medical use; or marijuana and  
192 extracts of marijuana authorized for therapeutic use.

193           SECTION 5. Section 31 of chapter 94C is further amended by adding to “CLASS D” the  
194 following additional subsections:-

195           (d) Any substance controlled in Schedule I of Title 21 of the Code of Federal Regulations  
196 Part 1308.11 or in Schedule II of Title 21 of the Code of Federal Regulations Part 1308.12,  
197 unless specifically excepted or unless listed in another class in this section.

198           (e) Public notice of this section shall be prepared by the Commissioner of the Department  
199 of Public Health and the Attorney General, and such notice shall be posted on the public  
200 websites of both the Department of Public Health and the Office of the Attorney General  
201 continuously for 180 days before the effective date of this act.

SENATE . . . . . No. 889

The Commonwealth of Massachusetts

PRESENTED BY:  
*Jason M. Lewis*

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 relative to synthetic drugs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Marian T. Ryan</i>	<i>15 Commonwealth Avenue Woburn, MA 01801</i>

SENATE . . . . . No. 889

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 889) of Jason M. Lewis and Marian T. Ryan for legislation relative to synthetic drugs. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4310 OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act relative to synthetic drugs.

*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. Section 1 of chapter 94C of the General Laws as appearing in the 2014  
2 Official Edition is hereby amended by striking the words “controlled substance analogue” in  
3 lines 23-24 and inserting in place the words “synthetic drug.”

4 SECTION 2. Section 1 of chapter 94C is further amended by striking the definition for  
5 “Controlled substance analogue,” lines 26-52.

6 SECTION 3. Section 1 of chapter 94C is further amended by inserting the following  
7 definition at line 316:-

8 “Synthetic drug”, a drug with properties and effects similar to a known hallucinogen or  
9 narcotic but having an altered chemical structure, including any substance within a structural  
10 group listed in “CLASS D” subsection (c) of section 31 of this chapter.



11

12 SECTION 4. Section 31 of chapter 94C is further amended by adding to "CLASS D" at  
13 line 326:-

14 (c) Unless specifically excepted or unless listed in another class, any substance within the  
15 following structural groups:

16 1) Any compound containing an indole ring system with a substituent on the  
17 nitrogen atom and bearing an additional substituent at the 3-position of the indole ring system,  
18 with a linkage connecting the ring system to the substituent:

19 a) Where the linkage connecting the indole ring system to the substituent at its 3-  
20 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino,  
21 Amido, Alkylamido

22 b) Where the substituent at the 3-position of the indole ring system is, disregarding  
23 the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
24 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido  
25 (limited to ethylamido, propylamido, butylamido, or pentylamido), Benzyl, Carboxylic acid,  
26 Ester, Ether, Phenylpropylamido, Phenylpropylamino.

27 c) Whether or not the substituent at the 3-position of the indole ring system,  
28 disregarding the linkage, is further substituted to any extent.

29 d) Whether or not further substituted on the indole ring system to any extent.

30           2)     Any compound containing an indazole ring system with a substituent at the 1-  
31 position nitrogen atom and bearing an additional substituent at the 3-position of the indazole ring  
32 system, with a linkage connecting the ring system to the substituent:

33           a)     Where the linkage connecting the indazole ring system to the substituent at its 3-  
34 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino,  
35 Amido, Alkylamido

36           b)     Where the substituent at the 3-position of the indazole ring system is, disregarding  
37 the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
38 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited  
39 to ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester,  
40 Ether, Phenylpropylamido, Phenylpropylamino

41           c)     Whether or not the substituent at the 3-position of the indazole ring system,  
42 disregarding the linkage, is further substituted to any extent.

43           d)     Whether or not further substituted on the indazole ring system to any extent.

44           3)     Any compound containing a pyrrole ring with a substituent on the nitrogen atom  
45 and bearing an additional substituent at the 3-position of the pyrrole ring, with a linkage  
46 connecting the ring to the substituent:

47           a)     Where the linkage connecting the pyrrole ring to the substituent at its 3-position is  
48 any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido,  
49 Alkylamido

50           b)     Where the substituent at the 3-position of the pyrrole ring is, disregarding the  
51 linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
52 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited  
53 to ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester,  
54 Ether, Phenylpropylamido, Phenylpropylamino

55           c)     Whether or not the substituent at the 3-position of the pyrrole ring, disregarding  
56 the linkage, is further substituted to any extent.

57           d)     Whether or not further substituted on the pyrrole ring to any extent.

58           4)     Any compound containing a pyrazole ring with a substituent at the 1-position  
59 nitrogen atom and bearing an additional substituent at the 3-position of the pyrazole ring with a  
60 linkage connecting the ring to the substituent:

61           a)     Where the linkage connecting the pyrazole ring to the substituent at its 3-position  
62 is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido,  
63 Alkylamido

64           b)     Where the substituent at the 3-position of the pyrazole ring is, disregarding the  
65 linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cyclopentyl, or  
66 cyclohexyl, Cycloalkyl (limited to cyclopropyl, cyclobutyl, or biphenyl), Alkylamido (limited to  
67 ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester, Ether,  
68 Phenylpropylamido, Phenylpropylamino

69           c)     Whether or not the substituent at the 3-position of the pyrazole ring, disregarding  
70 the linkage, is further substituted to any extent.

- 71 d) Whether or not further substituted on the pyrazole ring to any extent.
- 72 5) Any compound containing a pyrazole ring with a substituent at the 1-position  
73 nitrogen atom and bearing an additional substituent at the 3-position of the pyrazole ring with a  
74 linkage connecting the ring to the substituent:
- 75 a) Where the linkage connecting the pyrazole ring to the substituent at its 3 position  
76 is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido,  
77 Alkylamido
- 78 b) Where the substituent at the 3 position of the pyrazole ring is, disregarding the  
79 linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl, Cycloalkyl  
80 (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited  
81 to ethylamido, propylamido, butanamido, or pentanamido), Benzyl, Carboxylic acid, Ester,  
82 Ether, Phenylpropylamido, Phenylpropylamino
- 83 c) Whether or not the substituent at the 3 position of the pyrazole ring, disregarding  
84 the linkage, is further substituted to any extent.
- 85 d) Whether or not further substituted on the pyrazole ring to any extent.
- 86 6) Any compound containing a naphthalene ring system with a substituent on the 1  
87 position carbon atom and bearing an additional substituent at the 4 position of the naphthalene  
88 ring system, with a linkage connecting the ring system to the substituent:
- 89 a) Where the linkage connecting the naphthalene ring system to the substituent at its  
90 4 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino,  
91 Alkylamino, Amido, Alkylamido

92           b)     Where the substituent at the 4 position of the naphthalene ring system is,  
93     disregarding the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl,  
94     Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl,  
95     Alkylamido (limited to ethylamido, propylamido, butanamido, or pentanamido), Benzyl,  
96     Carboxylic acid, Ester, Ether, Phenylpropylamido, Phenylpropylamino

97           c)     Whether or not the substituent at the 4 position of the naphthalene ring system,  
98     disregarding the linkage, is further substituted to any extent.

99           d)     Whether or not further substituted on the naphthalene ring system to any extent.

100          7)     Any compound containing a carbazole ring system with a substituent on the  
101     nitrogen atom and bearing an additional substituent at the 1, 2, or 3 position of the carbazole ring  
102     system, with a linkage connecting the ring system to the substituent:

103           a)     Where the linkage connecting the carbazole ring system to the substituent at its 1,  
104     2, or 3 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino,  
105     Alkylamino, Amido, Alkylamido

106           b)     Where the substituent at the 1, 2, or 3 position of the carbazole ring system is,  
107     disregarding the linkage, any of the following groups: Naphthyl, Quinoliny, Adamantyl, Phenyl,  
108     Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl,  
109     Alkylamido (limited to ethylamido, propylamido, butanamido, or pentanamido), Benzyl,  
110     Carboxylic acid, Ester, Ether, Phenylpropylamido, Phenylpropylamino

111           c)     Whether or not the substituent at the 1, 2, or 3 position of the carbazole ring  
112     system, disregarding the linkage, is further substituted to any extent.

- 113 d) Whether or not further substituted on the carbazole ring system to any extent.
- 114 8) Any substance which includes, but is not limited to the following:
- 115 a) QUCHIC/BB-22.
- 116 b) STS-135.
- 117 c) APICA/SDB-001.
- 118 d) ADBICA.
- 119 e) ADB-FUBINACA.
- 120 f) AB-001.
- 121 g) SDB-006.
- 122 h) EG-018.
- 123 i) CB-13.
- 124 j) 5-chloro-UR-144.
- 125 k) FUB-PB-22.
- 126 9) Any synthetic cathinone, which shall be defined as any of the following chemical
- 127 structures, their salts, isomers and salts of isomers, whenever the existence of these is possible
- 128 within the specific chemical designation, including any compound structurally derived from 2-
- 129 aminopropanal by substitution at the 1-position with a monocyclic or fused polycyclic ring
- 130 system, including compounds further modified by:

131 a) Substitution on the ring system to any extent (including, but not limited to alkyl,  
132 alkoxy, alkylendioxy, haloalkyl, or halide substituents), whether or not further substituted in the  
133 ring system by other substituents; and/or

134 b) Substitution at the 3-position with a saturated or unsaturated hydrocarbon  
135 substituent; and/or

136 c) Mono- or di- substitution at the 2-amino nitrogen atom with saturated or  
137 unsaturated hydrocarbon groups, or inclusion of the 2-amino nitrogen atom in a cyclic structure,  
138 whether or not that cyclic structure contains any further substitutions; This term shall not include  
139 substances that are otherwise scheduled under the Controlled Substances Act: (e.g. cathinone,  
140 methcathinone, methylone, mephedrone, MDPV, diethylpropion, pyrovalerone), are FDA-  
141 approved pharmaceutical products (i.e. bupropion) or are FDA-approved research products.

142 10) Any synthetic psychoactive compound or substance which shall be defined as  
143 substances and their salts, isomers, and salts of isomers, wherever the existence of these is  
144 possible, within the following specific chemical designation:

145 a) 2,5-dimethoxy-4-methyl-N-(2-methoxybenzyl)phenethylamine (also known as  
146 25D-NBOMe).

147 b) 2,5-dimethoxy-4-ethyl-N-(2-methoxybenzyl)phenethylamine (also known as 25E-  
148 NBOMe).

149 c) 2,5-dimethoxy-4-nitro-N-(2-methoxybenzyl)phenethylamine (also known as 25N-  
150 NBOMe).

- 151 d) 2,5-dimethoxy-4-n-propyl-N-(2-methoxybenzyl)phenethylamine (also known as  
152 25P-NBOMe).
- 153 e) 2,5-dimethoxy-4-ethylthio-N-(2-methoxybenzyl)phenethylamine (also known as  
154 25T2-NBOMe).
- 155 f) 2,5-dimethoxy-4-sec-propylthio-N-(2-methoxybenzyl)phenethylamine (also  
156 known as 25T4-NBOMe).
- 157 g) 2,5-dimethoxy-4-n-propylthio-N-(2-methoxybenzyl)phenethylamine (also known  
158 as 25T7-NBOMe).
- 159 h) N-(2-methoxybenzyl)-3,4-dimethoxyamphetamine (also known as 34-DMA  
160 NBOMe).
- 161 i) 1-(1-Benzofuran-2-yl)propan-2-amine (also known as 2-APB).
- 162 j) 5-(2-aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
- 163 k) ) 2-(2-ethylaminopropyl)benzofuran (also known as 2-EAPB).
- 164 l) 1-(Benzofuran-5-yl)-N-methylpropan-2-amine (also known as 5-MAPB).
- 165 m) 3,4-dichloromethylphenidate.
- 166 n) 5,6-methylenedioxy-2-aminoindan (also known as 5,6-MDAI).
- 167 o) 4-hydroxy-diethyltryptamine (also known as 4-hydroxy-DET).
- 168 p) 4-methoxyphencyclidine (also known as 4-methoxy-PCP or methoxydine).



- 169 q) 3,4-dichloro-N-([1-(dimethylamino)cyclohexyl]methyl)benzamide (also known  
170 as AH-7921).
- 171 r) Benocyclidine (also known as BTCP).
- 172 s) Methoxetamine (also known as MXE).
- 173 t) 3-Methyl-6-[3-trifluoromethyl]phenyl]-1,2,4-triazolo[4,3-b]pyridazine (also  
174 known as CL218872).
- 175 u) 1-(1,2-diphenylethyl)piperidine (also known as diphenidine).
- 176 v) 1-Cyclohexyl-4-(1,2-diphenylethyl)piperazine (also known as MT-45).
- 177 w) (3-diethylamino-2,2-dimethylpropyl)-4-nitrobenzoate (also known as nitrocaine  
178 or nitracaine).
- 179 x) (E)-4-chloro-N-1(phenylethylpiperidin-2-ylidene)sulfonamide (also known as W-  
180 15).
- 181 y) (E)-4-chloro-N-(1-(4-nitrophenylethyl)piperidin-2-ylidene)sulfonamide (also  
182 known as W-18).
- 183 z) 4-fluoroamphetamine.
- 184 aa) 1-(thiophen-2-yl)-2-methylaminopropane (also known as methiopropamine).
- 185 11) This definition shall not include:
- 186 a) Endocannabinoids that are naturally found in the human body;

187           b)     Delta-9 Tetrahydrocannabinol (THC) or other marijuana-derived cannabinoids, in  
188     the form of marinol, dronabinol, or another generic pharmaceutical equivalent, provided the  
189     medication has been issued as the result of a valid prescription; or

190           c)     Any other drugs that have cannabinoid receptor activity that are currently  
191     approved by the United States Food and Drug Administration for medical use; or marijuana and  
192     extracts of marijuana authorized for therapeutic use.

193           SECTION 5. Section 31 of chapter 94C is further amended by adding to “CLASS D” the  
194     following additional subsections:-

195           .     (d) Any substance controlled in Schedule I of Title 21 of the Code of Federal Regulations  
196     Part 1308.11 or in Schedule II of Title 21 of the Code of Federal Regulations Part 1308.12,  
197     unless specifically excepted or unless listed in another class in this section.

198           (e) Public notice of this section shall be prepared by the Commissioner of the Department  
199     of Public Health and the Attorney General, and such notice shall be posted on the public  
200     websites of both the Department of Public Health and the Office of the Attorney General  
201     continuously for 180 days before the effective date of this act.



**An Act Relative to Visitation and Family Court Matters  
in Domestic Violence Cases  
H. 781/ S. 894**

**Lead Sponsors: Representative James Dwyer and Senator Jason Lewis**

*Impetus*

Under existing law, defendants charged with or convicted of domestic abuse, or sexual assault, can continue to subject their victims to abuse and manipulation by using the court system as a mechanism for harassment. Domestic abuse victims may be forced repeatedly to confront their abusers in Family and Probate Court and can be ordered to bring children to visit an abusive parent in jail. Abusers may seek joint custody or visitation as a means to continue to harass and to exert control over their former partners or over other victims they have been accused of assaulting.

---

*Need*

- Currently, Chapter 209C Section 3 prohibits ordering visitation rights to a person convicted of a rape whereby the victim became pregnant. This prohibition, however, does not apply to individuals charged with or convicted of the broad range of domestic abuse crimes and doesn't extend to the pretrial period of a criminal case when tensions between parties may be the highest.
  - Chapter 209C, Section 10 creates a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent, but the process creates opportunities for a defendant to use the judicial system as a mechanism to harass a victim.
- 

*Legislative Fix*

- Seeks to create a cooling off period during which family court matters are stayed and visitation will not be ordered.

- Establishes a ban on visitation during the pretrial period and, following a conviction, a ban during the first year of a defendant's sentence or incarceration or for the total duration if that is less than one year.
- Offers an opportunity for a victim, a parent of a victim, and under certain proscribed circumstances, a child, to request the ban provision be waived.
- Requires that a defendant who pursues visitation through the probate court following the termination of the ban must complete a psychological evaluation, a domestic violence education program, a parenting program and any other treatment that court deems necessary prior to being allowed visitation.

HOUSE . . . . . No. 781

---

The Commonwealth of Massachusetts

PRESENTED BY:

*James J. Dwyer*

*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 relative to visitation and family court matters in domestic violence cases.

PETITION OF:

NAME:

*James J. Dwyer*

DISTRICT/ADDRESS:

*30th Middlesex*

**HOUSE . . . . . No. 781**

By Mr. Dwyer of Woburn, a petition (accompanied by bill, House, No. 781) of James J. Dwyer relative to conditions of release visitation rights in domestic violence cases. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to visitation and family court matters in domestic violence cases.

*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 276 of the General Laws is hereby amended by inserting after  
2 section 42A the following section:-

3 Section 42B. conditions of release visitation rights.

4 (a) This section applies to defendants who are:

5 (1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4,  
6 inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or  
7 the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the  
8 assault and battery of a pregnant person under section 13A of chapter 265; and

9 (2) where the victim of the crime is pregnant at the time of the crime or becomes  
10 pregnant as a result of the crime; or where the victim and the defendant have a child in common;  
11 or where a child is the victim or witness to the crime.

12 (b) For a defendant as described in subsection (a), the criminal court in which the  
13 defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining  
14 visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of  
15 subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of  
16 a sentence as described in subsection (c).

17 (1) The adult victim, or the mother of a child victim or witness, may waive the right to  
18 have a visitation ban issue.

19 (2) A child of suitable age, or a guardian ad litem acting on their behalf, may request that  
20 the ban issue or not issue.

21 (3) Where a mother and a child of suitable age disagree about whether to waive the  
22 visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a  
23 determination regarding visitation based on the best interests of the child.

24 (4) Decisions by victims and any involved children regarding visitation bans are not  
25 necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time  
26 during the pendency of the case leading to the time when a visitation ban would terminate as  
27 described in section (3).

28 (5) Nothing in this section precludes the Commonwealth or the victim from asking for a  
29 stay away or no contact order as a post-conviction condition pursuant to sentencing.

30 (c) The visitation ban shall terminate after the completion of the defendant's sentence,  
31 following a conviction or plea of guilty to the offenses listed in (1)(a), or after one year of the  
32 defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation

33 through the probate courts, the defendant must complete a psychological evaluation, a domestic  
34 violence education program, a parenting program and any other treatment the probate court  
35 deems necessary prior to being allowed visitation.

36 (1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if  
37 the case is terminated, the ban prohibiting visitation shall be immediately lifted.

38 (d) For defendants for whom there is a ban prohibiting visitation as described in this  
39 section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic  
40 Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to  
41 continue until the visitation ban is lifted.

42 SECTION 2. Chapter 276 of the General Laws is hereby amended by inserting after  
43 section 87A the following section:-

44 Section 87B. conditions of probation visitation rights.

45 (a) This section applies to defendants who are:

46 (1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4,  
47 inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or  
48 the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the  
49 assault and battery of a pregnant person under section 13A of chapter 265; and

50 (2) where the victim of the crime is pregnant at the time of the crime or becomes  
51 pregnant as a result of the crime; or where the victim and the defendant have a child in common;  
52 or where a child is the victim or witness to the crime.



53 (b) For a defendant as described in subsection (a), the criminal court in which the  
54 defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining  
55 visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of  
56 subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of  
57 a sentence as described in subsection (c).

58 (1) The adult victim, or the mother of a child victim or witness, may waive the right to  
59 have a visitation ban issue.

60 (2) A child of suitable age, or a guardian ad litem acting on their behalf, may request that  
61 the ban issue or not issue.

62 (3) Where a mother and a child of suitable age disagree about whether to waive the  
63 visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a  
64 determination regarding visitation based on the best interests of the child.

65 (4) Decisions by victims and any involved children regarding visitation bans are not  
66 necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time  
67 during the pendency of the case leading to the time when a visitation ban would terminate as  
68 described in section (3).

69 (5) Nothing in this section precludes the Commonwealth or the victim from asking for a  
70 stay away or no contact order as a post-conviction condition pursuant to sentencing.

71 (c) The visitation ban shall terminate after the completion of the defendant's sentence,  
72 following a conviction or plea of guilty to the offenses listed in (1)(a), or after one year of the  
73 defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation

74 through the probate courts, the defendant must complete a psychological evaluation, a domestic  
75 violence education program, a parenting program and any other treatment the probate court  
76 deems necessary prior to being allowed visitation.

77 (1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if  
78 the case is terminated, the ban prohibiting visitation shall be immediately lifted.

79 (d) For defendants for whom there is a ban prohibiting visitation as described in this  
80 section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic  
81 Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to  
82 continue until the visitation ban is lifted.

SENATE . . . . . No. 894

---

The Commonwealth of Massachusetts

PRESENTED BY:

*Jason M. Lewis*

*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 relative to visitation and family court matters in domestic violence cases.

PETITION OF:

NAME:

*Jason M. Lewis*

DISTRICT/ADDRESS:

*Fifth Middlesex*

**SENATE . . . . . No. 894**

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 894) of Jason M. Lewis for legislation relative to visitation and family court matters in domestic violence cases. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to visitation and family court matters in domestic violence cases.

*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 276 of the General Laws is hereby amended by inserting after  
2 section 42A the following section:-

3 Section 42B. Conditions of release visitation rights.

4 (a) This section applies to defendants who are:

5 (1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4,  
6 inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or  
7 the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the  
8 assault and battery of a pregnant person under section 13A of chapter 265; and

9 (2) where the victim of the crime is pregnant at the time of the crime or becomes  
10 pregnant as a result of the crime; or where the victim and the defendant have a child in common;  
11 or where a child is the victim or witness to the crime.

12 (b) For a defendant as described in subsection (a), the criminal court in which the  
13 defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining  
14 visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of  
15 subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of  
16 a sentence as described in subsection (c).

17 (i) The adult victim, or the mother of a child victim or witness, may waive the right to  
18 have a visitation ban issue.

19 (ii) A child of suitable age, or a guardian ad litem acting on their behalf, may request that  
20 the ban issue or not issue.

21 (iii) Where a mother and a child of suitable age disagree about whether to waive the  
22 visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a  
23 determination regarding visitation based on the best interests of the child.

24 (iv) Decisions by victims and any involved children regarding visitation bans are not  
25 necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time  
26 during the pendency of the case leading to the time when a visitation ban would terminate as  
27 described in section (3).

28 (v) Nothing in this section precludes the Commonwealth or the victim from asking for a  
29 stay away or no contact order as a post-conviction condition pursuant to sentencing.

30 (c) The visitation ban shall terminate after the completion of the defendant's sentence,  
31 following a conviction or plea of guilty to the offenses listed in (a)(1), or after 1 year of the  
32 defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation

33 through the probate courts, the defendant must complete a psychological evaluation, a domestic  
34 violence education program, a parenting program and any other treatment the probate court  
35 deems necessary prior to being allowed visitation.

36 (1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if  
37 the case is terminated, the ban prohibiting visitation shall be immediately lifted.

38 (d) For defendants for whom there is a ban prohibiting visitation as described in this  
39 section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic  
40 Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to  
41 continue until the visitation ban is lifted.

42 SECTION 2. Chapter 276 of the General Laws is hereby amended by inserting after  
43 section 87A the following section:-

44 Section 87B. Conditions of probation visitation rights.

45 (a) This section applies to defendants who are:

46 (1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4,  
47 inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or  
48 the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the  
49 assault and battery of a pregnant person under section 13A of chapter 265; and

50 (2) where the victim of the crime is pregnant at the time of the crime or becomes  
51 pregnant as a result of the crime; or where the victim and the defendant have a child in common;  
52 or where a child is the victim or witness to the crime.

53 (b) For a defendant as described in subsection (a), the criminal court in which the  
54 defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining  
55 visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of  
56 subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of  
57 a sentence as described in subsection (c).

58 (i) The adult victim, or the mother of a child victim or witness, may waive the right to  
59 have a visitation ban issue.

60 (ii) A child of suitable age, or a guardian ad litem acting on their behalf, may request that  
61 the ban issue or not issue.

62 (iii) Where a mother and a child of suitable age disagree about whether to waive the  
63 visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a  
64 determination regarding visitation based on the best interests of the child.

65 (iv) Decisions by victims and any involved children regarding visitation bans are not  
66 necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time  
67 during the pendency of the case leading to the time when a visitation ban would terminate as  
68 described in section (3).

69 (v) Nothing in this section precludes the Commonwealth or the victim from asking for a  
70 stay away or no contact order as a post-conviction condition pursuant to sentencing.

71 (c) The visitation ban shall terminate after the completion of the defendant's sentence,  
72 following a conviction or plea of guilty to the offenses listed in (a)(1), or after 1 year of the  
73 defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation

74 through the probate courts, the defendant must complete a psychological evaluation, a domestic  
75 violence education program, a parenting program and any other treatment the probate court  
76 deems necessary prior to being allowed visitation.

77 (1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if  
78 the case is terminated, the ban prohibiting visitation shall be immediately lifted.

79 (d) For defendants for whom there is a ban prohibiting visitation as described in this  
80 section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic  
81 Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to  
82 continue until the visitation ban is lifted.





**An Act Promoting Restorative Justice Practices  
H. 793/ S. 847**

**Lead Sponsors: Representative Sean Garballey and Senator James Eldridge**

*Impetus*

Community-based restorative justice programs can provide a meaningful alternative to prosecution when a case is appropriate for diversion from the criminal justice system. In these instances, restorative justice programs bring offenders, victims and community members together to collectively identify and address the harms that arise from criminal conduct in a way that better serves the parties and the broader community than prosecution.

---

*Need*

- Parties engaged in the criminal justice system, and those concerned with maximizing the efficiency of its resources, recognize that there must be alternatives to the prosecution of particular cases where these could be better addressed with diversion programs. Where the charges and the circumstances of an incident make it eligible for diversion, a restorative justice program may provide the best means for bringing the impacted parties together to address and repair the harms caused by the offender's conduct.
- 

*Legislative Fix*

- Encourages the use of, but does not make mandatory, a diversion option that may be used for eligible adult and juvenile cases.
- Excludes certain serious crimes from consideration for diversion.
- Provides a confidentiality provision that precludes a statement made by the offender-participant during the course of their involvement in the program from being used against them.

- Establishes an advisory committee-- comprised of criminal justice and restorative justice practitioners, law enforcement, and legislative leaders-- to oversee the certification of programs so that there is consistency in restorative justice program standards across the state.

**HOUSE . . . . . No. 793**

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Sean Garballey*

*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 promoting restorative justice practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>

<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Carmin L. Gentile</i>	<i>13th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>

**HOUSE . . . . . No. 793**

---

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 793) of Sean Garballey and others for legislation promoting restorative justice practices. The Judiciary.

---

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act promoting restorative justice practices.

*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: It is the policy of this Commonwealth that principles of restorative justice  
2 are included as an option for criminal and juvenile justice practitioners and parties to certain  
3 harms. It is the goal that law enforcement officials employ restorative justice approaches  
4 wherever applicable, as it may mend and strengthen the social fabric, increase the safety, security  
5 and wellbeing of communities, and reduce recidivism and the risk of more serious crimes that  
6 would require a more intensive and costly response from the legal system, such as prosecution  
7 and incarceration. Local community members should design restorative justice approaches,  
8 considering the elements of truth-telling and confidentiality; impacted parties are encouraged to  
9 participate when they so choose. Nothing in this chapter shall be construed to limit restorative  
10 justice practices or approaches that are, or may be utilized, outside the scope of this bill.

11           SECTION 2. The General Laws are hereby amended by inserting after chapter 276A the  
12 following chapter:-

13 CHAPTER 276B.

14 RESTORATIVE JUSTICE.

15 Section 1. Definitions

16 As used in this chapter, the following terms shall have the following meanings unless the  
17 context clearly requires otherwise:

18 “Restorative justice”, a voluntary process whereby the offenders, victims, and members  
19 of the community collectively identify and address harms, needs and obligations resulting from  
20 an offense, in order to understand the impact of that offense. Restorative justice requires an  
21 offender’s acceptance of responsibility for their actions and supports the offender as they make  
22 repair to the victim or community in which the harm occurred.

23 “Community-based restorative justice program”, a program established on restorative  
24 justice principles and approved by the restorative justice advisory committee that engages parties  
25 to a crime or members of the community in order to develop a plan of repair that addresses the  
26 needs of the parties and the community. Programs may include the parties to a case, their  
27 supporters, and community members, or one-on-one dialogues between a victim and offender.

28 Section 2. Participation

29 Participation in a community-based restorative justice program shall be voluntary and  
30 shall be available to both a juvenile and adult defendant. A juvenile or adult defendant may be  
31 diverted to a community-based restorative justice program at any stage of a case beginning  
32 immediately post arraignment and with the consent of the District Attorney and the victim.  
33 Restorative justice may be contemplated as a means of disposition, with judicial approval. If a

34 juvenile or adult defendant successfully completes the restorative justice program, the charge  
35 will be dismissed. If a juvenile or adult defendant does not successfully complete the program or  
36 is found to be in violation of program requirements, the case will be returned to the court in  
37 which it was arraigned in order to commence with proceedings.

### 38 Section 3. Ineligible Offenses

39 A person shall not be eligible to participate in a community-based restorative justice  
40 program if that person is charged with: (i) a sexual offense as defined by section 1 of chapter  
41 123A; (ii) any offense against a family or household member as defined by section 13M of  
42 chapter 265; or (iii) any offense resulting in substantial impairment of the physical condition  
43 including any burn, subdural hematoma, injury to any internal organ, any injury which occurs as  
44 the result of repeated harm to any bodily function or organ including human skin or any physical  
45 condition which substantially imperils a person's health or welfare. A person charged with an  
46 offense that resulted in the fracture of a bone is not automatically ineligible, but may be  
47 considered ineligible in light of the facts and circumstances of the case.

### 48 Section 4. Confidentiality

49 Participation in a community-based restorative justice program shall not be used as  
50 evidence or as an admission of guilt, delinquency, or civil liability in current or subsequent legal  
51 proceedings. A statement made by a juvenile or adult defendant during the course of an  
52 assignment to a community-based restorative justice program shall be confidential and shall not  
53 be subject to disclosure in any judicial or administrative proceeding; provided, however, that  
54 nothing in this section shall preclude any evidence obtained through an independent source or

55 that would have been inevitably discovered by lawful means from being admitted at such  
56 proceedings.

57 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after  
58 section 85 the following section:-

59 Section 86. Restorative justice

60 A child against whom a complaint is brought under this chapter may participate in a  
61 community-based restorative justice program pursuant to the requirements of chapter 276B.

62 SECTION 4. There shall be established a restorative justice advisory committee to  
63 review community-based restorative justice programs. The advisory committee shall consist of  
64 sixteen members: the co-chairs of the joint committee on the judiciary, who shall serve as co-  
65 chairs of the advisory committee; the Secretary of Public Safety and Security or a designee; the  
66 Secretary of Health and Human Services or a designee; the President of the Massachusetts  
67 District Attorneys Association or a designee; the Chair of the Committee for Public Counsel  
68 Services or a designee; the Commissioner of Probation or a designee; the President of the  
69 Massachusetts Chiefs of Police Association or a designee; the Executive Director of the  
70 Massachusetts Office for Victim Assistance or a designee; and 7 persons to be appointed by the  
71 governor, 1 of whom shall be a retired Massachusetts Trial Court judge and 6 of whom shall be  
72 representatives of community-based restorative justice programs. Each member of the advisory  
73 committee shall serve a 6-year term and members appointed through an official title shall be  
74 members for as long as they hold that title.

75 The committee shall, in its discretion, approve, monitor and assist all community-based  
76 restorative justice programs to which a juvenile or adult defendant may be diverted pursuant to



77 this chapter. The committee shall issue approval of new and existing programs for a term of 2  
78 years, and may renew approval for additional 2-year terms, subject to revocation for cause. The  
79 committee shall establish criteria to determine approval of a program. The committee may issue  
80 approval to a person, partnership, corporation, society, association or other agency or entity.

81 The advisory committee shall track the use of community-based restorative justice  
82 programs through a partnership with an educational institution and shall make legislative, policy  
83 and regulatory recommendations to aid in the use of community-based restorative justice  
84 programs, including but not limited to: qualitative and quantitative outcomes for participants;  
85 recidivism rates of responsible parties; criteria for youth involvement and training; cost savings  
86 for the commonwealth; training guidelines for restorative justice facilitators; data on racial  
87 socioeconomic and geographic disparities in the use of community-based restorative justice  
88 programs; guidelines for restorative justice best practices; appropriate training and funding  
89 sources for community-based restorative programs; and plans for the expansion of restorative  
90 justice programs and opportunities throughout the commonwealth.

91 The advisory committee shall annually submit a report with findings and  
92 recommendations to the governor and the clerks of the senate and house of representatives no  
93 later than December 31.

94 Appointments to the advisory committee shall be made not later than October 1, 2018  
95 and the first meeting of the advisory committee shall be held not later than December 1, 2018.



**SENATE . . . . . No. 847**

**The Commonwealth of Massachusetts**

PRESENTED BY:

*James B. Eldridge*

*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 promoting restorative justice practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/26/2017</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/3/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>2/2/2017</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/2/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/2/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/2/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/2/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>2/3/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>



SENATE . . . . . No. 847

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 847) of James B. Eldridge, Sean Garballey, Jason M. Lewis, Ruth B. Balsler and other members of the General Court for legislation to promote restorative justice practices for juveniles and adults. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act promoting restorative justice practices.

*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. It is the policy of this Commonwealth that principles of restorative justice  
2 are included as an option for criminal and juvenile justice practitioners and parties to certain  
3 harms. It is the goal that law enforcement officials employ restorative justice approaches  
4 wherever applicable, as it may mend and strengthen the social fabric, increase the safety, security  
5 and wellbeing of communities, and reduce recidivism and the risk of more serious crimes that  
6 would require a more intensive and costly response from the legal system, such as prosecution  
7 and incarceration. Local community members should design restorative justice approaches,  
8 considering the elements of truth-telling and confidentiality; impacted parties are encouraged to  
9 participate when they so choose. Nothing in this chapter shall be construed to limit restorative  
10 justice practices or approaches that are, or may be utilized, outside the scope of this bill.

11 SECTION 2. The General Laws are hereby amended by inserting after chapter 276A the  
12 following chapter:-

13 CHAPTER 276B.

14 RESTORATIVE JUSTICE.

15 Section 1. Definitions

16 As used in this chapter, the following terms shall have the following meanings unless the  
17 context clearly requires otherwise:

18 “Restorative justice”, a voluntary process whereby the offenders, victims, and members  
19 of the community collectively identify and address harms, needs and obligations resulting from  
20 an offense, in order to understand the impact of that offense. Restorative justice requires an  
21 offender’s acceptance of responsibility for their actions and supports the offender as they make  
22 repair to the victim or community in which the harm occurred.

23 “Community-based restorative justice program”, a program established on restorative  
24 justice principles and approved by the restorative justice advisory committee that engages parties  
25 to a crime or members of the community in order to develop a plan of repair that addresses the  
26 needs of the parties and the community. Programs may include the parties to a case, their  
27 supporters, and community members, or one-on-one dialogues between a victim and offender.

28 Section 2. Participation

29 Participation in a community-based restorative justice program shall be voluntary and  
30 shall be available to both a juvenile and adult defendant. A juvenile or adult defendant may be  
31 diverted to a community-based restorative justice program at any stage of a case beginning  
32 immediately post arraignment and with the consent of the District Attorney and the victim.  
33 Restorative justice may be contemplated as a means of disposition, with judicial approval. If a

34 juvenile or adult defendant successfully completes the restorative justice program, the charge  
35 will be dismissed. If a juvenile or adult defendant does not successfully complete the program or  
36 is found to be in violation of program requirements, the case will be returned to the court in  
37 which it was arraigned in order to commence with proceedings.

### 38 Section 3. Ineligible Offenses

39 A person shall not be eligible to participate in a community-based restorative justice  
40 program if that person is charged with: (i) a sexual offense as defined by section 1 of chapter  
41 123A; (ii) any offense against a family or household member as defined by section 13M of  
42 chapter 265; or (iii) any offense resulting in substantial impairment of the physical condition  
43 including any burn, subdural hematoma, injury to any internal organ, any injury which occurs as  
44 the result of repeated harm to any bodily function or organ including human skin or any physical  
45 condition which substantially imperils a person's health or welfare. A person charged with an  
46 offense that resulted in the fracture of a bone is not automatically ineligible, but may be  
47 considered ineligible in light of the facts and circumstances of the case.

### 48 Section 4. Confidentiality

49 Participation in a community-based restorative justice program shall not be used as  
50 evidence or as an admission of guilt, delinquency, or civil liability in current or subsequent legal  
51 proceedings. A statement made by a juvenile or adult defendant during the course of an  
52 assignment to a community-based restorative justice program shall be confidential and shall not  
53 be subject to disclosure in any judicial or administrative proceeding; provided, however, that  
54 nothing in this section shall preclude any evidence obtained through an independent source or

55 that would have been inevitably discovered by lawful means from being admitted at such  
56 proceedings.

57 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after  
58 section 85 the following section:-

59 Section 86. Restorative justice

60 A child against whom a complaint is brought under this chapter may participate in a  
61 community-based restorative justice program pursuant to the requirements of chapter 276B.

62 SECTION 4. There shall be established a restorative justice advisory committee to  
63 review community-based restorative justice programs. The advisory committee shall consist of  
64 sixteen members: the co-chairs of the joint committee on the judiciary, who shall serve as co-  
65 chairs of the advisory committee; the Secretary of Public Safety and Security or a designee; the  
66 Secretary of Health and Human Services or a designee; the President of the Massachusetts  
67 District Attorneys Association or a designee; the Chair of the Committee for Public Counsel  
68 Services or a designee; the Commissioner of Probation or a designee; the President of the  
69 Massachusetts Chiefs of Police Association or a designee; the Executive Director of the  
70 Massachusetts Office for Victim Assistance or a designee; and 7 persons to be appointed by the  
71 governor, 1 of whom shall be a retired Massachusetts Trial Court judge and 6 of whom shall be  
72 representatives of community-based restorative justice programs. Each member of the advisory  
73 committee shall serve a 6-year term and members appointed through an official title shall be  
74 members for as long as they hold that title.

75 The committee shall, in its discretion, approve, monitor and assist all community-based  
76 restorative justice programs to which a juvenile or adult defendant may be diverted pursuant to



77 this chapter. The committee shall issue approval of new and existing programs for a term of 2  
78 years, and may renew approval for additional 2-year terms, subject to revocation for cause. The  
79 committee shall establish criteria to determine approval of a program. The committee may issue  
80 approval to a person, partnership, corporation, society, association or other agency or entity.

81 The advisory committee shall track the use of community-based restorative justice  
82 programs through a partnership with an educational institution and shall make legislative, policy  
83 and regulatory recommendations to aid in the use of community-based restorative justice  
84 programs, including but not limited to: qualitative and quantitative outcomes for participants;  
85 recidivism rates of responsible parties; criteria for youth involvement and training; cost savings  
86 for the commonwealth; training guidelines for restorative justice facilitators; data on racial  
87 socioeconomic and geographic disparities in the use of community-based restorative justice  
88 programs; guidelines for restorative justice best practices; appropriate training and funding  
89 sources for community-based restorative programs; and plans for the expansion of restorative  
90 justice programs and opportunities throughout the commonwealth.

91 The advisory committee shall annually submit a report with findings and  
92 recommendations to the governor and the clerks of the senate and house of representatives no  
93 later than December 31.

94 Appointments to the advisory committee shall be made not later than October 1, 2018  
95 and the first meeting of the advisory committee shall be held not later than December 1, 2018.





**An Act Relative to the Costs of Appeals by the Commonwealth  
H. 874/ S. 792**

**Lead Sponsors: Representative Kay Khan and Senator Cynthia Creem**

*Impetus*

Massachusetts is one of a handful of states that awards attorneys' fees to defendants following appeals taken by the prosecution. In a case where a jury found a defendant guilty of assault with intent to rape and a trial judge thereafter reduced the conviction to indecent assault and battery, the Commonwealth appealed. Even though the appeal was successful and the original conviction was reinstated, the District Attorney's office was still responsible for paying more than \$28,000. in fees to the defendant's privately retained attorney.

---

*Need*

- Taxpayers in Massachusetts currently reimburse privately retained defense attorneys in cases where the Commonwealth appeals, regardless of whether the Commonwealth prevails. In cases where a judge of a lower court has ruled in error, taxpayers should not have to pay privately retained attorneys to have that erroneous decision reversed by a higher court.
- Reimbursing the fees incurred by a privately retained defense attorney can be a substantial expense for a District Attorney's office, especially when compared to the annual starting salary of an assistant district attorney. For these offices, with finite resources and strapped budgets, this significant cost is a formidable barrier and must be considered when determining whether to pursue an appeal.

---

*Legislative Fix*

- Establishes that a defendant's right to reimbursement of fees for a privately retained attorney is limited only to those instances where the Commonwealth initiates an appeal and loses that appeal.



HOUSE . . . . . No. 874

---

The Commonwealth of Massachusetts

PRESENTED BY:

*Kay Khan*

*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 relative to the costs of appeals by the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>

**HOUSE . . . . . No. 874**

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 874) of Kay Khan relative to the cost of appeals by defendants who are not indigent. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act relative to the costs of appeals by the Commonwealth.

*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. Section 28E of Chapter 278 of the General Laws, as appearing in the 2014  
2 Official Edition, is hereby amended by adding, after the third paragraph thereof, the following  
3 paragraph:

4 A defendant who is not indigent, as defined by Chapter 211D of the General Laws, and is  
5 therefore not entitled to public representation, is responsible for their own costs on appeal, unless  
6 the Commonwealth loses the appeal or the Commonwealth’s application thereof is denied. In  
7 such cases, a defendant is entitled to be reimbursed for the costs they incurred as a result of the  
8 appeal, including reasonable attorney’s fees, subject to approval of the court.

SENATE . . . . . No. 792

---

The Commonwealth of Massachusetts

PRESENTED BY:

*Cynthia S. Creem*

*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 relating to costs of appeals by the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>District Attorney Marian T. Ryan</i>	<i>15 Commonwealth Avenue Woburn, MA 01801</i>

SENATE . . . . . No. 792

By Ms. Creem, a petition (accompanied by bill, Senate, No. 792) of Cynthia S. Creem and District Attorney Marian T. Ryan for legislation relative to costs of appeals by the Commonwealth. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 763 OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act relating to costs of appeals by the Commonwealth.

*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. Section 28E of Chapter 278 of the General Laws, as appearing in the 2014  
2 Official Edition, is hereby amended by adding, after the third paragraph thereof, the following  
3 paragraph:

4 A defendant who is not indigent, as defined by Chapter 211D of the General Laws, and is  
5 therefore not entitled to public representation, is responsible for the defendant's own costs on  
6 appeal, unless the Commonwealth loses the appeal or the Commonwealth's application thereof is  
7 denied. In such cases, a defendant is entitled to be reimbursed for the costs the defendant  
8 incurred as a result of the appeal, including reasonable attorney's fees, subject to approval of the  
9 court.





**An Act Relative to the Intimidation of Witnesses  
and Interfering with Justice  
H. 888**

**Lead Sponsor: Representative David Linsky**

*Impetus*

In Commonwealth v. Hamilton, 459 Mass. 422 (2011), the defendant threatened a probation officer in retaliation for violating his probation. The SJC vacated the defendant's conviction for violating G.L. c. 268, § 13B, holding that while it was clear that the 2006 amendments to the statute intended to broaden the protections provided by the statute, the language was ambiguous and the retaliation prong of the statute was therefore unenforceable.

---

*Need*

- Participants in the judicial system must be afforded protection against retaliatory conduct.
  - This protection had been a part of the statutory language since 1970.
  - The SJC has expressly asked the Legislature to clarify the language of the 2006 amendments to ensure that this protection is unambiguous.
- 

*Legislative Fix*

- Closes the current gap in the statute to cover retaliatory conduct.
- Rewrites G.L. c. 268, § 13B in streamlined language without altering the legislative intent or the penalties.



**HOUSE . . . . . No. 888**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

*David Paul Linsky*

*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 relative to the intimidation of witnesses and interfering with justice.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Marian T. Ryan (Middlesex District Attorney)</i>	

**HOUSE . . . . . No. 888**

By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 888) of David Paul Linsky and Marian T. Ryan (Middlesex District Attorney) relative to intimidation in the criminal justice system. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1460 OF 2015-2016.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act relative to the intimidation of witnesses and interfering with justice.

*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 268 of the General Laws, section 13B, is hereby amended by striking  
2 out the section in its entirety and replacing it with the following:

3 Section 13B.

4 (1) Whoever, directly or indirectly, willfully

5 (a) threatens, or attempts or causes physical injury, emotional injury, economic injury  
6 or property damage to,

7 (b) conveys a gift, offer or promise of anything of value to, or

8 (c) misleads, intimidates or harasses;

9 (2) another person who is

10 (a) a judge, juror, grand juror, attorney, police officer, federal agent, investigator,  
11 clerk, court officer, court reporter, probation officer or parole officer,

12 (b) a person who is a witness or potential witness,

13 (c) a person who is or was aware of information, records, documents or objects that  
14 relate to a violation of a criminal statute, or a violation of conditions of probation, parole, bail, or  
15 other court order, or

16 (d) a person who is or was attending, or had made known his intention to attend a  
17 proceeding referenced in subsection (3);

18 (3) with the intent to

19 (a) impede, obstruct, delay, prevent or otherwise interfere with

20 (i) a criminal investigation at any stage, a grand jury proceeding, a dangerousness  
21 hearing, a motion hearing, a trial or other criminal proceeding of any type, or a parole hearing, or  
22 parole violation proceeding, or probation violation proceeding, or

23 (ii) an administrative hearing, or a probate and family proceeding, juvenile  
24 proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation, or  
25 any other civil proceeding of any type; or

26 (b) punish, harm or otherwise retaliate against any person described in subsection (2)  
27 for their participation in any of the aforementioned proceedings shall be punished by  
28 imprisonment in the state prison for not more than ten years, or by imprisonment in jail or house

29 of correction for not more than two and one half years, or by a fine of not less than \$1,000 nor  
30 more than \$5,000, or by both such fine and imprisonment.

31 (4) As used in this section, "investigator" shall mean an individual or group of  
32 individuals lawfully authorized by a department or agency of the federal government, or any  
33 political subdivision thereof, or a department or agency of the commonwealth, or any political  
34 subdivision thereof, to conduct or engage in an investigation of, prosecution for, or defense of a  
35 violation of the laws of the United States or of the commonwealth in the course of his official  
36 duties.

37 (5) As used in this section, "harass" shall mean to engage in any act directed at a specific  
38 person or persons, which act seriously alarms or annoys such person or persons and would cause  
39 a reasonable person to suffer substantial emotional distress. Such act shall include, but not be  
40 limited to, an act conducted by mail or by use of a telephonic or telecommunication device or  
41 electronic communication device including but not limited to any device that transfers signs,  
42 signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in  
43 part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but  
44 not limited to, electronic mail, internet communications, instant messages or facsimile  
45 communications.

46 (6) A prosecution under this section may be brought in the county in which the criminal  
47 investigation, grand jury proceeding, trial or other criminal proceeding is being conducted or  
48 took place, or in the county in which the alleged conduct constituting an offense occurred.



**An Act to Enhance the Availability of Immunity to Witnesses  
in the Courts of the Commonwealth  
H. 896**

**Lead Sponsor: Representative Jay Livingstone**

*Impetus*

When making a determination whether to prosecute a case and what the evidence will be at trial, the Commonwealth must first assess the availability of necessary witnesses. In some cases, that assessment will depend, in part or entirely, on whether the court has the ability to offer immunity to a witness in exchange for their testimony. Currently, the Massachusetts immunity statute expressly limits the authority to grant immunity to justices of the Superior Court, the Appeals Court, and the Supreme Judicial Court. In the District Court and the Juvenile Court, where justices do not have this authority, cases are impacted when important witnesses may not be called to testify without that grant of immunity. In those cases, juries are denied the ability to consider probative evidence and in some instances the Commonwealth must forego prosecution altogether.

---

*Need*

- It is not uncommon in cases prosecuted in the District Court and the Juvenile Court, including in cases of domestic violence, for victims or witnesses to refuse to testify out of fear for their own criminal exposure.
  - It is important to ensure that witnesses testifying in our District and Juvenile courts are protected by the same rules of law that apply to witnesses who testify in other courts in Massachusetts.
- 

*Legislative Fix*

- Amends the statute to authorize District Court and Juvenile Court judges to grant immunity to witnesses.





HOUSE . . . . . No. 896

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone

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 to enhance the availability of immunity to witnesses in the courts of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jay D. Livingstone	8th Suffolk
Frank A. Moran	17th Essex
Mike Connolly	26th Middlesex
Jennifer L. Flanagan	Worcester and Middlesex
Mary S. Keefe	15th Worcester
Michelle M. DuBois	10th Plymouth
Anne M. Gobi	Worcester, Hampden, Hampshire and Middlesex

**HOUSE . . . . . No. 896**

By Mr. Livingstone of Boston, a petition (accompanied by bill, House, No. 896) of Jay D. Livingstone and others relative to the availability of immunity to witnesses in the courts of the Commonwealth. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to enhance the availability of immunity to witnesses in the courts of the Commonwealth.

*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. Section 20D of chapter 233 of the General Laws, as appearing in the 2015  
2 Official Edition, is hereby amended by striking the existing section and replacing it with the  
3 following paragraph:

4 A witness who is called or who may be called to testify before a grand jury or in a  
5 criminal proceeding in the supreme judicial court, appeals court, superior court, district court, or  
6 in a proceeding in the juvenile court, may, in the manner provided in section twenty E, be  
7 granted immunity in any proceeding or investigation involving a criminal offense.

8 SECTION 2. Section 20E(a) of chapter 233 of the General Laws, as appearing in the  
9 2015 Official Edition, is hereby amended by striking the words “or Superior Court” and  
10 replacing them with the words “Superior Court, District Court or Juvenile Court.”

11 SECTION 3. Section 20E(c) of chapter 233 of the General Laws, as appearing in the  
12 2015 Official Edition, is hereby amended by striking the words “or Superior Court” and

- 13 replacing them with the words “Superior Court, District Court or Juvenile Court,” and by striking  
14 the words “in the superior court” at the conclusion of the subsection.





**An Act Regarding Testimony after a Grant of Immunity to a Witness  
H. 897**

**Lead Sponsor: Representative Jay Livingstone**

*Impetus*

Under current Massachusetts law, an immunized witness who obstructs the investigation or prosecution of a case only faces a potential sentence of up to one year in jail, even when the case involves the most serious offenses of armed robbery, child rape or first-degree murder. This penalty does not serve as an effective deterrent to a witness who though granted immunity, still refuses to honor their obligation to testify.

---

*Need*

- The penalties for deliberately obstructing justice in this manner after being granted immunity must be proportionate to the charge that is being undermined by a witness's conduct in refusing to testify.
- 

*Legislative Fix*

- Establishes a sentencing structure that mirrors the penalty for the charge that is the basis for the criminal proceeding that is being obstructed.
- Creates a separate, less severe, penalty for a minor engaged in this conduct.



HOUSE . . . . . No. 897

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
PRESENTED BY:

*Jay D. Livingstone*

---

*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 regarding testimony after grant of immunity to a witness.

\_\_\_\_\_  
PETITION OF:

NAME: <i>Jay D. Livingstone</i>	DISTRICT/ADDRESS: <i>8th Suffolk</i>
------------------------------------	---

HOUSE . . . . . No. 897

By Mr. Livingstone of Boston, a petition (accompanied by bill, House, No. 897) of Jay D. Livingstone relative to testimony after grant of immunity to witnesses. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act regarding testimony after grant of immunity to a witness.

*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. Section 20H of Chapter 233 of the General Laws, as appearing in the 2015  
2 Official Edition, is hereby amended by striking the existing section and replacing it with the  
3 following:

4 Section 20H. If a witness has been granted immunity pursuant to the provisions of section  
5 twenty E and thereafter refuses to testify or produce evidence after being so ordered by the  
6 Court, the attorney general or district attorney shall institute contempt proceedings against such  
7 witness in the court where the alleged contempt occurred, and, after hearing or trial, if such  
8 witness is adjudged to be in contempt of court, they shall be punished, if they have attained the  
9 age of eighteen, by imprisonment in the state prison or the house of correction for a term not to  
10 exceed the maximum penalty for the crime which is the subject of the grand jury investigation or  
11 criminal proceeding, or until they comply with the order of the court, whichever occurs first. A  
12 witness who has not attained the age of eighteen shall, if found in contempt, be committed to the  
13 Department of Youth Services for a period not to exceed one year, or until they comply with the



14 order of the court, whichever occurs first. The rules of practice and procedure relative to  
15 criminal appeals as provided by the Massachusetts Rules of Criminal Procedure and the  
16 Massachusetts Rules of Appellate Procedure shall apply to appeals under this section.





**An Act Relative to Fires and Explosions  
H. 898**

**Lead Sponsor: Jay Livingstone**

***Impetus***

8A. In the summer of 2014, two juveniles obtained fireworks and without adult supervision ignited them in their backyard. One of the fireworks exploded, leaving both juveniles with serious injuries including missing fingers, broken bones, burns and hearing loss.

8B. In the Spring of 2014, there was a two-alarm residential fire in Tewksbury which caused personal injury and a great deal of property damage, and posed a serious safety risk to the people in the neighborhood. That fire was caused when several individuals tried to extract oil from marijuana, using pressurized butane, so that they could smoke the oil. The butane, which was highly volatile, caused an explosion when it was placed over an open flame. The explosion caused serious burns to the people standing closest to the stove and a fire which spread throughout the home and the two adjoining apartments.

8C. Each year, small fires are set on school property by students seeking to interrupt the school day or cause a distraction. These fires are typically set in trash barrels or to paper in sinks or toilets.

8D. Trespassers who started a fire and allowed it to spread were responsible for tens of thousands of dollars in damage to property at a campground.

---

***Need***

8A. There is currently no mechanism to charge a person whose wanton or reckless use of fireworks, or other incendiary or explosive material, causes harm to a bystander or another party or to the property of another.

8B. There is no applicable statute to address conduct wherein a person negligently or recklessly causes a fire during the manufacture of controlled substances. This is because our current arson and burning statutes require proof of the specific intent to set a fire or cause an explosion, rather than the intent to make controlled substances. Currently, a misdemeanor charge for wanton destruction of property in violation of G.L. c. 266, § 127 may be brought in these cases. This

charge, however, does not sufficiently address the extent of the property damage that could occur and does not address at all the more important harm of personal injury.

8C. Intentional fires that are set on school property create a risk of damage to property and harm to students and school personnel. Our current statutes do not adequately address this crime.

G.L. c. 266, § 2, prohibits the willful and malicious burning of the “contents” of “any building or structure” other than a dwelling, which could arguably be applied to incidents where fires are set in schools. G.L. c. 266, § 5, prohibits the willful and malicious burning of “any personal property of whatsoever class or character exceeding a value of twenty-five dollars.” Section 2 establishes a felony charge for which there is no jurisdiction in District Court, while section 5 establishes a felony charge for which there is concurrent District Court jurisdiction.

8D. The current statute only authorizes a misdemeanor charge where an individual damages the land or property of another through negligent management of an intentionally set fire, regardless of the extent and dollar value of the damage.

---

### *Legislative Fix*

8A. Establishes a penalty when the wanton or reckless use of fireworks, or other incendiary or explosive material, causes personal injury or property damage.

8B. Establishes a penalty when a person, in the course of manufacturing a controlled substance or a product derived therefrom, causes a fire or explosion that results in personal injury or property damage.

8C. Clearly sets forth a misdemeanor penalty when a person intentionally sets a fire on school grounds, regardless of the value of damage caused thereby. Provides an appropriate charging option for cases that merit prosecution and eliminates ambiguity about damage thresholds caused by existing statutes in the context of school fires.

8D. Broadens the sentencing options so that these correspond to the value of the damage caused when a person sets a fire and negligently allows it to spread.

HOUSE . . . . . No. 898

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
PRESENTED BY:

*Jay D. Livingstone*

---

*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 relative to fires and explosions.

\_\_\_\_\_  
PETITION OF:

NAME:  
*Jay D. Livingstone*

DISTRICT/ADDRESS:  
*8th Suffolk*

**HOUSE . . . . . No. 898**

By Mr. Livingstone of Boston, a petition (accompanied by bill, House, No. 898) of Jay D. Livingstone relative to the penalty for setting fires or using fireworks, pyrotechnic or incendiary or explosive devices or materials. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act relative to fires and explosions.

*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 265 is hereby amended by adding after Section 13D½ the  
2 following section: -

3 Section 13D¾. Whoever wantonly or recklessly sets or uses a fire or fireworks or  
4 pyrotechnic or any incendiary or explosive device or material, as those terms are defined in  
5 section 39 of chapter 148 and/or section 101 of chapter 266, and thereby causes injury to the  
6 person of another shall be punished by a fine of not more than one thousand dollars or by  
7 imprisonment for not more than two years.

8 Any person who; as a result of or in the course of unlawfully and intentionally  
9 manufacturing a controlled substance as defined by section 31 of chapter 94C, or any substance  
10 or product derived therefrom, causes a fire or explosion that causes personal injury, whether to  
11 themselves or to other persons, shall be punished by imprisonment in the state prison for not

12 more than ten years, or by imprisonment in a jail or house of correction for not more than two  
13 and one half years.

14 SECTION 2. Section 2 of Chapter 266 is hereby amended by adding as a second  
15 paragraph the following: -

16 Any person who, without authorization of the school administration, intentionally sets  
17 fire to, burns, or causes to be burned any property, whether of himself or another, within any  
18 building or structure of a school or educational institution (including but not limited to any  
19 elementary school, secondary school, college, or university), whether such institution is public or  
20 private and whether or not such institution is currently in session or not, or on the grounds  
21 thereof, shall be punished by imprisonment in a jail or house of correction for not more than two  
22 and one half years.

23 SECTION 3. Chapter 266 is hereby amended by striking out Section 8 as appearing in  
24 the 2014 Official Edition, and inserting in place thereof the following paragraph: -

25 Section 8. Whoever, without the consent of the owner, sets or increases a fire upon the  
26 land of another whereby the woods or property of another is injured, or whoever negligently or  
27 wilfully suffers any fire, set upon his own land or upon the land of another by consent of the  
28 owner, to extend beyond the limits thereof so as to cause injury to the woods or property of  
29 another, if the cost to restore or replace the property injured is less than \$5,000, shall be punished  
30 by a fine of not more than one thousand dollars or by imprisonment for not more than two years;  
31 if the cost to restore or replace the property injured equals or exceeds \$5,000, such person shall  
32 be punished by imprisonment in the state prison for not more than five years, or by imprisonment  
33 in a jail or house of correction for not more than two and one half years. The town where such

34 fire occurred may recover the expense of extinguishing such fire in an action of tort, brought  
35 within two years after the cause of action accrues, against any such person.

36 SECTION 4. Chapter 266 is hereby amended by adding after Section 8 the following  
37 section: -

38 Section 8A. Any person who, as a result of or in the course of unlawfully and  
39 intentionally manufacturing a controlled substance as defined by section 31 of chapter 94C, or  
40 any substance or product derived therefrom, causes a fire or explosion that causes injury to a  
41 dwelling house (as defined in section 1 of this chapter), structure, building or real property, or  
42 that causes injury to a motor vehicle, boat or other conveyance, whether such property is owned  
43 by such person or by another, or is apparently abandoned, shall be punished by imprisonment in  
44 the state prison for not more than ten years, or by imprisonment in a jail or house of correction  
45 for not more than two and one half years.

46 SECTION 5. Section 102B of Chapter 266 is hereby amended by adding as a second  
47 paragraph the following: -

48 Whoever wantonly or recklessly sets or uses a fire or fireworks or pyrotechnic or any  
49 incendiary or explosive device or material, as those terms are defined in section 39 of chapter  
50 148 and/or section 101 of chapter 266, and thereby causes injury to the property of another shall  
51 be punished by a fine of not more than one thousand dollars or by imprisonment for not more  
52 than two years.





**An Act Providing Immunity for Individuals Under Age 21 Seeking  
Medical Assistance for an Alcohol-related Overdose  
H. 907/ S. 111**

**Lead Sponsors: Representative James Miceli and Senator Eileen Donoghue**

*Impetus*

Witnesses to an alcohol overdose are often afraid to seek medical assistance for their friends, fearing prosecution for underage drinking. Massachusetts has a large number of college students, many of whom are under 21, and patterns of consumption for many underage students can include episodes of heavy drinking that may lead to alcohol overdose and poisoning. Immediate medical assistance is critical for treating an alcohol overdose and fear of prosecution should not be a barrier to requesting and receiving medical aid.

---

*Need*

- The current "good Samaritan" statute, Chapter 94, Section 34A, provides immunity from prosecution for a person seeking medical assistance for a person experiencing a drug-related overdose.
- The "good Samaritan" statute does not currently provide immunity for a person seeking medical assistance for a person experiencing an alcohol-related overdose.

---

*Legislative Fix*

- Creates a provision that provides immunity for persons under twenty-one from criminal liability for purchasing or possessing alcohol when they seek medical assistance for themselves or for another person experiencing an alcohol-related overdose.



HOUSE . . . . . No. 907

The Commonwealth of Massachusetts

PRESENTED BY:

*James R. Miceli*

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 providing immunity for individuals under age 21 seeking medical assistance for alcohol-related overdose.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>District Attorney Marian Ryan</i>	<i>The Middlesex District Attorney's Office 15 Commonwealth Ave. Woburn, MA 01801</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>

**HOUSE . . . . . No. 907**

By Mr. Miceli of Wilmington, a petition (accompanied by bill, House, No. 907) of James R. Miceli and others relative to providing immunity for individuals under age 21 seeking medical assistance for alcohol-related overdoses. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act providing immunity for individuals under age 21 seeking medical assistance for alcohol-related overdose.

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

1 Chapter 138 of the General Laws is hereby amended by inserting after section 34A the  
2 following:

3 Section 34AA: Immunity from prosecution under Sections 34 or 34A for persons under  
4 twenty-one years of age seeking medical assistance for self or other experiencing alcohol-related  
5 overdose.

6 (a) For the purposes of this section, alcohol-related overdose means an acute  
7 condition, including, but not limited to, extreme physical illness, decreased level of  
8 consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or  
9 use of alcohol or that a layperson would reasonably believe to be resulting from the consumption  
10 or use of alcohol for which medical assistance is required.

11           (b)    A person under twenty-one years of age who, in good faith, seeks medical  
12 assistance for someone experiencing an alcohol-related overdose shall not be charged or  
13 prosecuted under sections 34 or 34A if the evidence for the charge of purchase or possession of  
14 alcohol was gained as a result of the seeking of medical assistance.

15           (c)    A person under twenty-one years of age who experiences an alcohol-related  
16 overdose and is in need of medical assistance and, in good faith, seeks such medical assistance,  
17 or is the subject of such a good faith request for medical assistance, shall not be charged or  
18 prosecuted under sections 34 or 34A if the evidence for the charge of purchase or possession of  
19 alcohol was gained as a result of the overdose and the need for medical assistance.



SENATE . . . . . No. 111

---

The Commonwealth of Massachusetts

PRESENTED BY:

*Eileen M. Donoghue*

*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 providing immunity for individuals under age 21 seeking medical assistance for an alcohol-related overdose.

PETITION OF:

NAME:

*Eileen M. Donoghue*

DISTRICT/ADDRESS:

*First Middlesex*

**SENATE . . . . . No. 111**

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 111) of Eileen M. Donoghue for legislation to provide immunity for individuals under age 21 seeking medical assistance for an alcohol-related overdose. Consumer Protection and Professional Licensure.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act providing immunity for individuals under age 21 seeking medical assistance for an alcohol-related overdose.

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

1 Chapter 138 of the General Laws, as appearing in the 2014 Official Edition, is hereby  
2 amended by inserting after section 34A the following section:

3 Section 34AA. Immunity from prosecution under Sections 34 or 34A for persons under  
4 21 years of age seeking medical assistance for an alcohol-related overdose

5 (a) As used in this section, the following word shall, unless the context clearly requires  
6 otherwise, have the following meaning:-

7 “Alcohol-related overdose”, an acute condition, including, but not limited to, extreme  
8 physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death,  
9 resulting from the consumption or use of alcohol or that a layperson would reasonably believe to  
10 be resulting from the consumption or use of alcohol for which medical assistance is required.



11           (b) A person under 21 years of age who, in good faith, seeks medical assistance for  
12 someone experiencing an alcohol-related overdose shall not be charged or prosecuted under  
13 sections 34 or 34A if the evidence for the charge of purchase or possession of alcohol was gained  
14 as a result of the seeking of medical assistance.

15           (c) A person under 21 years of age who experiences an alcohol-related overdose and is in  
16 need of medical assistance and, in good faith, seeks such medical assistance, or is the subject of  
17 such a good faith request for medical assistance, shall not be charged or prosecuted under  
18 sections 34 or 34A if the evidence for the charge of purchase or possession of alcohol was gained  
19 as a result of the overdose and the need for medical assistance.





**An Act Prohibiting Gunfire Directed at Dwelling Houses  
H. 908/ S. 839**

**Lead Sponsors: Representative Rady Mom and Senator Eileen Donoghue**

*Impetus*

On the evening of Monday, January 9, 2017, two bullets were fired through the window of a home in Lowell. Just two days later, several more bullets were fired at the same home, including one that entered the bedroom of a 14-year-old boy who was sleeping at the time. Over the last few years, there has been an alarming increase statewide in this dangerous activity directed at residential buildings, particularly in densely-populated urban communities.

Currently, the discharge of a firearm near a home is only punishable by a fine and/or up to 3 months in jail under G.L. c. 269, § 12E. Shooting at windows and doors may provide a basis to charge malicious destruction of property under G.L. c. 266, § 127, but effective prosecution under that statute requires that the Commonwealth prove the defendant acted with hostility toward the owner of the property. Our current statutes are not an effective deterrent, as a defendant who shoots at a home could theoretically receive a less severe punishment than someone charged with a much less serious crime.

---

*Need*

- There is no statute that specifically addresses discharging a firearm at a dwelling house.
  - When a case arises, prosecutors are forced to charge a defendant with imperfect alternatives such as discharging a firearm within five hundred feet of a dwelling, or malicious destruction of property.
  - Whether a shooting is directed at a house and the people therein to intimidate and cause fear, or with the intention to physically harm someone inside, or believed to be inside, the penalty should reflect the seriousness of that offense.
-

### *Legislative Fix*

- Establishes an appropriate and precise charge for the act of intentionally discharging a firearm at a dwelling.
- Sets forth sentencing options that are proportional to this serious crime.

HOUSE . . . . . No. 908

The Commonwealth of Massachusetts

PRESENTED BY:

*Rady Mom*

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 prohibiting gunfire directed at dwelling houses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Marian Ryan (District Attorney)</i>	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>

**HOUSE . . . . . No. 908**

By Mr. Mom of Lowell, a petition (accompanied by bill, House, No. 908) of Rady Mom and others relative to the penalties for using a weapon with intent to strike a dwelling house. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4314 OF 2015-2016.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act prohibiting gunfire directed at dwelling houses.

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

1 Chapter 269 of the General Laws, as so appearing, is hereby amended by inserting after  
2 section 12F the following section:--

3 Section 12G: Whoever discharges an assault weapon, firearm, large capacity weapon,  
4 machine gun, rifle, sawed-off shotgun, or shotgun, as defined in section one hundred twenty-one  
5 of chapter one hundred forty, with the intent to strike a dwelling, and as a result does strike a  
6 dwelling, shall be punished by imprisonment in the house of correction for not more than 2 ½  
7 years, or in state prison for not more than 5 years, or by a fine of not more than \$10,000, or both  
8 such imprisonment and fine.

SENATE . . . . . No. 839

---

The Commonwealth of Massachusetts

PRESENTED BY:

*Eileen M. Donoghue*

*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 prohibiting gunfire directed at dwelling houses.

PETITION OF:

NAME:

*Eileen M. Donoghue*

DISTRICT/ADDRESS:

*First Middlesex*

SENATE . . . . . No. 839

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 839) of Eileen M. Donoghue for legislation to prohibit gunfire directed at dwelling houses. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4314 OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act prohibiting gunfire directed at dwelling houses.

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

1 Chapter 269 of the General Laws, as so appearing, is hereby amended by inserting after  
2 section 12F the following section:-

3 Section 12G. Whoever discharges an assault weapon, firearm, large capacity weapon,  
4 machine gun, rifle, sawed-off shotgun, or shotgun, as defined in section one hundred twenty-one  
5 of chapter one hundred forty, with the intent to strike a dwelling, and as a result does strike a  
6 dwelling, shall be punished by imprisonment in the house of correction for not more than 2 ½  
7 years, or in state prison for not more than 5 years, or by a fine of not more than \$10,000, or both  
8 such imprisonment and fine.





## An Act to Properly Punish the Solicitation of Felony Crimes H. 941

Lead Sponsor: Representative David Rogers

### *Impetus*

In September 2014, a Chelmsford man solicited an undercover Massachusetts State Police Trooper posing as a hit man to murder his estranged wife. After he was charged and while being held prior to trial, he then solicited the murder of the State Trooper and another witness. For the act of soliciting murder, he could only be charged with a common law misdemeanor, subject to a maximum sentence of 2 ½ years in the House of Correction. The SJC has previously lamented this "notable deficiency" in the criminal law and commented that the task of revising the schedule of punishments for soliciting felonies by the Legislature was "long overdue." Commonwealth v. Barsell, 424 Mass. 737 (1997).

---

### *Need*

- The penalty for solicitation to commit a felony should be proportional to the crime committed.
  - The punishment for solicitation in Massachusetts has not been updated since the common law rule was established.
  - Other similar inchoate crimes such as conspiracy and attempt have been amended to ensure that the proper punishment is imposed. The Model Penal Code (§§5.02, 5.05), Federal law (18 U.S.C. §373), and many other states statutorily define and punish the crime of solicitation proportionally to the severity of the underlying offense (See, e.g., Ala. Code §13A-4-1(f); Ariz. Rev. Stat §13-1002; Cal. Pen. Code §653f; Del. Code tit. 11, §§501-503; Fla. Stat. Ann. §777.04; Me. Rev. Stat. Ann. Tit. 17-A, §153; N.H. Rev. Stat. Ann. §629:2; N.Y. Penal Law §§100.00 et seq.; Or. Rev. Stat. §161.435; Tenn. Code Ann. §§39-12-102, 107; Tex. Penal Code §15.03).
-

### *Legislative Fix*

- Provides for a range of penalties of up to 20 years, 10 years, or 5 years in state prison, or of up to 2 ½ years in the House of Correction, depending on the crime solicited, to permit flexibility and individualized charging and sentencing determinations.
- Determines the appropriate punishment by looking to the purpose of the solicitation — that is, the more serious the purpose and sentence of the underlying crime, the more severe the penalty.

HOUSE . . . . . No. 941

The Commonwealth of Massachusetts

PRESENTED BY:

*David M. Rogers*

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 to properly punish the solicitation of felony crimes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Marian T. Ryan</i>	<i>Office of the Middlesex District Attorney 15 Commonwealth Ave, Woburn, MA 01801</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>

**HOUSE . . . . . No. 941**

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 941) of David M. Rogers and others for legislation to properly punish the solicitation of felony crimes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4005 OF 2015-2016.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to properly punish the solicitation of felony crimes.

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

1 Chapter 274 of the General Laws is hereby amended by adding after Section 7 the  
2 following section: -

3 Section 8. Whoever solicits, counsels, advises, or otherwise entices another to  
4 commit a crime that may be punished by imprisonment in the state prison and who intends that  
5 the person, in fact, commit or procure the commitment of the crime alleged shall, except as  
6 otherwise provided, be punished as follows:

7 First, by imprisonment for not more than 20 years in the state prison or for not  
8 more than 2½ half years in a jail or house of correction, or by a fine of not more than \$10,000, or

9 by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or  
10 enticement is a crime punishable by imprisonment for life.

11 Second, by imprisonment for not more than 10 years in the state prison or for not  
12 more than 2½ years in a jail or house of correction, or by a fine of not more than \$10,000, or by  
13 both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement is  
14 a crime punishable by imprisonment in the state prison for 10 years or more.

15 Third, by imprisonment for not more than 5 years in the state prison or for not more than  
16 2½ years in a jail or house of correction, or by a fine of not more than \$5,000, or by both such  
17 fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement is a crime  
18 punishable by imprisonment in the state prison for 5 years or more.

19 Fourth, by imprisonment for not more than 2½ years in a jail or house of correction, or by a  
20 fine of not more than \$2,000, or by both such fine and imprisonment, if the intent of the  
21 solicitation, counsel, advice or enticement is a crime punishable by imprisonment in the state  
22 prison for less than 5 years.

23 If a person is convicted of a crime of solicitation, counsel, advice or enticement for which  
24 crime the penalty is expressly set forth in any other section of the General Laws, the provisions  
25 of this section shall not apply to said crime and the penalty therefor shall be imposed pursuant to  
26 the provisions of such other section.





## An Act to Define Inducing a Minor into Prostitution H. 942

**Lead Sponsor: Representative David Rogers**

### *Impetus*

In Commonwealth v. Matos, 78 Mass. App. Ct. 578 (2011), the defendant was found guilty at trial of inducing a 16-year-old minor to have sex with him for a fee. On appeal, the defendant argued that the statute prohibiting this conduct required proof that the minor had never previously engaged in prostitution because the statutory language only prohibited a person from inducing a minor "to become" a prostitute. The Appeals Court agreed with this interpretation of the statutory language and overturned the conviction.

---

### *Need*

- The current statute has been found to only apply when a minor has been induced into prostitution for the very first time. The statutory language has created an unnecessarily limited prohibition.
- The Legislature has recognized the need to protect minor victims from commercial sexual activity as evidenced by its enactment of the human trafficking statutes. This statute which prohibits another aspect of commercial sexual activity should be updated so that it reflects this same concern.

---

### *Legislative Fix*

- Broadens the statute to allow charges to be brought when a person induces a minor to engage in, agree to engage in, or offer to engage in prostitution or in sexual conduct with another for a fee, regardless of their prior history.





HOUSE . . . . . No. 942

The Commonwealth of Massachusetts

PRESENTED BY:

*David M. Rogers*

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 to define inducing a minor into prostitution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Marian T. Ryan</i>	<i>Office of the Middlesex District Attorney 15 Commonwealth Ave, Woburn, MA 01801</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>

**HOUSE . . . . . No. 942**

---

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 942) of David M. Rogers and others relative to the penalties for inducing a minor to engage in, agree to engage in or offer to engage in prostitution or sexual conduct. The Judiciary.

---

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1558 OF 2015-2016.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

An Act to define inducing a minor into prostitution.

*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. The first sentence of Section 4A of Chapter 272, is hereby amended to provide  
2 as follows: -

3 Whoever induces a minor to engage in or to agree to engage in or offer to engage in  
4 prostitution or in sexual conduct with another person in return for a fee, or who knowingly aids  
5 and assists in such inducement, shall be punished by imprisonment in the state prison for not  
6 more than five, nor less than three years, and by a fine of five thousand dollars.



## An Act to Clarify the Definition of a “Violent Crime” in Chapter 140 H. 1282

Lead Sponsor: Representative David Linsky

### *Impetus*

The Armed Career Criminal Act (ACCA), Chapter 269, section 10G, established enhanced penalties for unlawful possession of firearms, rifles, machine guns, and sawed off shotguns for those with prior convictions or juvenile court adjudications for a “violent crime” or a “serious drug offense.”

The ACCA adopted the definition of “violent crime” set forth in Chapter 140, section 121, which includes any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a *deadly weapon* that would be punishable by imprisonment for such term if committed by an adult, and that, in relevant part, “has as an element the use, attempted use or threatened use of physical force or a *deadly weapon*...”

*Deadly weapon* was not defined in the statute and the Appeals Court has held that a *deadly weapon* is not synonymous with a *dangerous weapon*. Commonwealth v. Rezendes, 88 Mass. App. Ct. 369 (2015). As a result, a prosecution commenced under this prong of the definition of “violent crime” is very difficult to sustain.

---

### *Need*

- The relevant prong of the definition of “violent crime” is currently very narrowly construed as one involving the “use, attempted use or threatened use of... a *deadly weapon*.” The statutory language, which does not define *deadly weapon*, should include both *deadly weapon* and *dangerous weapon*.
- Throughout other sections of Massachusetts’ criminal law the statutory language refers to *dangerous weapons* when setting forth conduct which creates aggravated penalties, such

as: assault or assault and battery with a *dangerous weapon* or other crimes where the defendant was armed with a *dangerous weapon*.

---

### *Legislative Fix*

- Resolves the ambiguity created by the current language by pairing *dangerous weapon* and *deadly weapon* in the definition of a violent crime.

**HOUSE . . . . . No. 1282**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
PRESENTED BY:

*David Paul Linsky*

\_\_\_\_\_

*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 to clarify the definition of a "violent crime" in Chapter 140.

\_\_\_\_\_  
PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>

**HOUSE . . . . . No. 1282**

---

By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 1282) of David Paul Linsky and Michelle M. DuBois for legislation to clarify the definition of violent crimes in the law relative to firearm sales. Public Safety and Homeland Security.

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act to clarify the definition of a "violent crime" in Chapter 140.

*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 140, Section 121 is amended by striking the words "deadly
- 2    weapon" as appearing twice in the definition of "violent crime," and inserting twice the words
- 3    "dangerous or deadly weapon."



**An Act to Increase Safety on Public Ways  
H. 1819**

**Lead Sponsor: Representative Michael Day**

*Impetus*

The Commonwealth is battling an opiate epidemic and overdoses are on the rise. Many of these overdoses occur in or near cars on public roadways when users purchase narcotics and then consume the drugs immediately afterward.

Growing awareness of the effectiveness of the reversal drug naloxone and increasing use of the drug have meant that more people survive an overdose. While that is true, people who have been revived may continue to be in a compromised physical state after receiving the drug. Where first responders assist a person and the person's car is towed from the scene of the incident, there is currently nothing to prohibit them from being able to retrieve their car from a tow yard shortly after being resuscitated.

One concerned tow truck operator estimates that approximately 3-4 times each month he deals with this situation. Tow operators have no recourse but to release the car, even when the operator was revived only hours earlier with naloxone.

---

*Need*

- There is a mandatory period of impoundment in certain instances where a person is alleged to be driving under the influence of alcohol on a public way and their car has been towed. Currently, there is no such law where a car has been towed due to a drug overdose occurring on a public way.
- A mandatory 12 hour period of impoundment will provide the person revived the necessary time to recover from the effects of the overdose before they drive again on public roadways, protecting both the driver and the driving public.

---

*Legislative Fix*

- Provides for a mandatory 12 hour impoundment period where an incapacitated person is found to be the operator or in possession of a motor vehicle on a public roadway.





HOUSE . . . . . No. 1819

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

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 to increase safety on public ways.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael S. Day	31st Middlesex
Middlesex District Attorney Marian T. Ryan	15 Commonwealth Avenue Woburn, MA 01801
Sheila C. Harrington	1st Middlesex
James R. Miceli	19th Middlesex
Bruce E. Tarr	First Essex and Middlesex
Jose F. Tosado	9th Hampden
Steven Ultrino	33rd Middlesex
Chris Walsh	6th Middlesex
Timothy R. Whelan	1st Barnstable

**HOUSE . . . . . No. 1819**

---

By Mr. Day of Stoneham, a petition (accompanied by bill, House, No. 1819) of Michael S. Day and others relative to the towing of motor vehicles under operation by incapacitated persons. Transportation.

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act to increase safety on public ways.

*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: General Laws Part I Title XVI Chapter 111E, is amended to include the  
2 following Section 9B which provides:

3           (a)     For the purposes of this section, “incapacitated” shall have the same meaning as  
4 is defined in Section 9A of Chapter 111E.

5           (b)     Where an incapacitated person is found to be the operator of or in possession of a  
6 motor vehicle on a public way, that motor vehicle shall be towed away and impounded for a  
7 period of twelve (12) hours.

8           (c)     This (12) hour impoundment period shall be calculated from the time the vehicle  
9 is towed. The costs for the towing, storage and maintenance of the vehicle shall be borne by the  
10 operator or individual who retrieves the vehicle after the twelve (12) hour hold period is  
11 complete.



**An Act to Clarify Penalties for Violations Occurring  
While Driving With a Hardship License  
H. 1860**

**Lead Sponsor: Representative David Linsky**

*Impetus*

In Commonwealth v. Murphy, 68 Mass. App. Ct. 152 (2007), the defendant, whose license was suspended for driving under the influence, applied for and was granted a hardship license to allow him to drive under certain conditions. When he violated the terms of that hardship license, he was only subject to a \$100. fine. The Court held that while a person found to be driving a motor vehicle with a license suspended for driving under the influence would be subject to a sentence of 60 days in jail, because the defendant in this instance was granted a right to drive pursuant to the hardship license, he could only be fined.

A defendant whose license was suspended for driving under the influence based on a conviction in another state could not be convicted of driving on a license suspended for operating under the influence because out of state convictions and revocations are not referenced in the statute.

---

*Need*

- There are several loopholes in our driving under the influence laws. The granting of a hardship license during a suspension period should not lessen the penalty an individual faces when continuing to drive unlawfully.
  - License revocations in other states for driving under the influence should not be treated differently than those in Massachusetts.
-

### *Legislative Fix*

- Closes the hardship license loophole by amending the statute to treat driving outside the terms of a hardship license the same as driving on a license suspended for operating under the influence.
- Establishes the same penalty for driving with a license suspended by another jurisdiction for driving under the influence as for driving with a license suspended for operating under the influence in MA.

**HOUSE . . . . . No. 1860**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

*David Paul Linsky*

*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 to clarify penalties for violations occurring while driving with a hardship license.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Marian T. Ryan (District Attorney)</i>	

**HOUSE . . . . . No. 1860**

By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 1860) of David Paul Linsky and Marian T. Ryan (District Attorney) relative to clarifying violations that occur while driving with a hardship license. Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3032 OF 2015-2016.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to clarify penalties for violations occurring while driving with a hardship license.

*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. Section 23 of Chapter 90 of the General Laws, as amended by section 67 of  
2 the Acts of 2009, is hereby amended in paragraph two by inserting, after the words “(1) of  
3 section twenty-four,” the following:-

4 “pursuant to paragraph (f)(1) of subdivision (1) of section twenty-four;”

5 and in the same paragraph by inserting, after the words “section eight A or section eight  
6 B of chapter ninety B, or pursuant to a violation of section 8, 9 or 11 of chapter ninety F,” the  
7 following:-

8 “ or pursuant to a similar or like statute of another jurisdiction,” ;

9 and in the same paragraph by inserting, after the words “right to operate or the issuance  
10 to him of a new license to operate,” the following:-

11 “or whoever operates a motor vehicle in violation of the terms of a hardship license  
12 granted pursuant to M.G.L. Chapters 90, 90A or 90B,” ;

13 and in paragraph four by inserting, after the words “pursuant to paragraph (a) of  
14 subdivision (1) of sections 24, sections 24G or 24L, subsection (a) of section 8 of chapter 90B,  
15 sections 8A or 8B of chapter 90B or section 13 ½ of chapter 265 ,” the following:-

16 “or pursuant to a similar or like statute of another jurisdiction, or whoever operates a  
17 motor vehicle in violation of paragraph (a) of subdivision (1) of section 24, sections 24G or 24L,  
18 subsection (a) of section 8 of chapter 90B, sections 8A or 8B of chapter 90B or section 13 ½ of  
19 chapter 265 , where such operation was pursuant to a hardship license granted pursuant to  
20 M.G.L. Chapters 90, 90A or 90B or where such operation was outside the terms of such hardship  
21 license.” .







**An Act to Mandate Domestic Violence and Sexual Assault Awareness  
Education for Aestheticians, Barbers, Cosmetologists, Electrologists,  
Hairdressers, Manicurists, and Massage Therapists  
H. 1973**

**Lead Sponsor: Representative Christine Barber**

*Impetus*

While victims of domestic violence or sexual assault may be reluctant to report abuse to law enforcement, they may confide in their hairdresser, barber, manicurist, or massage therapist, especially when they have had a long-term relationship. Similarly, personal service providers who are in close physical proximity to their clients may observe injuries or a change in a client's appearance resulting from such abuse.

Providing these service professionals with education on domestic violence and sexual assault to increase their awareness about recognizing symptoms of abuse would help them to assist clients who confide in them.

---

*Need*

- Hairdressers, aestheticians, barbers, cosmetologists, electrologists, manicurists, massage therapists, and massage practitioners may be uniquely situated to assist clients who confide in them about abuse. Education and training about available local resources would allow these professionals to safely refer a client who was interested in obtaining help.

---

*Legislative Fix*

- Requires completion of one hour of domestic violence and sexual assault awareness education in order to obtain a license, or to receive a license renewal, as an Aesthetician, Barber, Cosmetologist, Electrologist, Hairdresser, Manicurist, Massage Therapist, or Massage Practitioner, or to be an Instructor, Assistant Instructor, or Junior Instructor thereof as applicable.

- Mandates that post-secondary institutions and massage therapy schools offer this training in order to obtain, and maintain, a license.
- Provides immunity for service providers to ensure that they will not be held civilly or criminally liable for acting in good faith or for not acting on information obtained in the course of their employment concerning potential domestic violence or sexual assault.

HOUSE . . . . . No. 1973

The Commonwealth of Massachusetts

PRESENTED BY:

*Christine P. Barber*

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 to mandate domestic violence and sexual assault awareness education for aestheticians, barbers, cosmetologists, electrologists, hairdressers, manicurists, and massage therapists.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>DA Marian T. Ryan</i>	<i>15 Commonwealth Avenue, Woburn, MA 01801</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

**HOUSE . . . . . No. 1973**

By Ms. Barber of Somerville, a petition (accompanied by bill, House, No. 1973) of Christine P. Barber and others for legislation to mandate domestic violence and sexual assault awareness education for aestheticians, barbers, cosmetologists, electrologists, hairdressers, manicurists and massage therapists. Consumer Protection and Professional Licensure.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act to mandate domestic violence and sexual assault awareness education for aestheticians, barbers, cosmetologists, electrologists, hairdressers, manicurists, and massage therapists.

*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 112 is hereby amended by inserting at the end of the first paragraph  
2 of Section 87BB the following:

3 No license will be issued to or renewed for any school unless it offers training of at least  
4 one hour in domestic violence and sexual assault awareness and requires its students to attend  
5 such training.

6 Section 2. Chapter 112 is hereby amended by adding Section 87CC ½:

7 To obtain a license issued by the Board as an Aesthetician, Barber, Cosmetologist,  
8 Electrologist, Hairdresser or Manicurist, or as an Instructor, Assistant Instructor, or Junior  
9 Assistant Instructor thereof as applicable, and for any license renewal, the applicant is required to

10 complete one hour of domestic violence and sexual assault awareness education by a provider  
11 approved by the Board.

12 A licensed Aesthetician, Barber, Cosmetologist, Electrologist, Hairdresser or Manicurist,  
13 or Instructor, Assistant Instructor, or Junior Assistant Instructor thereof who completes the  
14 domestic violence and sexual assault awareness education, or his or her employer, shall not be  
15 civilly or criminally liable for acting in good faith or failing to act on information obtained  
16 during the course of employment concerning potential domestic violence or sexual assault.

17 Section 3. Chapter 112 is hereby amended by inserting at the end of the second  
18 paragraph of Section 87JJ the following:

19 No license will be issued to or renewed for any post-secondary institution unless it offers  
20 training of at least one hour in domestic violence and sexual assault awareness and requires its  
21 students to attend such training.

22 Section 4. Chapter 112 is hereby amended by adding the following subsection to Section  
23 229:

24 (d) To obtain a license issued by the Board as a Massage Therapist or Massage  
25 Practitioner, and for any license renewal, the applicant is required to complete one hour of  
26 domestic violence and sexual assault awareness education by a provider approved by the Board.

27 A licensed Massage Therapist or Massage Practitioner who completes the domestic  
28 violence and sexual assault awareness education, or his or her employer, shall not be civilly or  
29 criminally liable for acting in good faith or failing to act on information obtained during the  
30 course of employment concerning potential domestic violence or sexual assault.

31           Section 5. Chapter 112, Section 233, is hereby amended by inserting after the sentence:  
32    “No school or entity may teach massage therapy unless licensed by the Board.” and prior to the  
33    sentence: “No person may instruct in a massage school unless he is licensed by the board.” the  
34    following:

35           No license will be issued to or renewed for any school teaching massage therapy unless it  
36    offers training of at least one hour in domestic violence and sexual assault awareness and  
37    requires its students to attend such training.



**An Act Criminalizing Sexual Assault by Fraud by a Medical Professional  
H. 2289/ S. 835**

**Lead Sponsors: Representative Kate Hogan and Senator Eileen Donoghue**

*Impetus*

Under existing law, when a medical or healthcare professional knowingly induces a patient to engage in sexual intercourse or sexual touching by falsely representing that the act is necessary for a legitimate medical purpose, their behavior cannot be punished criminally. Where there is either consent by the patient or a lack of explicit objection to such conduct, and there is no physical force involved, these actions are not prosecutable under the current rape and sexual assault laws. Currently, more than 26 states have enacted laws to address this egregious behavior.

---

*Need*

- This conduct, perpetrated under the guise of medical or therapeutic “treatment,” violates public policy and undermines a victim’s consent and their sense of personal autonomy.
  - It is important to make it clear that accomplishing sexual intercourse or sexual touching by means of fraud in these circumstances is appropriately condemnable as rape or sexual assault.
- 

*Legislative Fix*

- Criminalizes instances of fraud involving a medical or healthcare professional who knowingly deceives a patient into engaging in sexual intercourse or sexual touching for other than a legitimate medical purpose.
- Eliminates the traditional elements of sexual assault crimes, including “force” and “non-consent,” within these very specific circumstances.

- Defines “medical or healthcare professional” to include groups of treatment providers who are in a position of trust and upon whom vulnerable victims rely for appropriate care and treatment.
- Adds these crimes to the law on the statute of limitations for sexual assaults.



**HOUSE . . . . . No. 2289**

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Kate Hogan*

*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 criminalizing sexual assault by fraud by a medical professional.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>

<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>

**HOUSE . . . . . No. 2289**

By Ms. Hogan of Stow, a petition (accompanied by bill, House, No. 2289) of Kate Hogan and others relative to criminalizing sexual assault by fraud by a medical professional. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act criminalizing sexual assault by fraud by a medical professional.

*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 265 of the General Laws as appearing in the 2014 Official Edition  
2 is hereby amended by inserting after Section 13H the following section:-

3 Section 13H½. Sexual Misconduct on a Patient or Client by a Medical Professional

4 (a) A person who is, or holds themselves out to be, a medical or health care  
5 professional, and who commits an indecent assault and battery on a patient or client during the  
6 course of diagnosis, counseling, or treatment, where consent to the act was procured by a false  
7 representation that the act was for a bona fide medical purpose, shall be punished by  
8 imprisonment in the state prison for not more than five years, or by imprisonment for not more  
9 than two and one-half years in a jail or house of correction.

10 (b) Definition. As used in this section, the following words shall have the following  
11 meaning:

12           “Medical or health care professional” refers to all individuals who provide professional  
13 medical or health services, diagnosis, treatment or counseling, and shall include, but not be  
14 limited to, doctors of medicine and osteopathy, dentists, nurses, physician assistants, physical  
15 therapists, chiropractors, psychologists, social workers, medical technicians, mental health  
16 counselors, substance abuse counselors, clergy members, and marriage and family counselors or  
17 therapists.

18           SECTION 2. Said Chapter 265 of the General Laws, as so appearing, is hereby amended  
19 by inserting after Section 22C the following section:-

20           Section 22D: Rape on a Patient or Client by a Medical Professional

21           (a)     A person who is, or holds themselves out to be, a medical or health care  
22 professional, and who knowingly induces a patient or client to engage in natural or unnatural  
23 sexual intercourse during the course of diagnosis, counseling, or treatment, where consent to the  
24 intercourse was procured by a false representation that the act was for a bona fide medical  
25 purpose, shall be punished by imprisonment in the state prison for not more than 20 years.

26           (b)     Definition. As used in this section, the following words shall have the following  
27 meaning:

28           Medical or health care professional refers to all individuals who provide professional  
29 medical or health services, diagnosis, treatment or counseling, and shall include, but not be  
30 limited to, doctors of medicine and osteopathy, dentists, nurses, physician assistants, physical  
31 therapists, chiropractors, psychologists, social workers, medical technicians, mental health  
32 counselors, substance abuse counselors, clergy members, and marriage and family counselors or  
33 therapists.

34           SECTION 3. Section 63 of Chapter 277 of the General Laws, as appearing in the 2014  
35 Official Edition, is hereby amended by striking out, in line 27, the word "13H" and inserting in  
36 place thereof the following words:- 13H, 13H ½.

37           SECTION 4. Said Chapter 277 of the General Laws, as so appearing, is hereby amended  
38 by striking out, in line 4, the word "22A" and inserting in place thereof the following words:-  
39 22A, 22D.



**SENATE . . . . . No. 835**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Eileen M. Donoghue*

*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 criminalizing sexual assault by fraud by a medical professional.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	
<i>District Attorney Marian T. Ryan</i>	<i>15 Commonwealth Avenue, Woburn, MA 01801</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/24/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/25/2017</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>2/1/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/1/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/1/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>2/3/2017</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/14/2017</i>

**SENATE . . . . . No. 835**

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 835) of Eileen M. Donoghue, District Attorney Marian T. Ryan, Jason M. Lewis, James R. Miceli and other members of the General Court for legislation to criminalize sexual assault by fraud by a medical professional. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act criminalizing sexual assault by fraud by a medical professional.

*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 265 of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by inserting after section 13H the following section:

3 Section 13H ½. Sexual Misconduct on a Patient or Client by a Medical Professional

4 (a) As used in this section, the following words shall, unless the context clearly requires  
5 otherwise, have the following meaning:

6 “Medical or health care professional”, an individual who provides professional medical  
7 or health services, diagnosis, treatment or counseling, and shall include, but not be limited to,  
8 doctors of medicine and osteopathy, dentists, nurses, physician assistants, physical therapists,  
9 chiropractors, psychologists, social workers, medical technicians, mental health counselors,  
10 substance abuse counselors, clergy members, and marriage and family counselors or therapists.



11 (b) A person who is, or holds themselves out to be, a medical or health care professional,  
12 and who commits an indecent assault and battery on a patient or client during the course of  
13 diagnosis, counseling, or treatment, where consent to the act was procured by a false  
14 representation that the act was for a bona fide medical purpose, shall be punished by  
15 imprisonment in the state prison for not more than five years, or by imprisonment for not more  
16 than two and one-half years in a jail or house of correction.

17 SECTION 2. Said chapter 265 of the General Laws, as appearing in the 2014 Official  
18 Edition, is hereby amended by inserting after section 22C the following section:

19 Section 22D. Rape on a Patient or Client by a Medical Professional

20 (a) As used in this section, the following words shall, unless the context clearly requires  
21 otherwise, have the following meaning:

22 “Medical or health care professional”, an individual who provides professional medical  
23 or health services, diagnosis, treatment or counseling, and shall include, but not be limited to,  
24 doctors of medicine and osteopathy, dentists, nurses, physician assistants, physical therapists,  
25 chiropractors, psychologists, social workers, medical technicians, mental health counselors,  
26 substance abuse counselors, clergy members, and marriage and family counselors or therapists.

27 (b) A person who is, or holds themselves out to be, a medical or health care professional,  
28 and who knowingly induces a patient or client to engage in natural or unnatural sexual  
29 intercourse during the course of diagnosis, counseling, or treatment, where consent to the  
30 intercourse was procured by a false representation that the act was for a bona fide medical  
31 purpose, shall be punished by imprisonment in the state prison for not more than 20 years.

32           SECTION 3. Section 63 of chapter 277 of the General Laws, as appearing in the 2014  
33 Official Edition, is hereby amended, in line 27, by striking out the word “13H” and inserting in  
34 place thereof the following words:- 13H, 13H½

35           SECTION 4. Said section 63 of chapter 277 of the General Laws, as appearing in the  
36 2014 Official Edition, is hereby amended, in line 4, by striking out the word “22A” and inserting  
37 in place thereof the following words:- 22A, 22D



**An Act to Extend the Statute of Limitations for Incest  
H. 2314/ S. 836**

**Lead Sponsors: Representative John Lawn and Senator Eileen Donoghue**

*Impetus*

Embarrassment, humiliation, shame, and trauma are a few of the factors that may cause survivors of sexual assault to delay in making timely reports to law enforcement. Survivors who eventually report may do so only after periods of considerable delay, sometimes years later. When the perpetrator is a family member or caretaker, the trauma may be even more complex. Perpetrators of incest often use their access to victims, or a victim's dependency on them, to exert fear and intimidation that prevents survivors from reporting while the physical abuse is ongoing and even after it has ended.

---

*Need*

- The Legislature addressed the complex issues in reporting and pursuing charges of sexual assault in 1996 when it increased the statute of limitations for prosecuting these crimes. The amendment, however, did not apply to the crime of incest.
- Currently, the statute of limitations begins to run when a victim reaches the age of 16. At 16, however, many survivors of incest are still living in the same home as, and are dependent upon, the perpetrator of the crime.
- An extension of the tolling period to the age of 18, when survivors would no longer legally be under their perpetrator's care and control, would better address the particular dynamics that survivors of incest face and is appropriate.

---

*Legislative Fix*

- Amends the statute of limitations for prosecuting crimes of incest so that it is commensurate with the time period that currently applies to other sex assault crimes.



HOUSE . . . . . No. 2314

The Commonwealth of Massachusetts

PRESENTED BY:

*John J. Lawn, Jr.*

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 to extend statute of limitations for incest.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>DA Marian T. Ryan</i>	<i>15 Commonwealth Ave. Woburn, MA 01801</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>

**HOUSE . . . . . No. 2314**

By Mr. Lawn of Watertown, a petition (accompanied by bill, House, No. 2314) of John J. Lawn, Jr. and others relative to extending the statute of limitations for incest. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1443 OF 2015-2016.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

An Act to extend statute of limitations for incest.

*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. The second paragraph of Section 63 of Chapter 277, is hereby amended to  
2 provide as follows: -

3 Notwithstanding the first paragraph, if a victim of a crime set forth in section 13B, 13F,  
4 13H, 22, 22A, 23, 24B, 26A or 50 of chapter 265, or section 1, 2, 3, 4, 4A, 4B, 5, 6, 7, 8, 12, 13,  
5 26, 28, 29A, 29B, 33, 34, 35 or 35A of chapter 272 is under the age of 16 at the time the crime is  
6 committed, or, if a victim of section 17 of chapter 272 is under the age of 18 at the time the  
7 crime is committed, the period of limitation for prosecution shall not commence until the victim  
8 has reached the age of 16 (or has reached age 18 if a victim of section 17 of chapter 272) or the  
9 violation is reported to a law enforcement agency, whichever occurs earlier.

SENATE . . . . . No. 836

The Commonwealth of Massachusetts

PRESENTED BY:

*Eileen M. Donoghue*

*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 relative to the crime of incest.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>District Attorney Marian T. Ryan</i>	

**SENATE . . . . . No. 836**

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 836) of Eileen M. Donoghue and District Attorney Marian T. Ryan for legislation relative to the crime of incest. The Judiciary.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act relative to the crime of incest.

*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. Section 63 of chapter 277 is hereby amended, in line 28, by striking out the  
2 figure “17”.

3 SECTION 2. Section 63 of chapter 277 is hereby amended by inserting after the second  
4 paragraph the following paragraph:-

5 “Notwithstanding the first paragraph, if a victim of a crime set forth in section 17 of  
6 chapter 272 is under the age of 16 at the time the crime is committed, the period of limitation for  
7 prosecution shall not commence until the victim has reached the age of 18 or the violation is  
8 reported to a law enforcement agency, whichever occurs earlier.”





## An Act Providing Protection from Child Enticement H. 3028/ S. 888

**Lead Sponsors: Representative Paul Brodeur and Senator Jason Lewis**

### *Impetus*

As she was leaving work, a fourteen-year-old girl was approached by a man in an Ashland parking lot who asked her if she wanted a ride. After responding "no," the man immediately shouted "get in the truck." The teenager ran and sought help from the first person she encountered.

At trial, a jury found the defendant guilty of child enticement, but the judge later dismissed the charge upon a finding that the evidence was insufficient to prove what the defendant intended to do with the child by luring her into the truck. The Appeals Court held that cornering the child and ordering her into the truck did not establish that the defendant intended to forcibly confine her. Commonwealth v. LaPlante, 73 Mass. App. Ct. 199 (2008).

---

### *Need*

- The current child enticement statute was enacted in response to an earlier SJC opinion which held that attempting to lure a child into a motor vehicle was insufficient to establish an attempted kidnapping. Commonwealth v. Banfill, 413 Mass. 1002 (1992). However, the Appeals Court's more recent interpretation of the current statute reflects that an issue with the law still remains and children who may be harmed are not protected.
- Specific unlawful intent should be presumed where a stranger attempts to lure a child into a vehicle.

### *Legislative Fix*

- Revises the existing child enticement statute to mirror that of other jurisdictions by eliminating the requirement to prove a specific unlawful intent when a stranger entices a child under the age of 16 into a vehicle.
- Requires a showing that the actions were taken without the permission of the child's parent or guardian or without other authority to do so.
- Provides an affirmative defense for actions undertaken based on a reasonable belief that they are in the best interests of the child so as to encourage, rather than criminalize, well-intentioned behavior.

HOUSE . . . . . No. 3028

The Commonwealth of Massachusetts

PRESENTED BY:

*Paul Brodeur*

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 providing protection from child enticement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>District Attorney Marian Ryan</i>	<i>15 Commonwealth Avenue Woburn, MA 01801</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>

**HOUSE . . . . . No. 3028**

By Mr. Brodeur of Melrose, a petition (accompanied by bill, House, No. 3028) of Paul Brodeur and others relative to providing protection from child enticement. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1202 OF 2015-2016.]

**The Commonwealth of Massachusetts**

In the One Hundred and Ninetieth General Court  
(2017-2018)

An Act providing protection from child enticement.

*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. Section 26C of chapter 265 of the General Laws, as amended by Chapter  
2 267 of the Acts of 2010, is hereby amended by inserting after the existing subsection (b), a new  
3 subsection (c) as follows:

4  
5 (c) No person, by any means and without privilege to do so, shall knowingly entice any  
6 child under the age of 16, or someone he believes to be a child under the age of 16, to enter into  
7 any vehicle, if:

8 (1) The person does not have the express or implied permission of the parent, guardian,  
9 or other legal custodian of the child in undertaking the activity; and

10           (2) (i) The person is not a law enforcement officer, emergency services provider as  
11 defined in section 71-507, firefighter, or other person who regularly provides emergency  
12 services, is not the operator of a bookmobile or other such vehicle operated by the state or a  
13 political subdivision and used for informing, educating, organizing, or transporting children, is  
14 not a paid employee of, or a volunteer for, a nonprofit or religious organization which provides  
15 activities for children, and is not an employee or agent of or a volunteer acting under the  
16 direction of any board of education or (ii) the person is a person listed in subdivision (c)(2)(i) of  
17 this section but, at the time the person undertakes the activity, he or she is not acting within the  
18 scope of his or her lawful duties in that capacity.

19           (3) It is an affirmative defense to a charge under this subsection (c) that the person  
20 undertook the activity in response to a bona fide emergency situation or that the person  
21 undertook the activity in response to a reasonable belief that it was necessary to preserve the  
22 health, safety, or welfare of the child.

23           (4) Any person who violates this subsection (c) shall be punished by imprisonment in the  
24 state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years,  
25 or by both imprisonment and a fine of not more than \$5,000.



SENATE . . . . . No. 888

The Commonwealth of Massachusetts

PRESENTED BY:

*Jason M. Lewis*

*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 providing protection from child enticement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Marian T. Ryan, Middlesex District Attorney</i>	<i>15 Commonwealth Avenue Woburn, MA 01801</i>

**SENATE . . . . . No. 888**

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 888) of Jason M. Lewis and Marian T. Ryan, Middlesex District Attorney for legislation to provide protection from child enticement. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 858 OF 2015-2016.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act providing protection from child enticement.

*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. Section 26C of chapter 265 of the General Laws, as amended by Chapter  
2 267 of the Acts of 2010, is hereby amended by inserting after the existing subsection (b), a new  
3 subsection (c) as follows:

4 (c) No person, by any means and without privilege to do so, shall knowingly entice any  
5 child under the age of 16, or someone he believes to be a child under the age of 16, to enter into  
6 any vehicle, if:

7 (1) The person does not have the express or implied permission of the parent, guardian,  
8 or other legal custodian of the child in undertaking the activity; and



9           (2) (i) The person is not a law enforcement officer, emergency services provider as  
10 defined in section 71-507, firefighter, or other person who regularly provides emergency  
11 services, is not the operator of a bookmobile or other such vehicle operated by the state or a  
12 political subdivision and used for informing, educating, organizing, or transporting children, is  
13 not a paid employee of, or a volunteer for, a nonprofit or religious organization which provides  
14 activities for children, and is not an employee or agent of or a volunteer acting under the  
15 direction of any board of education or (ii) the person is a person listed in subdivision (c)(2)(i) of  
16 this section but, at the time the person undertakes the activity, he or she is not acting within the  
17 scope of his or her lawful duties in that capacity.

18           (3) It is an affirmative defense to a charge under this subsection (c) that the person  
19 undertook the activity in response to a bona fide emergency situation or that the person  
20 undertook the activity in response to a reasonable belief that it was necessary to preserve the  
21 health, safety, or welfare of the child.

22           (4) Any person who violates this subsection (c) shall be punished by imprisonment in the  
23 state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years,  
24 or by both imprisonment and a fine of not more than \$5,000.





**An Act to Protect the Property of Elder or Disabled Persons  
H. 3029**

**Lead Sponsor: Representative Paul Brodeur**

*Impetus*

An 86-year-old woman, a widow with no children, lay in a nursing home bed near death. She was confused and was no longer able to recognize the family friend who served as her healthcare proxy. While heavily medicated, the woman was duped by her neighbor into signing over a quit-claim deed of her property.

The neighbor was charged and convicted in the Middlesex Superior Court with larceny of property valued over \$250. from an elderly person. On appeal, the SJC reversed the conviction, determining that in order to be found guilty, the defendant himself--rather than a reasonable person in his position-- must be shown to have known the victim lacked capacity to consent.

---

*Need*

- Given that elder and disabled persons may be especially vulnerable to fraud, the focus of the analysis should be on whether there is a showing that they gave their consent to the transfer of property.
  - Financial exploitation of an elder or disabled person is frequently committed by people with close access to them, including: family members, friends, neighbors or caretakers.
  - Legal protections should exist to protect the state's senior population, especially considering the projected population growth of this demographic. It is estimated that nearly 1.5 million Massachusetts residents (about 21%) will be 65 years or older by 2030.
-

### *Legislative Fix*

- Creates a chargeable offense where an elderly or disabled person does not give consent to the conveyance of their property.
- Provides elderly and disabled victims with restitution commensurate with the value of the property.
- Requires a caretaker, where there is one, to be present when property is conveyed to a third party to verify that the transfer was voluntary and lawful.

HOUSE . . . . . No. 3029

The Commonwealth of Massachusetts

PRESENTED BY:

*Paul Brodeur*

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 to protect property of elder or disabled persons.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>District Attorney Marian Ryan</i>	<i>15 Commonwealth Avenue, Woburn, MA, 01801</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

**HOUSE . . . . . No. 3029**

By Mr. Brodeur of Melrose, a petition (accompanied by bill, House, No. 3029) of Paul Brodeur and others relative to the penalties for property crimes against elderly or disabled persons. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1206 OF 2015-2016.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to protect property of elder or disabled persons.

*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 266, Section 30 is amended by adding subsection (6), as follows:

2 (6) Whoever, without consent of the owner, obtains possession or control over the

3 property of another, sixty years of age or older, or of a person with a disability as defined in

4 section thirteen K of chapter two hundred and sixty-five, if the value of such property exceeds

5 one thousand dollars, shall be guilty of unlawful possession of property, and shall be punished by

6 imprisonment in the state prison for not more than five years or in the house of correction for not

7 more than two and one-half years, or by a fine of not more than twenty-five thousand dollars or

8 by both such fine and imprisonment; if the property is an interest in real estate, whoever is guilty

9 of unlawful possession of property shall be punished by imprisonment in the state prison for not

10 more than ten years or in the house of correction for not more than two and one-half years, or by

11 a fine of not more than fifty thousand dollars or by both such fine and imprisonment, and shall  
12 restore or forfeit such interest in real estate to the owner. The court may order, regardless of the  
13 value of the property, restitution to be paid to the victim commensurate with the value of the  
14 property. If there is a caretaker as defined in section thirteen K of chapter two hundred and  
15 sixty-five for the person who is the owner, the consent of the owner shall not be deemed  
16 voluntary and lawful to convey the property unless witnessed in writing by the caretaker. A  
17 caretaker may not witness the consent of the owner if the caretaker intends to receive or does  
18 receive any interest in the property conveyed or any other benefit as witness.







## **An Act to Define "Abuse" and "Neglect" of a Child**

**H. 3030**

**Lead Sponsor: Representative Paul Brodeur**

### *Impetus*

General Laws c. 199, § 51A requires a mandated reporter to immediately communicate with the Department of Children and Families (DCF) when there is reasonable cause to believe that a child is suffering physical or emotional injury resulting from abuse, including sexual abuse, neglect; physical dependence upon an addictive drug at birth; and sexual exploitation.

General Laws c. 119, § 21, the section which sets for explanations of the terms that are applicable in 51A matters, however, does not include definitions for either abuse or neglect.

---

### *Need*

- Mandated reporters lack guidance as to what the law requires them to report.

---

### *Legislative Fix*

- Amends G.L. c. 119, § 21, to add definitions of abuse and neglect to assist mandated reporters.
- Adopts the definition of neglect set forth in 110 Code of Mass. Regulations (CMR) 2.00, which pertains to DCF.
- Broadens the CMR definition of abuse such that it applies not only to a caregiver, but to any individual who commits abuse of a child to ensure that vulnerable children have the full range of protection; clarifies that abuse means physical and sexual abuse; and adds definitions of both of these terms.



HOUSE . . . . . No. 3030

The Commonwealth of Massachusetts

PRESENTED BY:

Paul Brodeur

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 to define abuse and neglect of a child.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul Brodeur	32nd Middlesex
District Attorney Marian Ryan	15 Commonwealth Avenue, Woburn, MA, 01801
Marjorie C. Decker	25th Middlesex
Barbara A. L'Italien	Second Essex and Middlesex
Chris Walsh	6th Middlesex
James B. Eldridge	Middlesex and Worcester
Bruce E. Tarr	First Essex and Middlesex

**HOUSE . . . . . No. 3030**

By Mr. Brodeur of Melrose, a petition (accompanied by bill, House, No. 3030) of Paul Brodeur and others for legislation to further define abuse and neglect of children. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to define abuse and neglect of a child.

*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. Section 21 of Chapter 119 of the General Laws, as appearing in the 2014  
2 official edition, is hereby amended by inserting after the words “or neglect” in line 5 the  
3 following definition:

4 “Abuse”, both physical and sexual abuse. Any individual, not limited to a caregiver, may  
5 commit abuse.

6 Section 21 of Chapter 119, as so appearing, is hereby further amended by inserting after  
7 the words “child advocate” in line 74 the following definition:

8 “Neglect”, the failure by a caregiver to take those actions necessary to provide a child  
9 with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability  
10 and growth, or other essential care, including malnutrition. Neglect may be deliberate or through  
11 negligence or inability, but it cannot be due solely to inadequate economic resources or due

12 solely to the existence of a handicapping condition. Actual injury, whether physical or  
13 emotional, is not required.

14 Section 21 of Chapter 119, as so appearing, is hereby further amended by inserting after  
15 the words “transitional assistance” in lines 77- 78 the following definition:

16 “Physical abuse”, a non-accidental act that causes or creates a substantial risk of physical  
17 injury to a child, including knowingly or recklessly engaging in behavior that was dangerous to  
18 the child and resulted in injury. Intent to cause injury to the child is not required.

19 Section 21 of Chapter 119, as so appearing, is hereby further amended by inserting after  
20 the words “mental faculty” in line 87 the following definition:

21 “Sexual abuse”, (1) A non-accidental sexual act with a child that causes harm or  
22 substantial risk of harm to the child’s health or welfare. In determining whether the act causes  
23 such harm or substantial risk of harm, the following factors are to be considered: whether the act  
24 was committed by force or threat of bodily injury; whether the child was incapable of consent  
25 due to factors such as intoxication, sleep, or intellectual disability; any age disparity between the  
26 child and the alleged perpetrator; the child’s cognitive, emotional, psychological, and social  
27 maturity; any power imbalance between the child and the alleged perpetrator; and the presence of  
28 any coercive factors; (2) Sexual contact between a caregiver and a child for whom the caregiver  
29 is responsible; and

30 (3) Sexual contact between a child and any individual, not limited to a caregiver, by  
31 verbal or written communication, except that a communication (a) that is reasonably intended to  
32 provide information and direction for a child’s education and physical and emotional well-being;

33 or (b) that is consensual, is between peers, and shall not involve coercion or exploitation, does  
34 not constitute sexual abuse.



**An Act Relative to Driving Under the Influence of Toxic Vapors  
S. 1941**

**Lead Sponsor: Senator Jason Lewis**

*Impetus*

In Commonwealth v. Sousa, 88 Mass. App. Ct. 47 (2015), the defendant was driving a motor vehicle while inhaling vapors from an aerosol container and subsequently found unconscious behind the wheel. Despite the strong evidence in the case, the Appeals Court vacated the defendant's conviction since the substance contained in the aerosol can, diflouroethane, did not fall within the precisely defined language of the operating under the influence statute.

The current statutory language prohibits driving "while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue." G.L. c. 90, § 24(1)(a)(1). The contents of an aerosol canister do not fall within any of these categories.

---

*Need*

- Under G.L. c. 270, § 18 a person can be charged for "huffing," that is the intentional inhalation of toxic vaporous substances for the purpose of intoxication or euphoria.
- While a person may be prosecuted for inhaling toxic vapors, there is no criminal penalty for driving while under the influence of such vapors (except for the vapors of glue), and for thereby placing themselves and others at risk on public roadways.

---

*Legislative Fix*

- Replaces "vapors of glue" in the existing OUI statute, G.L. c. 90, § 24(1)(a)(1), with language encompassing any substance that has the property of releasing toxic vapors.





SENATE . . . . . No. 1941

---

The Commonwealth of Massachusetts

PRESENTED BY:

*Jason M. Lewis*

*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 relative to driving under the influence of toxic vapors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Marian T. Ryan, Middlesex District Attorney</i>	<i>15 Commonwealth Avenue Woburn, MA 01801</i>

**SENATE . . . . . No. 1941**

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1941) of Jason M. Lewis and Marian T. Ryan, Middlesex District Attorney for legislation relative to driving under the influence of toxic vapors. Transportation.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to driving under the influence of toxic vapors.

*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. Item (1) of subsection (a) of subdivision (1) of section 24 of chapter 90 of  
2 the General Laws, as appearing in the 2014 Official Edition, is hereby amended in line 8 by  
3 deleting the words "the vapors of glue" and inserting in place thereof the following words:-

4           "while under the influence from smelling or inhaling the fumes of any substance having  
5 the property of releasing toxic vapors, as defined in section 18 of chapter 270,"