

191st General Court of the Commonwealth

2019-2020 Legislative Session



**Legislative Filings
Briefing Booklet**

Office of Middlesex District Attorney Marian T. Ryan

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Middlesex District Attorney's Office Contacts

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**An Act to Mandate Domestic Violence and Sexual Assault Awareness
Education for Aestheticians, Barbers, Cosmetologists, Electrologists,
Hairdressers, Manicurists, and Massage Therapists
H. 197/S.125**

**Lead Sponsors: Representative Christine P. Barber and
Senator Cynthia Stone Creem**

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. 197

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>Marian T. Ryan, District Attorney</i>	
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>

Jay D. Livingstone

Rebecca L. Rausch

Andres X. Vargas

8th Suffolk

Norfolk, Bristol and Middlesex

3rd Essex

HOUSE No. 197

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 either
5 attend a training in person or review a training online.

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, either in person or online, one hour of a free standardized domestic violence and
11 sexual assault awareness training approved by the Board of Cosmetology.

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 either attend a training in person or review a training online.

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, either in person
26 or online, one hour of a free standardized domestic violence and sexual assault awareness
27 training approved by the board of cosmetology.

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

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

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

SENATE No. 125

The Commonwealth of Massachusetts

PRESENTED BY:

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

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 125

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 either
5 attend a training in person or review a training online.

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, either in person or online, one hour of a free standardized domestic violence and
11 sexual assault awareness training approved by the Board of Cosmetology .

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 either attend a training in person or review a training online.

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, either in person
26 or online, one hour of a free standardized domestic violence and sexual assault awareness
27 training approved by the board of cosmetology.

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

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

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



**An Act to Define Abuse and Neglect of a Child
H. 1359**

Lead Sponsor: Representative Paul Brodeur

Impetus

General Laws c. 119, § 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 forth 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, thus to ensure that vulnerable children have the full range of protections; clarifies that abuse means physical and sexual abuse, and adds definitions of both these terms.

HOUSE No. 1359

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:

Paul Brodeur

*Marian T. Ryan, Middlesex District
Attorney*

DISTRICT/ADDRESS:

32nd Middlesex

HOUSE No. 1359

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3030 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 Section1. Section 21 of Chapter 119 of the General Laws, as appearing in the 2016
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 to Protect the Property of Elder or Disabled Persons H. 1360

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. Commonwealth v. St. Hilaire, 470 Mass. 338 (2015).

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. 1360

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:

Paul Brodeur

32nd Middlesex

*Marian T. Ryan, Middlesex District
Attorney*

HOUSE No. 1360

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3029 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 as appearing in the Official 2016 edition of the
2 General Laws is amended by adding subsection (6), as follows:

3 (6) Whoever, without consent of the owner, obtains possession or control over the
4 property of another, sixty years of age or older, or of a person with a disability as defined in
5 section thirteen K of chapter two hundred and sixty-five, if the value of such property exceeds
6 one thousand dollars, shall be guilty of unlawful possession of property, and shall be punished by
7 imprisonment in the state prison for not more than five years or in the house of correction for not
8 more than two and one-half years, or by a fine of not more than twenty-five thousand dollars or
9 by both such fine and imprisonment; if the property is an interest in real estate, whoever is guilty
10 of unlawful possession of property shall be punished by imprisonment in the state prison for not
11 more than ten years or in the house of correction for not more than two and one-half years, or by

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



An Act Providing Protection from Child Enticement H. 1362/ S. 975

Lead Sponsors: Representative Paul Brodeur and Senator Jason M. 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. 1362

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:

Paul Brodeur

*Marian T. Ryan, Middlesex District
Attorney*

DISTRICT/ADDRESS:

32nd Middlesex

HOUSE No. 1362

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3028 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 appearing in the 2016
2 Official Edition, is hereby amended by inserting after subsection (b), a new subsection (c) as
3 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. 975

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:

Jason M. Lewis

DISTRICT/ADDRESS:

Fifth Middlesex

SENATE No. 975

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 888 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2016, 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 Criminalizing Sexual Assault by Fraud by a Medical Professional H. 1436/ S. 1031

Lead Sponsors: Representative Kate Hogan and Senator Bruce E. Tarr

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. 1436

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:

Bruce E. Tarr

First Essex and Middlesex

Kate Hogan

3rd Middlesex

HOUSE No. 1436

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2016 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 2016
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. 1031

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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:

Bruce E. Tarr

First Essex and Middlesex

Kate Hogan

3rd Middlesex

SENATE No. 1031

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2016 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 2016
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.



**An Act Relative to Visitation and Family Court Matters
in Domestic Violence Cases
H. 1437/ S. 969**

Lead Sponsors: Representative Kate Hogan and Senator Jason M. 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. 1437

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>District Attorney Marian T. Ryan</i>	<i>Office of the Middlesex District Attorney, 15 Commonwealth Avenue, Woburn MA 01801</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>

HOUSE No. 1437

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 as appearing in the 2016 Official Edition
2 is hereby amended by inserting after 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, as so appearing, is hereby amended by
43 inserting after 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. 969

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. 969

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 894 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 Relative to the protection of vulnerable adults
from sexual assault committed by mandated reporters,
persons in a position of trust and providers of transportation
H. 1438/S. 977**

**Lead Sponsors: Representative Kate Hogan and
Senator Jason M. Lewis**

Impetus

Under current law, once a person reaches the age of consent, that person is presumed to be free to agree to engage in sexually activity. No crime occurs unless force or threat of force is used to overcome that free will or choice to participate in sexual activity. However, some people, though of “legal age,” are vulnerable, and we provide them with a variety of services, including a supportive residences or worksites, special educative programs, mental health services, or rehabilitation, and we provide them with transportation.

This Bill addresses those providers upon whom these vulnerable adults rely on a daily basis for the special services. The Bill makes it unlawful for any such service provider who knows someone to be a vulnerable adult to engage in any sexual activity with that vulnerable adult.

For example, a man assigned to provide transportation for residents of a group home came to know a young woman who lived in the group home and who relied on him to drive her to her worksite. Because she had suffered an injury to her cognitive abilities, she was unable to choose as freely as the law would presume. This driver began a sexual relationship with this woman during times when he was alone with her. Although this was an abuse of the trust placed in him, it was very difficult or impossible to prosecute his breach of trust because this woman had reached the age of consent.

Need

- The sexual offenses of rape or indecent assault and battery of adults may not be prosecuted unless there is proof that the conduct was against the will of the victim. Persons “known to be a vulnerable adult” must not be targeted in any circumstances by those professionals upon whom they rely to provide them an independent and safe life.
-

Legislative Fix

- This Bill identifies “vulnerable adults” as persons who are age 14 or older at the time of the offense who are “admitted to a mental health facility or to a community based or residential facility,” or who are receiving community based services through the Department of Developmental Services or the Department of Mental Health or the Mass. Rehabilitation Commission, or who are residents of a long-term care facility.

HOUSE No. 1438

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 relative to the protection of vulnerable adults from sexual assault committed by mandated reporters, persons in a position of trust and providers of transportation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>District Attorney Marian T. Ryan</i>	<i>Office of the Middlesex District Attorney, 15 Commonwealth Avenue, Woburn MA 01801</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>

Hannah Kane

11th Worcester

Lori A. Ehrlich

8th Essex

James K. Hawkins

2nd Bristol

Michelle M. DuBois

10th Plymouth

HOUSE No. 1438

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the protection of vulnerable adults from sexual assault committed by mandated reporters, persons in a position of trust and providers of transportation.

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 2016 Official Edition,
2 is hereby amended by adding the following new section 22D:

3 Whoever, being at the time (a) a mandated reporter as defined in section 21 of chapter
4 119, section 1 of chapter 19C, or section 15 of chapter 19A, or (b) a person with supervisory
5 responsibility or disciplinary authority over such vulnerable adult by virtue of his or her legal,
6 professional or occupational status, or (c) in the course of providing transportation, or
7 immediately before or after, as an employee or contracted service provider, has sexual
8 intercourse or unnatural sexual intercourse with, or commits indecent assault and battery upon, a
9 vulnerable adult as defined herein, knowing such person to be a vulnerable adult, shall be
10 punished. Whoever commits sexual intercourse (nature or unnatural) with a vulnerable adult,
11 shall be punished by imprisonment in the state prison for not more than twenty years; and
12 whoever commits a second or subsequent such offense shall be punished by imprisonment in the
13 state prison for life, or for any term of years. Whoever commits an indecent assault and battery

14 on a vulnerable adult, shall be punished by imprisonment in the state prison for not more than ten
15 years, or by imprisonment in the house of correction for not more than two and one-half years;
16 and whoever commits a second or subsequent such offense shall be punished by imprisonment in
17 the state prison for not more than twenty years. A prosecution commenced under either section
18 of this paragraph shall not be placed on file nor continued without a finding.

19 Consent of the vulnerable adult to such sexual intercourse or indecent assault and battery
20 shall not constitute a defense or excuse to this offense.

21 A vulnerable adult is a person fourteen years of age or older who at the time of the
22 offense (1) is admitted to a mental health facility or to a community based or residential facility,
23 or (2) is receiving community based services through the Department of Developmental Services
24 or the Department of Mental Health or the Massachusetts Rehabilitation Commission, or (3) is a
25 resident of a long-term care facility.

26 SECTION 2 Section 178C of Chapter 6 of the General Laws, as amended by St. 2018,
27 chapter 219, section 1, is hereby amended by inserting into the definition of “Sex offense” after
28 the words “aggravated rape under section 39 of chapter 277;” the following: “sexual assault of
29 vulnerable adults under section 22D of chapter 265;”

SENATE No. 977

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 the protection of vulnerable adults from sexual assault committed by mandated reporters, persons in a position of trust and providers of transportation.

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. 977

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the protection of vulnerable adults from sexual assault committed by mandated reporters, persons in a position of trust and providers of transportation.

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 2016 Official Edition,
2 is hereby amended by adding the following new section 22D:

3 Whoever, being at the time (a) a mandated reporter as defined in section 21 of chapter
4 119, section 1 of chapter 19C, or section 15 of chapter 19A, or (b) a person with supervisory
5 responsibility or disciplinary authority over such vulnerable adult by virtue of his or her legal,
6 professional or occupational status, or (c) in the course of providing transportation, or
7 immediately before or after, as an employee or contracted service provider, has sexual
8 intercourse or unnatural sexual intercourse with, or commits indecent assault and battery upon, a
9 vulnerable adult as defined herein, knowing such person to be a vulnerable adult, shall be
10 punished. Whoever commits sexual intercourse (nature or unnatural) with a vulnerable adult,
11 shall be punished by imprisonment in the state prison for not more than twenty years; and
12 whoever commits a second or subsequent such offense shall be punished by imprisonment in the
13 state prison for life, or for any term of years. Whoever commits an indecent assault and battery

14 on a vulnerable adult, shall be punished by imprisonment in the state prison for not more than ten
15 years, or by imprisonment in the house of correction for not more than two and one-half years;
16 and whoever commits a second or subsequent such offense shall be punished by imprisonment in
17 the state prison for not more than twenty years. A prosecution commenced under either section
18 of this paragraph shall not be placed on file nor continued without a finding.

19 Consent of the vulnerable adult to such sexual intercourse or indecent assault and battery
20 shall not constitute a defense or excuse to this offense.

21 A vulnerable adult is a person fourteen years of age or older who at the time of the
22 offense (1) is admitted to a mental health facility or to a community based or residential facility,
23 or (2) is receiving community based services through the Department of Developmental Services
24 or the Department of Mental Health or the Massachusetts Rehabilitation Commission, or (3) is a
25 resident of a long-term care facility.

26 SECTION 2 Section 178C of Chapter 6 of the General Laws, as amended by St. 2018,
27 chapter 219, section 1, is hereby amended by inserting into the definition of “Sex offense” after
28 the words “aggravated rape under section 39 of chapter 277;” the following: “sexual assault of
29 vulnerable adults under section 22D of chapter 265;”



**An Act to Extend the Statute of Limitations for Incest
H. 1489**

Lead Sponsor: Representative John J. Lawn, Jr.

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. 1489

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>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>

HOUSE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2314 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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.



An Act Prohibiting Gunfire Directed at Dwelling Houses H. 1523/ S. 963

Lead Sponsors: Representative Rady Mom and Senator Edward J. Kennedy

Impetus

There is no statute that specifically addresses discharging a firearm at a dwelling house. 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. Shooting at dwellings, apartments and homes creates a serious risk of injury or death to the occupants. There must be a crime that fits the act, and a punishment that fits the crime.

Current laws provide a range of possible charges that does not appropriately respond to this offense. If the shooter causes damage to the dwelling or the property inside, the shooter may face a charge of willful and malicious destruction of property under G.L. c. 266, § 127. That offense requires proof that the shooter intended to do damage and acted with malice towards the occupants. If the damage is not intentional and done with malice, the shooter may be charged with a lesser offense.

If the shooter does not cause damage to the dwelling or the property inside, the shooter may be charged with minor offenses, such as disturbing the peace or disorderly conduct (G.L. c. 272, § 53), or with discharging a firearm within 500 feet of a dwelling (G.L. c. 266, § 12E). A first offense disturbing the peace or disorderly conduct carries a fine only. Discharging a firearm has a maximum penalty of 90 days in jail.

This Bill would create a new crime with a five year maximum penalty that would punish the shooter who intentionally shoots at a dwelling, a home, or an apartment. This Bill protects people, even if the shooter has the intent only to frighten those in their home, and has no intent to injure anyone in the targeted homes.

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.
- Provides a range sentencing options that are proportional to this level of crime.

HOUSE No. 1523

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>James Arciero</i>	<i>2nd Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 SECTION 1. Chapter 269 of the General Laws, as so appearing, is hereby amended by
2 inserting after 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. 963

The Commonwealth of Massachusetts

PRESENTED BY:

Edward Kennedy

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:

Edward Kennedy

DISTRICT/ADDRESS:

First Middlesex

SENATE No. 963

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 839 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 Define Inducing a Minor into Prostitution H. 1536

Lead Sponsor: Representative David M. 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. 1536

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>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>

HOUSE No. 1536

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 942 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 Relative to the establishment of and
payments into an opioid stewardship fund
H. 1718; S. 1711**

**Lead Sponsors: Representative Tami L. Gouveia
and Senator Jason M. Lewis**

Impetus

For years law enforcement and other first responders have been administering nasal naloxone to revive people who are experiencing an opioid overdose. Today, as communities across the Commonwealth continue to grapple with the impact of the opioid epidemic more and more citizens are equipping themselves with this safe antidote that can reverse the effects of an opioid overdose.

Recognizing that naloxone is a key part of the community public health response to this epidemic, Massachusetts has already removed certain barriers that have kept this life-saving drug from being available at the critical minute by adapting rules on prescriptions, through training efforts and by the development of simplified delivery mechanisms such as improved nasal sprays. Although public funds have been used to create a basic inventory for law enforcement and other first responders, others are still denied access by the cost, even those whose insurance provides some level of drug coverage.

This Bill would create an additional source of funds to meet the existing insurance co-payments so that the cost of Naloxone is greatly reduced or free of charge to those who need it.

Need

- This Bill calls on those who sell, distribute, or deliver opioids in the Commonwealth to supplement the cost of making insurance co-payments so that the cost of Naloxone is greatly reduced or free of charge to those who need it.
-

Legislative Fix

- This Bill directs the Massachusetts Department of Public Health to establish a Naloxone Co-Pay Assistance Program to improve access, and to supplement or cover the cost of insurance co-payments. The programs would be supported by monies paid annually into an Opioids Stewardship Fund by each manufacturer and distributor, based on their share of the value of all opioids sold or distributed in the Commonwealth.

HOUSE No. 1718

The Commonwealth of Massachusetts

PRESENTED BY:

Tami L. Gouveia

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 establishment of and payments into an opioid stewardship fund.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Middlesex District Attorney Marian Ryan</i>	<i>15 Commonwealth Avenue, Woburn, MA 01801</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>

HOUSE No. 1718

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the establishment of and payments into an opioid stewardship fund.

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. Over the past few years across the state we have become all too aware of
2 the prevalence of opioid use disorders. Despite increased public awareness and prevention
3 efforts, all of our communities have been impacted by the ongoing opioid epidemic.

4 Law enforcement and first responders have had much success reviving people
5 who have overdosed with the use of nasal naloxone. Naloxone has been credited as a significant
6 factor in the decrease in the number of fatal overdoses in the last year in the Commonwealth.

7 Recognizing the impact that access to this drug has on saving lives, now people
8 across the state can go to a pharmacy and get naloxone. Having access is not enough, however,
9 if-- even with insurance--the cost of the co-pay is prohibitive.

10 Every overdose death is the loss of someone’s child, someone’s parent,
11 someone’s brother or sister, someone’s friend; and it need not happen. We must work to get
12 naloxone into the hands of everyone who needs it.

13 SECTION 2: Chapter 94C of the General Laws, as appearing in the 2016 Official
14 Edition, is hereby amended by adding the following new section 50:

15 (a) Naloxone Co-Pay Assistance Program.

16 The department of public health shall establish and promulgate regulations
17 for administration of a Naloxone Co-Pay Assistance Program, a program to improve access to
18 those who seek to obtain naloxone and other medications approved by the United States Food
19 and Drug Administration that, when administered, negates or neutralizes in whole or in part the
20 pharmacological effects of an opioid in the body. The program shall supplement the cost of
21 insurance copayments so that the cost of Naloxone is greatly reduced or free of charge to those
22 who need it.

23 (b)(1) There shall be established in the Commonwealth a separate trust fund to be
24 known as the Opioid Stewardship Fund to support the Naloxone Co-Pay Assistance Program
25 established in subsection 50(a).

26 (b)(2) Monies in the Opioid Stewardship Fund shall be kept separate and shall
27 not be commingled with any other monies in the custody of the State Comptroller and the
28 Commissioner of Administration and Finance. The fund shall be maintained by the
29 Commissioner of Public Health or a designee. The monies shall be expended under the direction
30 of the department of public health, without prior appropriation. Any balance in the fund at the
31 close of a fiscal year shall be available for expenditure in subsequent fiscal years and shall not be
32 transferred to any other fund or revert to the General Fund. The Commissioner of Public Health
33 or a designee shall annually report the amount of funds collected and any expenditures made
34 from the fund to the clerks of the house of representatives and senate to be forwarded on to the

35 house and senate committees on ways and means, the house and senate chairs of the joint
36 committee on public health and the house and senate chairs of the joint committee on health care
37 financing.

38 (b)(3) The Opioid Stewardship Fund shall consist of the opioid stewardship
39 payments made by each manufacturer and distributor as directed in subsection 50(c)(3), monies
40 appropriated for the purpose of such fund, and monies transferred to such fund pursuant to law.

41

42 (c)(1) Definitions:

43 (i) "Opioid stewardship payment" shall mean the total amount to be paid
44 into the Opioid Stewardship Fund for each state fiscal year as set forth in subsection (d)(4);

45 (ii) "Ratable share" shall mean the individual portion of the opioid
46 stewardship payment to be paid by each manufacturer and distributor registered with the
47 Commissioner of Public Health pursuant to section 7(a) of this chapter or registered with the
48 board of registration in pharmacy pursuant to section 12(a) of this chapter (hereinafter
49 "registrants") that sells or distributes or delivers opioids in the Commonwealth;

50 (c)(2) Reports and records of Registrants. Annually each registrant shall provide
51 to the Commissioner of Public Health a report detailing all opioids sold or distributed by such
52 manufacturer or distributor in the Commonwealth. Such information shall be reported to the
53 department of public health in such form as designed by the Commissioner, provided however
54 that the initial report provided upon the establishment of the Opioid Stewardship Fund shall
55 report all opioids sold or distributed by the registrant in the Commonwealth for the 2019

56 calendar year, and must be submitted by August 1, 2020. Subsequent annual reports shall be
57 submitted on April first of each year based on the actual opioid sales and distributions of the
58 prior calendar year.

59 Such report shall include:

60 (i) the manufacturer's or distributor's name, address, phone number,
61 federal Drug Enforcement Agency (DEA) registration number and controlled substance
62 registration number issued by the department of public health or board of registration in
63 pharmacy;

64 (ii) the name, address and DEA registration number of the entity to whom
65 the opioid was sold or distributed;

66 (iii) the date of the sale or distribution of the opioid;

67 (iv) the gross receipt total, in dollars, of all opioids sold or distributed;

68 (v) the name and National Drug Code (NDC) of the opioid sold or
69 distributed;

70 (vi) the number of containers and the strength and metric quantity of
71 controlled substance in each container of the opioid sold or distributed;

72 (vii) the total number of morphine milligram equivalents (MMEs) sold or
73 distributed; and

74 (viii) any other elements as deemed necessary by the commissioner.

75 For the purpose of such annual reporting, MMEs shall be determined pursuant to a
76 formulation to be issued by the department of public health and updated as the department deems
77 appropriate.

78 (c)(3) Determination of ratable share. Each registered manufacturer and
79 distributor that sells or distributes opioids in the Commonwealth shall pay a portion of the total
80 opioid stewardship payment amount. The department shall notify the registrant in writing
81 annually on or before October fifteenth of each year of the registrant's ratable share, based on the
82 report of opioids sold or distributed for the prior calendar year. The ratable share shall be
83 calculated as follows:

84 (i) The total amount of MMEs sold or distributed in the Commonwealth
85 by the registrant for the preceding calendar year, as reported by the registrant pursuant to
86 subsection (c)(2), shall be divided by the total amount of MME sold or distributed in the
87 Commonwealth by all registrants to determine the registrant payment percentage. The registrant
88 payment percentage shall be multiplied by the total opioid stewardship payment. The product of
89 such calculations shall be the registrant's ratable share. The department of public health shall
90 have the authority to adjust the total number of a registrant's MMEs to account for the nature and
91 use of the product, as well as the type of entity purchasing the product from the registrant, when
92 making such determination and adjust the ratable share accordingly.

93 (ii) The registrant's total amount of MME sold or distributed, as well as
94 the total amount of MME sold or distributed by all registrants under this chapter, used in the
95 calculation of the ratable share shall not include the MME of those opioids which are: (a)
96 manufactured in the Commonwealth, but whose final point of delivery or sale is outside of the

97 Commonwealth; (b) sold or distributed to entities certified to operate pursuant to section 5 of
98 chapter 111E, or section 57D of chapter 111; or (c) the MMEs attributable to buprenorphine,
99 methadone or morphine.

100 (c)(4) Opioid stewardship payment imposed on manufacturers and distributors.

101 All registered manufacturers and distributors that sell or distribute opioids in the Commonwealth
102 shall be required to pay an opioid stewardship payment. On an annual basis, the Commissioner
103 of Public Health shall certify to the State Comptroller the amount of all revenues collected from
104 opioid stewardship payments and any penalties imposed. The amount of revenues so certified
105 shall be deposited quarterly into the opioid stewardship fund established pursuant to subsection
106 50(b). No registrant shall pass the cost of their ratable share amount to a purchaser, including the
107 ultimate user of the opioid, or such registrant shall be subject to penalties pursuant to subsection
108 (c)(8).

109 (c)(5). Payment of ratable share. The registrant shall make payments of the ratable
110 share quarterly to the department of public health with the first quarter's due on January 1
111 following the annual notice as set forth in subsection (d)(3); additional quarterly payments shall
112 be due and owing on the first day of every quarter thereafter.

113 (c)(6). Rebate of ratable share. In any year for which the Commissioner of Public
114 Health determines that any registrant has failed to make a timely report of required information
115 pursuant to subsection (c)(2), then those registrants who comply by making a timely report
116 pursuant to subsection (c)(2) shall receive a reduced assessment of their ratable share in the
117 following year equal to the amount in excess of any overpayment in the prior year's payment.

118 (c)(7). Registrant's opportunity to appeal. A registrant shall be afforded an
119 opportunity to submit information to the department of public health to justify why the ratable
120 share calculated for the registrant pursuant to subsection (c)(3), or amounts paid thereunder, are
121 in error or otherwise not warranted. If the department determines thereafter that all or a portion
122 of such ratable share, as determined by the Commissioner pursuant to subsection (c)(3), is not
123 warranted, the department may: (a) adjust the ratable share; (b) adjust the assessment of the
124 ratable share in the following year equal to the amount in excess of any overpayment in the prior
125 payment period; or (c) refund amounts paid in error.

126 (c)(8) Penalties.

127 (i) The department may assess a civil penalty in an amount not to exceed
128 one thousand dollars per day against any registrant that fails to comply with subsections (d)(2) or
129 (d)(5).

130 (ii) In addition to any other civil or criminal penalty provided by law,
131 where a registrant has failed to pay its ratable share in accordance with subsection (d)(5), the
132 department may also assess a penalty of no less than ten percent and no greater than three
133 hundred percent of the ratable share due from such registrant.

134 (iii) Where the ratable share, or any portion thereof, has been passed on to
135 a purchaser by a registrant as prohibited in subsection (d)(3), the commissioner may impose a
136 penalty not to exceed one million dollars per incident.

SENATE No. 1711

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 the establishment of and payments into an opioid stewardship fund.

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. 1711

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the establishment of and payments into an opioid stewardship fund.

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. Over the past few years across the state we have become all too aware of
2 the prevalence of opioid use disorders. Despite increased public awareness and prevention
3 efforts, all of our communities have been impacted by the ongoing opioid epidemic.

4 Law enforcement and first responders have had much success reviving people who have
5 overdosed with the use of nasal naloxone. Naloxone has been credited as a significant factor in
6 the decrease in the number of fatal overdoses in the last year in the Commonwealth.

7 Recognizing the impact that access to this drug has on saving lives, now people across
8 the state can go to a pharmacy and get naloxone. Having access is not enough, however, if--
9 even with insurance--the cost of the co-pay is prohibitive.

10 Every overdose death is the loss of someone's child, someone's parent, someone's
11 brother or sister, someone's friend; and it need not happen. We must work to get naloxone into
12 the hands of everyone who needs it.

13 SECTION 2: Chapter 94C of the General Laws, as appearing in the 2016 Official
14 Edition, is hereby amended by adding the following new section 50:

15 (a) Naloxone Co-Pay Assistance Program.

16 The department of public health shall establish and promulgate regulations for
17 administration of a Naloxone Co-Pay Assistance Program, a program to improve access to those
18 who seek to obtain naloxone and other medications approved by the United States Food and
19 Drug Administration that, when administered, negates or neutralizes in whole or in part the
20 pharmacological effects of an opioid in the body. The program shall supplement the cost of
21 insurance copayments so that the cost of Naloxone is greatly reduced or free of charge to those
22 who need it.

23 (b)(1) There shall be established in the Commonwealth a separate trust fund to be known
24 as the Opioid Stewardship Fund to support the Naloxone Co-Pay Assistance Program established
25 in subsection 50(a).

26 (b)(2) Monies in the Opioid Stewardship Fund shall be kept separate and shall not be
27 commingled with any other monies in the custody of the State Comptroller and the
28 Commissioner of Administration and Finance. The fund shall be maintained by the
29 Commissioner of Public Health or a designee. The monies shall be expended under the direction
30 of the department of public health, without prior appropriation. Any balance in the fund at the
31 close of a fiscal year shall be available for expenditure in subsequent fiscal years and shall not be
32 transferred to any other fund or revert to the General Fund. The Commissioner of Public Health
33 or a designee shall annually report the amount of funds collected and any expenditures made
34 from the fund to the clerks of the house of representatives and senate to be forwarded on to the

35 house and senate committees on ways and means, the house and senate chairs of the joint
36 committee on public health and the house and senate chairs of the joint committee on health care
37 financing.

38 (b)(3) The Opioid Stewardship Fund shall consist of the opioid stewardship payments
39 made by each manufacturer and distributor as directed in subsection 50(c)(3), monies
40 appropriated for the purpose of such fund, and monies transferred to such fund pursuant to law.

41 (c)(1) Definitions:

42 (i) "Opioid stewardship payment" shall mean the total amount to be paid into the Opioid
43 Stewardship Fund for each state fiscal year as set forth in subsection (d)(4);

44 (ii) "Ratable share" shall mean the individual portion of the opioid stewardship payment
45 to be paid by each manufacturer and distributor registered with the Commissioner of Public
46 Health pursuant to section 7(a) of this chapter or registered with the board of registration in
47 pharmacy pursuant to section 12(a) of this chapter (hereinafter "registrants") that sells or
48 distributes or delivers opioids in the Commonwealth;

49 (c)(2) Reports and records of Registrants. Annually each registrant shall provide to the
50 Commissioner of Public Health a report detailing all opioids sold or distributed by such
51 manufacturer or distributor in the Commonwealth. Such information shall be reported to the
52 department of public health in such form as designed by the Commissioner, provided however
53 that the initial report provided upon the establishment of the Opioid Stewardship Fund shall
54 report all opioids sold or distributed by the registrant in the Commonwealth for the 2019
55 calendar year, and must be submitted by August 1, 2020. Subsequent annual reports shall be

56 submitted on April first of each year based on the actual opioid sales and distributions of the
57 prior calendar year.

58 Such report shall include:

59 (i) the manufacturer's or distributor's name, address, phone number, federal Drug
60 Enforcement Agency (DEA) registration number and controlled substance registration number
61 issued by the department of public health or board of registration in pharmacy;

62 (ii) the name, address and DEA registration number of the entity to whom the opioid was
63 sold or distributed;

64 (iii) the date of the sale or distribution of the opioid;

65 (iv) the gross receipt total, in dollars, of all opioids sold or distributed;

66 (v) the name and National Drug Code (NDC) of the opioid sold or distributed;

67 (vi) the number of containers and the strength and metric quantity of controlled substance
68 in each container of the opioid sold or distributed;

69 (vii) the total number of morphine milligram equivalents (MMEs) sold or distributed; and

70 (viii) any other elements as deemed necessary by the commissioner.

71 For the purpose of such annual reporting, MMEs shall be determined pursuant to a
72 formulation to be issued by the department of public health and updated as the department deems
73 appropriate.

74 (c)(3) Determination of ratable share. Each registered manufacturer and distributor that
75 sells or distributes opioids in the Commonwealth shall pay a portion of the total opioid
76 stewardship payment amount. The department shall notify the registrant in writing annually on
77 or before October fifteenth of each year of the registrant's ratable share, based on the report of
78 opioids sold or distributed for the prior calendar year. The ratable share shall be calculated as
79 follows:

80 (i) The total amount of MMEs sold or distributed in the Commonwealth by the registrant
81 for the preceding calendar year, as reported by the registrant pursuant to subsection (c)(2), shall
82 be divided by the total amount of MME sold or distributed in the Commonwealth by all
83 registrants to determine the registrant payment percentage. The registrant payment percentage
84 shall be multiplied by the total opioid stewardship payment. The product of such calculations
85 shall be the registrant's ratable share. The department of public health shall have the authority to
86 adjust the total number of a registrant's MMEs to account for the nature and use of the product,
87 as well as the type of entity purchasing the product from the registrant, when making such
88 determination and adjust the ratable share accordingly.

89 (ii) The registrant's total amount of MME sold or distributed, as well as the total amount
90 of MME sold or distributed by all registrants under this chapter, used in the calculation of the
91 ratable share shall not include the MME of those opioids which are: (a) manufactured in the
92 Commonwealth, but whose final point of delivery or sale is outside of the Commonwealth; (b)
93 sold or distributed to entities certified to operate pursuant to section 5 of chapter 111E, or section
94 57D of chapter 111; or (c) the MMEs attributable to buprenorphine, methadone or morphine.

95 (c)(4) Opioid stewardship payment imposed on manufacturers and distributors. All
96 registered manufacturers and distributors that sell or distribute opioids in the Commonwealth
97 shall be required to pay an opioid stewardship payment. On an annual basis, the Commissioner
98 of Public Health shall certify to the State Comptroller the amount of all revenues collected from
99 opioid stewardship payments and any penalties imposed. The amount of revenues so certified
100 shall be deposited quarterly into the opioid stewardship fund established pursuant to subsection
101 50(b). No registrant shall pass the cost of their ratable share amount to a purchaser, including the
102 ultimate user of the opioid, or such registrant shall be subject to penalties pursuant to subsection
103 (c)(8).

104 (c)(5). Payment of ratable share. The registrant shall make payments of the ratable share
105 quarterly to the department of public health with the first quarter's due on January 1 following
106 the annual notice as set forth in subsection (d)(3); additional quarterly payments shall be due and
107 owing on the first day of every quarter thereafter.

108 (c)(6). Rebate of ratable share. In any year for which the Commissioner of Public Health
109 determines that any registrant has failed to make a timely report of required information pursuant
110 to subsection (c)(2), then those registrants who comply by making a timely report pursuant to
111 subsection (c)(2) shall receive a reduced assessment of their ratable share in the following year
112 equal to the amount in excess of any overpayment in the prior year's payment.

113 (c)(7). Registrant's opportunity to appeal. A registrant shall be afforded an opportunity
114 to submit information to the department of public health to justify why the ratable share
115 calculated for the registrant pursuant to subsection (c)(3), or amounts paid thereunder, are in
116 error or otherwise not warranted. If the department determines thereafter that all or a portion of

117 such ratable share, as determined by the Commissioner pursuant to subsection (c)(3), is not
118 warranted, the department may: (a) adjust the ratable share; (b) adjust the assessment of the
119 ratable share in the following year equal to the amount in excess of any overpayment in the prior
120 payment period; or (c) refund amounts paid in error.

121 (c)(8) Penalties.

122 (i) The department may assess a civil penalty in an amount not to exceed one thousand
123 dollars per day against any registrant that fails to comply with subsections (d)(2) or (d)(5).

124 (ii) In addition to any other civil or criminal penalty provided by law, where a registrant
125 has failed to pay its ratable share in accordance with subsection (d)(5), the department may also
126 assess a penalty of no less than ten percent and no greater than three hundred percent of the
127 ratable share due from such registrant.

128 (iii) Where the ratable share, or any portion thereof, has been passed on to a purchaser by
129 a registrant as prohibited in subsection (d)(3), the commissioner may impose a penalty not to
130 exceed one million dollars per incident.



**An Act Relative to the reckless discharge of firearm, large capacity
weapon, rifle, shotgun, sawed-off shotgun, or machine gun
without regard for the risk of harm
H. 2046/ S. 1426**

**Lead Sponsors: Representative Marjorie C. Decker and
Senator Edward J. Kennedy**

Impetus

Gun violence creates grave risks not only to the intended targets but to innocent people who live, work, travel in and near the scene of such violence. There is presently no ability to charge someone who fires a gun in such a situation with a crime that reflects the risk.

Need

- Our criminal laws punish those who fire weapons with intent to kill or murder a specific target or who fire weapons to threaten or to compel another to comply with the shooter's demands. Our laws punish those who injure another by intentional use of these weapons. Our laws fall short where one or more people fire a weapon without regard for the safety of those who are close by, and who are put at risk by the reckless or highly dangerous use of deadly force.
-

Legislative Fix

- This Bill provides a new felony offense, similar to G.L. c. 265, § 13A(b), assault and battery that causes serious bodily injury, and less punitive than G.L. c. 265, § 15A, assault and battery that causes serious bodily injury by means of a dangerous weapon. These existing offenses require proof that the shooter intended to commit a battery, i.e., targeted the person injured by the shooting. The Bill will add an offense that does not

require an intent to commit a battery or an intent to kill or assault by shooting. The Bill will punish the shooter who acts “without regard for the risk of serious bodily injury to another” but who shoots intentionally or recklessly and “thereby causes a substantial risk of serious bodily injury.”

HOUSE No. 2046

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker

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 reckless discharge of firearms.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>

HOUSE No. 2046

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the reckless discharge of firearms.

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 2016 Official Edition,
2 is hereby amended by adding the following new section:

3 Section 15G. Whoever without regard for the risk of serious bodily injury to another
4 intentionally or recklessly discharges a firearm, large capacity weapon, rifle, shotgun, sawed-off
5 shotgun, or machine gun and thereby causes a substantial risk of serious bodily injury to another
6 shall be punished by imprisonment in the state prison for not more than 5 years or by
7 imprisonment in the house of correction for not more than 2 ½ years.

SENATE No. 1426

The Commonwealth of Massachusetts

PRESENTED BY:

Edward J. Kennedy

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 discharge of firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun or machine gun without regard for the risk of harm; penalty.

PETITION OF:

NAME:

Edward J. Kennedy

DISTRICT/ADDRESS:

First Middlesex

SENATE No. 1426

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act Relative to the discharge of firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun or machine gun without regard for the risk of harm; penalty.

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 2016 Official Edition,
2 is hereby amended by adding the following new section 15G:

3 Whoever without regard for the risk of serious bodily injury to another intentionally or
4 recklessly discharges a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, or
5 machine gun and thereby causes a substantial risk of serious bodily injury to another shall be
6 punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the
7 house of correction for not more than 2 ½ years.



**An Act to Increase Safety on Public Ways
H. 2993**

Lead Sponsor: Representative Michael S. 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. 2993

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:
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Middlesex District Attorney Marian Ryan</i>	<i>15 Commonwealth Ave Woburn, MA 01801</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>

HOUSE No. 2993

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1819 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. 3069**

Lead Sponsor: Representative David Paul 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. 3069

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:

David Paul Linsky

DISTRICT/ADDRESS:

5th Middlesex

HOUSE No. 3069

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1860 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 the
2 Acts of 2009, is hereby amended in paragraph two by inserting, after the words “(1) of section
3 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 Relative to the punishment
of organized retail crimes
H. 3279/ S. 852**

**Lead Sponsor: Representative Michael S. Day and
Senator William N. Brownsberger**

Impetus

The term “organized retail crime” refers to an aggravated form of larceny or shoplifting committed by three or more people acting together to steal and resell or redeem \$2,500 or more within no more than six months. Under the current law, each person in these criminal organizations faces the same lengthy prison sentence. This Bill would allow minor participants, not the leaders of these criminal organizations, to face punishment in line with that faced by others who steal a similar value of property at a single time.

Given the variation of roles that individuals may have as participants in “organized retail crime,” a range of greater and lesser punishments must be available in this statute. The current version of the “organized retail crime” statute requires that each offender be indicted and, if incarcerated, a sentence to the state prison must be imposed.

Need

- There should be a range of sentencing options so that minor members of a retail crimes organization receive a punishment that fits their role in the crime.
- Currently the same severe sentences are provided for both the leaders of a criminal enterprise as for the people who are directed from above to participate.

Legislative Fix

- This Bill would provide a possibility of not more than 2½ years in a house of correction as an alternative to the current substantial terms in the state prison, and would amend G.L. c. 218, § 26, so that the District Court would have jurisdiction over these offenses concurrent with the Superior Court. This would provide a more flexible response than the present requirement of seeking a Superior Court indictment, and of providing no possible sentence but commitment to the state prison.

HOUSE No. 3279

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 relative to the punishment of organized retail crimes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Middlesex District Attorney Marian Ryan</i>	<i>15 Commonwealth Ave Woburn, MA 01801</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>

HOUSE No. 3279

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the punishment of organized retail 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 SECTION 1. Subsection (b) of § 30D of Chapter 266 of the General Laws, as appearing
2 in the 2016 Official Edition, is hereby amended by inserting in the second sentence after the
3 words “shall be punished by imprisonment in the state prison for not more than 10 years” the
4 following language: “or imprisonment in the house of correction for not more than 2 ½ years”.

5 SECTION 2. Subsection (c) of § 30D of Chapter 266 of the General Laws, as appearing
6 in the 2016 Official Edition, is hereby amended by inserting in the second sentence after the
7 words “shall be punished by imprisonment in the state prison for not more than 15 years” the
8 following language: “or imprisonment in the house of correction for not more than 2 ½ years”.

9 SECTION 3. § 26 of Chapter 218 of the General Laws, as amended by St.2018, c. 69,
10 §109, is hereby amended by inserting after the words “and sections sixteen, seventeen, eighteen,
11 nineteen, twenty-eight, thirty” the following language: “thirty D”.

SENATE No. 852

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 punishment of organized retail crimes.

PETITION OF:

NAME:

William N. Brownsberger

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

SENATE No. 852

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the punishment of organized retail 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 SECTION 1. Subsection (b) of § 30D of Chapter 266 of the General Laws, as appearing
2 in the 2016 Official Edition, is hereby amended by inserting in the second sentence after the
3 words “shall be punished by imprisonment in the state prison for not more than 10 years” the
4 following language: “or imprisonment in the house of correction for not more than 2 ½ years”.

5 SECTION 2. Subsection (c) of § 30D of Chapter 266 of the General Laws, as appearing
6 in the 2016 Official Edition, is hereby amended by inserting in the second sentence after the
7 words “shall be punished by imprisonment in the state prison for not more than 15 years” the
8 following language: “or imprisonment in the house of correction for not more than 2 ½ years”.

9 SECTION 3. § 26 of Chapter 218 of the General Laws, as amended by St.2018, c. 69,
10 §109, is hereby amended by inserting after the words “and sections sixteen, seventeen, eighteen,
11 nineteen, twenty-eight, thirty” the following language: “thirty D”.



**An Act Relative to Victims' Rights
H. 3314**

Lead Sponsor: Representative Tami L. Gouveia

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.

Aaron J. Hernandez was convicted of murder in the first degree in Bristol Superior Court; while his conviction was on review in the Superior Court, and after his acquittal on different murder charges in Suffolk County, Mr. Hernandez committed suicide in prison.

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. Benn*, 364 Mont. 153, 156, 158 (2012); *Brass v. State*, 325 P.3d 1256, 1256 (Nev. 2014).

HOUSE No. 3314

The Commonwealth of Massachusetts

PRESENTED BY:

Tami L. Gouveia

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:

Tami L. Gouveia

14th Middlesex

Michelle M. DuBois

10th Plymouth

HOUSE No. 3314

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 709 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 regarding district court jurisdiction of
threats to use deadly weapons, explosives, chemical or
biological agents, or other devices or substances capable of
causing death, serious bodily injury or substantial property damage.
H. 3315/ S. 853**

**Lead Sponsors: Representative Tami L. Gouveia and
Senator William Brownsberger**

Impetus

Currently, G.L. c. 269, §§ 14(b) and 14(c) provide for sentences to a house of correction or to the state prison for whoever threatens to use deadly weapons or explosives or other agents at a location, or causes the evacuation or disruption of a school or other place of assembly.

This Bill reflects the need for prosecutors to have a range of options in bringing charges that reflect the criminal acts. This amendment recognizes that some cases, such as those in which a person makes the threat proves to have no access to deadly weapons or explosives, and knows that no weapons or explosives have actually been placed at the threatened location, should be treated differently than those in which a person makes the threat and has access to deadly weapons or explosives, or knows that weapons or explosives have actually been placed at the threatened location. The current statute should be changed to allow the first type of case to be heard in the District Court, where the maximum sentence is two and a half years in the house of corrections.

The range of cases warrants there being an option to prosecute some threats in District Court.

Need

- Experience has shown that some violations involve circumstances that may be addressed more effectively before a District Court, but the possibility of a sentence of up to 20 years in state prison bars the District Court from taking jurisdiction over this offense under any circumstances.

Legislative Fix

- This Bill would amend G.L. c. 218, § 26 to include this offense within the jurisdiction of the District Court; Section 26 gives the District Court jurisdiction concurrent with the Superior Court over designated offenses.

HOUSE No. 3315

The Commonwealth of Massachusetts

PRESENTED BY:

Tami L. Gouveia

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 district court jurisdiction of threats to use deadly weapons, explosives, chemical or biological agents, or other devices or substances capable of causing death, serious bodily injury or substantial property damage.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Middlesex District Attorney Marian Ryan</i>	<i>15 Commonwealth Ave, Woburn MA 01801</i>

HOUSE No. 3315

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act regarding district court jurisdiction of threats to use deadly weapons, explosives, chemical or biological agents, or other devices or substances capable of causing death, serious bodily injury or substantial property damage.

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 26 of Chapter 218 of the General Laws, as amended by St.2018, c.
2 69, §109, is hereby amended by inserting after the words “of chapter two hundred and sixty-six,”
3 the following language: “subsections (b) and (c) of section fourteen of chapter two hundred and
4 sixty-nine”.

SENATE No. 853

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 district court jurisdiction of threats to use deadly weapons, explosives, chemical or biological agents, or other devices or substances capable of causing death, serious bodily injury or substantial property damage.

PETITION OF:

NAME:

William N. Brownsberger

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

SENATE No. 853

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act regarding district court jurisdiction of threats to use deadly weapons, explosives, chemical or biological agents, or other devices or substances capable of causing death, serious bodily injury or substantial property damage.

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 26 of Chapter 218 of the General Laws, as amended by St.2018, c.
2 69, §109, is hereby amended by inserting after the words “of chapter two hundred and sixty-six,”
3 the following language: “subsections (b) and (c) of section fourteen of chapter two hundred and
4 sixty-nine”.



**An Act relative to the punishment of the crimes of photographing,
videotaping, or electronically surveilling nude or partially nude
persons, or the sexual or intimate parts of a person under or
around the person's clothing
H. 3316**

Lead Sponsor: Representative Tami L. Gouveia

Impetus

Under current law, G.L. c. 272, § 105, a person who secretly photographs or videotapes or electronically surveils others is punishable by up to two and one half years in the house of correction.

While current law recognizes the serious personal invasion of privacy that people who the victims of these types of crimes suffer, there should be a range of sentencing options for those who commit large scale or particularly egregious violations of this law

Our Office has prosecuted more and more of these types of cases over the past few years. Last year, our Office prosecuted a person found to be in possession of dozens of videos of women who were partially dressed.

Despite the overwhelming evidence and convictions on 25 counts of secretly recording a person in a state of nudity, the defendant was only subject to a house of correction sentence and probation. Where the facts warrant, because they are particularly egregious or there are numerous victims, the Commonwealth and the Court should have a range of sentencing options so that sentencing is commensurate with the facts of the crime.

Need

In G.L. c. 272, § 105, we recognized the serious invasion of privacy caused by those who secretly photograph or videotape or electronically surveil a person who is nude or partially nude. Current law caps punishment as a misdemeanor. This Bill would create sentencing options so that the disposition reflects the nature of the crime.

Legislative Fix

- This Bill also would make all violations of subsection (b), creation of these images, an offense within the registration requirements of the sex offender law.

HOUSE No. 3316

The Commonwealth of Massachusetts

PRESENTED BY:

Tami L. Gouveia

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 punishment of the crimes of photographing, videotaping, or electronically surveilling nude or partially nude persons, or the sexual or intimate parts of a person under or around the person’s clothing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Middlesex District Attorney Marian Ryan</i>	<i>15 Commonwealth Ave, Woburn MA 01801</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>

HOUSE No. 3316

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the punishment of the crimes of photographing, videotaping, or electronically surveilling nude or partially nude persons, or the sexual or intimate parts of a person under or around the person’s clothing.

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 paragraph of subsection (b) of § 105 of Chapter 272 of the General
2 Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words
3 “shall be punished by imprisonment in the house of correction for not more than 2½ years” the
4 following language: “or in the state prison for not more than 5 years”.

5 SECTION 2. The second paragraph of subsection (b) of § 105 of Chapter 272 of the
6 General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the
7 words “shall be punished by imprisonment in the house of correction for not more than 2½
8 years” the following language: “or by imprisonment in the state prison for not more than 5
9 years”.

10 SECTION 3. Section 178C of Chapter 6 of the General Laws, as amended by St. 2018,
11 chapter 219, section 1, is hereby amended by inserting into the definition of “Sex offense” after
12 the words “aggravated rape under section 39 of chapter 277;” the following: “photographing,

- 13 videotaping or electronically surveilling another person who is nude or partially nude under
- 14 section 105(b) of said chapter 272;”



**An Act Relative to the Costs of Appeals by the Commonwealth
H. 3356/ S. 878**

**Lead Sponsors: Representative David Paul Linsky and
Senator Cynthia Stone 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. 3356

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 for legislation relative to costs of appeals by the Commonwealth.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

David Paul Linsky

5th Middlesex

Kenneth I. Gordon

21st Middlesex

HOUSE No. 3356

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act for legislation relative 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 is hereby amended by
2 adding, after the third paragraph thereof, the following paragraph:-

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

SENATE No. 878

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 878

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 792 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2016
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 his 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 he incurred as a result of the
8 appeal, including reasonable attorney’s fees, subject to approval of the court.



**An Act to Enhance the Availability of Immunity to Witnesses
in the Courts of the Commonwealth
H. 3359**

Lead Sponsor: Representative Jay D. 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. 3359

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:

Jay D. Livingstone

DISTRICT/ADDRESS:

8th Suffolk

HOUSE No. 3359

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 896 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. 3360**

Lead Sponsor: Representative Jay D. 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. 3360

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:

Jay D. Livingstone

DISTRICT/ADDRESS:

8th Suffolk

HOUSE No. 3360

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 897 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. 3361**

Lead Sponsor: Jay D. 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. 3361

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. 3361

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 898 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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.