

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Kathi-Anne Reinstein

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative To Rape Of An Elder Or A Person With A Disability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frederick E. Berry	Second Essex
Kathi-Anne Reinstein	16th Suffolk
Pam Richardson	6th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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

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

1 **SECTION 1** Chapter 265 of the General Laws, as appearing in the **2006** Official Edition, is hereby
2 amended by adding the following section after section 22B as so appearing:

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

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

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

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(a) the sexual intercourse or unnatural sexual intercourse is committed during
20 the commission or attempted commission of any of the following offenses: (1)
21 armed burglary as set forth in section 14 of chapter 266; (2) unarmed burglary
22 as set forth in section 15 of said chapter 266; (3) breaking and entering as set
23 forth in section 16 of said chapter 266; (4) entering without breaking as set

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24 forth in section 17 of said chapter 266; (5) breaking and entering into a
25 dwelling house as set forth in section 18 of said chapter 266; (6) kidnapping as
26 set forth in section 26 of chapter 265; (7) armed robbery as set forth in section
27 17 of said chapter 265; (8) unarmed robbery as set forth in section 19 of said
28 chapter 265; (9) assault and battery with a dangerous weapon or assault with a
29 dangerous weapon as set forth in sections 15A and 15B of said chapter 265; or
30 (10) home invasion as set forth in section 18C of said chapter 265;

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

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

36 (d) the sexual intercourse or unnatural sexual intercourse is committed while
37 the victim is tied, bound or gagged;

38 (e) the sexual intercourse or unnatural sexual intercourse is committed after
39 the defendant administered or caused to be administered, alcohol or a
40 controlled substance by injection, inhalation, ingestion or any other means to
41 the victim without the victim's consent;

42 (f) the sexual intercourse or unnatural sexual intercourse is committed by a
43 joint enterprise; or

44 (g) the sexual intercourse or unnatural sexual intercourse was committed in a
45 manner in which the victim could contract a sexually transmitted disease or
46 infection of which the defendant knew or should have known he/she was a
47 carrier, shall be punished by imprisonment in the state prison for life or for
48 any term of years, but not less than 15 years. The sentence imposed on such
49 person shall not be reduced to less than 15 years or suspended, nor shall any
50 person convicted under this section be eligible for probation, parole, work
51 release or furlough or receive any deduction from his/her sentence for good
52 conduct until he/she shall have served 15 years of such sentence.

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

55 (3) Whoever has sexual intercourse or unnatural sexual intercourse with an elder
56 or a person with a disability and compels such elder or person with a disability to
57 submit by force and against his will or compels such elder or persons with a
58 disability to submit by threat of bodily injury, and has been previously convicted
59 of or adjudicated delinquent or as a youthful offender for: indecent assault and
60 battery on an elder or person with a disability as set forth in section 13H of
61 chapter 265; indecent assault and battery on a mentally retarded person as set
62 forth in section 13F of chapter 265; assault and battery upon an elder or disabled
63 person as set forth in section 13K of chapter 265; rape as set forth in section 22 of
64 chapter 265; or a like violation of the laws of another state, the United States or a
65 military, territorial or Indian tribal authority, shall be punished by imprisonment
66 in the state prison for life or for any term of years, but not less than 20 years. The
67 sentence imposed on such person shall not be reduced to less than 20 years, or
68 suspended, nor shall any person convicted under this section be eligible for
69 probation, parole, work release or furlough or receive any deduction from his/her

70 sentence for good conduct until he/she shall have served 20 years of such
71 sentence. Prosecutions commenced under this section shall neither be continued
72 without a finding nor placed on file.

73 In any prosecution commenced pursuant to this section, introduction into
74 evidence of a prior adjudication or conviction or a prior finding of sufficient facts
75 by either certified attested copies of original court papers, or certified attested
76 copies of the defendant's biographical and information data from records of the
77 department of probation, any jail or house of correction or the department of
78 correction, shall be prima facie evidence that the defendant before the court has
79 been convicted previously by a court of the commonwealth or any another
80 jurisdiction. Such documentation shall be self authenticating and admissible, after
81 the commonwealth has established the defendant's guilt on the primary offense,
82 as evidence in any court of the commonwealth to prove the defendant's
83 commission of any prior conviction described therein. The commonwealth shall
84 not be required to introduce any additional corroborating evidence or live witness
85 testimony to establish the validity of such prior conviction.

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

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

103 (6) Whoever unlawfully has sexual intercourse or unnatural sexual intercourse
104 with and abuses an elder or a person with a disability as defined in section 13K of
105 chapter 265 and has been previously convicted of or adjudicated delinquent or as
106 a youthful offender for: indecent assault and battery on an elder or person with a
107 disability as set forth in section 13H of chapter 265; indecent assault and battery
108 on a mentally retarded person as set forth in section 13F of chapter 265; assault
109 and battery upon an elder or disabled person as set forth in section 13K of chapter
110 265; rape as set forth in section 22 of chapter 265; or a like violation of the laws
111 of another state, the United States or a military, territorial or Indian tribal
112 authority, shall be punished by imprisonment in the state prison for life or for any
113 term of years, but not less than 15 years. The sentence imposed on such person
114 shall not be reduced to less than 15 years, or suspended, nor shall any person
115 convicted under this section be eligible for probation, parole, work release or

116 furlough or receive any deduction from his/her sentence for good conduct until
117 he/she shall have served 15 years of such sentence. Prosecutions commenced
118 under this section shall neither be continued without a finding nor placed on file.

119 In any prosecution commenced pursuant to this section, introduction into
120 evidence of a prior adjudication or conviction or a prior finding of sufficient facts
121 by either certified attested copies of original court papers, or certified attested
122 copies of the defendant's biographical and information data from records of the
123 department of probation, any jail or house of correction or the department of
124 correction, shall be prima facie evidence that the defendant before the court has
125 been convicted previously by a court of the commonwealth or any another
126 jurisdiction. Such documentation shall be self authenticating and admissible, after
127 the commonwealth has established the defendant's guilt on the primary offense,
128 as evidence in any court of the commonwealth to prove the defendant's
129 commission of any prior conviction described therein. The commonwealth shall
130 not be required to introduce any additional corroborating evidence or live witness
131 testimony to establish the validity of such prior conviction.

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

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