

HOUSE No. 1547

By Mr. Koutoujian of Waltham, petition of Peter J. Koutoujian relative to parental rights and child survivors of homicide. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PARENTAL RIGHTS AND CHILD SURVIVORS OF HOMICIDE.

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 119 of the General Laws is amended by
2 inserting the following section after Section 26A as Section 26B;
3 Chapter 208 of the General Laws is amended by inserting the
4 following section as Section 31B after Section 31A; Chapter 209 of
5 the General Laws is amended by inserting the following section after
6 Section 38 as Section 38A; Chapter 209C of the General Laws is
7 amended to insert the following section after Section 10 as Section
8 10A:—

9 Conviction of a parent for murder of a child's other parent. In
10 issuing any judgment or temporary order of visitation or custody, the
11 conviction by a court of competent jurisdiction of the parent of a
12 child for murder in the first or second degree of the child's other
13 parent, or conviction for aiding, abetting, attempting, conspiring or
14 soliciting to commit murder in the first or second degree of the
15 child's other parent, or a comparable crime against the other parent
16 under federal law or the law of any other state, shall create a rebut-
17 table presumption that contact with the child and exercise of parental
18 rights, including but not limited to care and custody of the child, by
19 the convicted parent are not in the child's best interests. This rebut-
20 table presumption may be overcome only if the court determines
21 that:—

22 (i) the child is competent to signify his or her assent and has
23 assented to an order of the court permitting contact between the

24 convicted parent and the child or exercise of parental rights by the
25 convicted parent; or

26 (ii) the crime occurred in the context of past physical, sexual or
27 psychological abuse committed by the other parent against the con-
28 victed parent as set forth Section 23F of Chapter 233, and contact
29 between the child and convicted parent or award of custody, visita-
30 tion or other rights to the convicted parent is in the child's best inter-
31 ests. If the court determines that the convicted parent has overcome
32 the rebuttable presumption, it shall enter written findings of fact in
33 support of such a determination. This rebuttable presumption applies
34 whether or not the convicted parent has exhausted any right to
35 appeal the conviction, and notwithstanding any order of a court
36 entered prior to the conviction that awarded the convicted parent
37 custody, visitation or other rights related to the child.

38 Except as authorized and ordered by a court under this section, no
39 person who is a party in any action before the court concerning cus-
40 tody or visitation, shall permit contact with the convicted parent in
41 the presence of the child and no person shall visit, telephone, write
42 to, or otherwise communicate with the convicted parent in the
43 child's presence or deliver messages or other communications
44 between the child and the convicted parent.

1 SECTION 2. Section 26 of Chapter 119 of the General Laws is
2 hereby amended by deleting the period at the end of the last sentence
3 in subsection (4) and adding the following:—

4 ; or (iii) the court hearing the petition finds that the parent of the
5 child was convicted by a court of competent jurisdiction of murder
6 in the first or second degree of the child's other parent, or for
7 aiding, abetting, attempting, conspiring or soliciting to commit
8 murder in the first or second degree of the child's other parent, or a
9 crime against the other parent under federal law or the law of any
10 other state that is comparable to those crimes, and (a) there has been
11 no finding by a court that the crime occurred in the context of past
12 physical, sexual or psychological abuse committed by the other
13 parent against the convicted parent as set forth Section 23F of
14 Chapter 233; and (b) the child, if competent to signify his assent, has
15 not assented to an order to dispense with the need for consent by the
16 convicted parent to adoption of the child.

1 SECTION 3. Section 3 of Chapter 210 of the General Laws is
2 hereby amended by deleting the period at the end of the sentence
3 that appears before the last sentence of subsection (c) and inserting
4 the following:—
5 ; (iii) the court hearing the petition finds that the parent of the
6 child was convicted of murder by a court of competent jurisdiction
7 in the first or second degree of the child's other parent, or for aiding,
8 abetting, attempting, conspiring or soliciting to commit murder in
9 the first or second degree of the child's other parent, or a crime
10 against the other parent under federal law or the law of any other
11 state that is comparable to those crimes, and (a) there has been no
12 finding by a court that the crime occurred in the context of past
13 physical, sexual or psychological abuse committed by the other
14 parent against the convicted parent as set forth Section 23F of
15 Chapter 233; and (b) the child, if competent to signify his assent,
16 has not assented to an order to dispense with the need for consent by
17 the convicted parent to adoption of the child.