

SENATE No. 1559

The Commonwealth of Massachusetts

PRESENTED BY:

Frederick E. Berry

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 to protect and enhance the rights of child and adult victims and witnesses of crime.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frederick E. Berry	Second Essex
Peter J. Koutoujian	10th Middlesex
Steven A. Tolman	Second Suffolk and Middlesex
Benjamin B. Downing	Berkshire, Hampshire and Franklin
Richard T. Moore	Worcester and Norfolk
Christine E. Canavan	10th Plymouth
Mary E. Grant	6th Essex
Louis L. Kafka	8th Norfolk
John D. Keenan	7th Essex
Denise Provost	27th Middlesex
Mark C. Montigny	Second Bristol and Plymouth
Jennifer L. Flanagan	Worcester and Middlesex
Richard R. Tisei	Middlesex and Essex
Susan C. Tucker	Second Essex and Middlesex
Bruce E. Tarr	First Essex and Middlesex
Michael R. Knapik	Second Hampden and Hampshire
F. Jay Barrows	1st Bristol
David P. Linsky	5th Middlesex
Barbara A. L'Italien	18th Essex

Timothy J. Toomey, Jr.	26th Middlesex
John W. Scibak	2nd Hampshire
Kay Khan	11th Middlesex
Anne M. Gobi	5th Worcester
Bradley H. Jones, Jr.	20th Middlesex
Robert P. Spellane	13th Worcester
Susan C. Fargo	Third Middlesex
Steven M. Walsh	11th Essex
Robert F. Fennell	10th Essex
Geraldo Alicea	6th Worcester
Ellen Story	3rd Hampshire
James B. Eldridge	Middlesex and Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT AND ENHANCE THE RIGHTS OF CHILD AND ADULT VICTIMS AND WITNESSES OF CRIME.

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.** of chapter 258B of the General Laws, as appearing in the 2004 Official Edition, is
2 hereby amended by inserting, after the word “delinquency”, in line 10, the following words:- or
3 conviction as a youthful offender;
- 4 **Section 2.** Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking, in lines
5 12-14, the words “or found delinquent or against whom a finding of sufficient facts for conviction or
6 finding of delinquency is made” and inserting, in place thereof, the following words:- adjudicated as a
7 delinquent or convicted as a youthful offender, or against whom a finding of sufficient facts is made;
- 8 **Section 3.** Said section 1 of said chapter 258B, as so appearing, is hereby further amended, after the word
9 “stepparent” in lines 15-16, the following word:- grandparent;
- 10 **Section 4.** Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting,
11 after the word “victim” in line 20, the following words:-“Orientation”, a familiarization with the
12 courtroom setting, court personnel, and rules of the court, to the extent practicable under the
13 circumstances as required within this chapter; this requirement may be satisfied through the use of
14 diagrams, photographs, or other reasonable methods;
- 15 **Section 5.** Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking, in line
16 25, the word “which”, and inserting, in place thereof, the following word:- that;
- 17 **Section 6.** Said section 1 of said chapter 258B, as so appearing, is hereby further amended, by deleting,
18 after the word “incompetent” in line 31, the words: “or deceased” and inserting, in place thereof, the
19 words:- “, the family members of such person if the person is deceased even if no arrest, indictment, or
20 complaint has been issued”;
- 21 **Section 7.** Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking, in line
22 40, the words “is expected to”, and inserting, in place thereof, the following word:- may;

23 **Section 8.** Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting,
24 after the word “prosecution”, in line 41, the following words:- or family member or guardian if such
25 person is a minor, incompetent or deceased;

26 **Section 9.** Subsection (b) of section 3 of said chapter 258B, as so appearing, is hereby amended by
27 inserting, in line 16, after the word “all”, the following words:- adult and juvenile;

28 **Section 10.** Subsection (d) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
29 striking, in lines 31-34, the words “protection from local law enforcement agencies from harm and threats
30 of harm arising out of their cooperation with law enforcement and prosecution efforts” and inserting, in
31 place thereof, the following words:- assistance in developing safety plans and appropriate referrals to
32 address harm, threats of harm, or fears arising out of their cooperation with law enforcement and
33 prosecution efforts;

34 **Section 11.** Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking
35 out subsection (i) in its entirety and replacing it with the following new subsection:-

36 (i) for victims, family members, and witnesses, to be provided, by the court as outlined in
37 MGL 211B (17), with a secure waiting area or room which is separate from the waiting area of
38 the defendant or the defendant’s family, friends, attorneys or witnesses, and separate from any
39 district attorney’s office, during court proceedings. The court shall designate a waiting area at
40 each courthouse and develop any reasonable safeguards to minimize contact between victims and
41 the defendant, or the defendant’s family, friends, attorneys or witnesses

42 there shall be a task force established to conduct an assessment and implementation plan regarding the
43 designation or creation of separate and secure waiting areas (SSWA) for victims and witnesses of crime in
44 the commonwealth’s district and superior courthouses, as required under M.G.L. chapter 258B(3)(i) and
45 M.G.L. chapter 211B(17)

46 The task force shall be chaired by both the executive director of the massachusetts office for victim
47 assistance and the chief justice of the administrative office of the trial court or his designee; the task force
48 shall include, but not be limited to: the chair of the victim and witness assistance board or her designee;
49 one (1) victim/public member of the victim and witness assistance board; one (1) community-based
50 victim services provider; the commissioner of the department of capital asset management or his
51 designee; the executive director of the massachusetts district attorneys association or her designee; and
52 two (2) victim witness assistance program directors from district attorneys’ offices. Additional members
53 may be appointed by the governor in consultation with the co-chairs of the task force

54 Within 180 days of the passage of this act, the task force shall file a report, inclusive of a SSWA
55 implementation plan, with the chairs of the house and the senate ways and means committees, the chairs
56 of the house and senate judiciary committee, and the clerks of the house and the senate. If deemed
57 necessary by the co-chairs, a 90 day grace period may be granted for submission of the report. Once the
58 submission plan has been filed, the task force shall submit an implementation progress report to said
59 recipients every 365 days. For those district and superior courthouses undergoing new construction or
60 substantial renovation, the SSWA as defined by the task force shall be included in the final plans and
61 completed construction;

62 **Section 12.** Subsection (l) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
63 striking the word “A” in line 86 and inserting, in place thereof, the following word:- “B”;

64 **Section 13.** Subsection (m) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
65 inserting, in line 88, after the word “informed”, the following words:- by the prosecutor;

66 **Section 14.** Subsection (m) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
67 inserting, at the end thereof, the following:- provided further, defense counsel may not seek to interview a
68 victim or witness under the age of majority, incompetent, or cognitively impaired, until the victim or
69 witness has been informed, in the presence of a parent/guardian or accompanying adult who is not the
70 defendant, of the right to submit to or decline the interview;

71 **Section 15.** Subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
72 striking, in line 111, the word “at” and inserting, in place thereof, the following word:- before;

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74 **Section 16.** Said subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby further
75 amended by inserting after the word “defendant”, in lines 111-112, the following words:- , even if there is
76 admission to sufficient facts, the sentence is mandatory, or there is an agreed upon plea;

77 **Section 17.** Said subsection (p) of said chapter 3 of said chapter 258B, as so appearing, is hereby further
78 amended by inserting, at the end thereof, the following:- provided further, upon showing by the
79 prosecutor that a personal appearance by the victim will cause an unreasonable hardship on the victim, the
80 court shall permit the victim to exercise the right to be heard by submitting a statement through audio tape
81 or videotape to be heard or viewed before sentence or disposition is imposed;

82 **Section 18.** Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking
83 out subsection (t) in its entirety and replacing it with the following new subsection:-

84 (t) for victims and witnesses, to be informed by the prosecutor about notification rights
85 and the certification process required to access the criminal offender record information files
86 pursuant to sections 172(c) and 178A of chapter 6. Individuals certified by the criminal history
87 systems board, or, in the case of a juvenile defendant, certified by the department of youth
88 services, will be informed by the appropriate custodial authority if the offender escapes from
89 custody, receive advance notification when the offender receives a temporary, provisional or
90 final release from custody or is transferred from a secure facility to a less-secure
91 facility. Certified individuals shall provide the criminal history systems board, or the department
92 of youth services in the case of a juvenile defendant, with current contact information;

93 **Section 19.** Said section 3 of said chapter 258B, as so appearing, is hereby further amended by
94 inserting, at the end thereof, the following new subsections:-

95 (w) for victims and witnesses who are minor children or adults with disabilities as
96 defined in subsection (k) of section 13 of chapter 265, as so appearing, notwithstanding any law
97 to the contrary, to have parents, a counselor, friend or other person having a supportive
98 relationship with the victim or witness, in addition to the victim witness advocate, remain in the

99 courtroom during the child's or adult's testimony unless, in written findings made and entered,
100 the court finds that the defendant's constitutional right to a fair trial will be prejudiced;

101 (x) for victims and witnesses who are minor children or adults with disabilities, as
102 defined in subsection (k) of section 13 of chapter 265, as so appearing, for prosecutors to provide
103 an orientation, as defined in this chapter, to the courtroom setting, court personnel, and rules of
104 the court, to the extent practicable under the circumstances;

105 (y) for victims and witnesses, to have a summary of the rights afforded under this section
106 conspicuously posted in all courthouses and police stations. The victim and witness assistance
107 board, pursuant to section 4 of this chapter, shall devise and provide posters to satisfy this
108 requirement to court officials and police station personnel, and, upon request and at the
109 discretion of the office and board, to any other institution or organization to post and maintain in
110 space accessible to the general public. The board shall develop the posters in a variety of
111 languages as determined by the Massachusetts office for victim assistance. Upon request, the
112 board will respond, to the extent possible, to any requests for additional language translations of
113 the posters;

114 (z) for victims, to confer with the prosecution prior to the acceptance of a plea of guilty or
115 admission to sufficient facts. Before the judge accepts a plea of guilty, an admission to sufficient
116 facts, a disposition, or an agreed-upon sentence recommendation, the judge shall ask the
117 prosecutor if the victim has been consulted regarding plea discussions, whether or not the victim
118 agrees or disagrees with the plea discussions and agreement, if the victim was notified of the
119 court date and is present, and if the victim would like to assert their right to offer a victim impact
120 statement;

121 (aa) for victims, to be notified by the prosecutor that they have the right to provide the
122 sex offender registry board with a written impact statement for inclusion in the convicted sex
123 offender's classification determination pursuant to section 178K(1)(k) of chapter 6. Upon the
124 specific request of the victim to the sex offender registry board, the sex offender registry board
125 shall inform the victim of the sex offender's (i) registration and classification status and (ii) the
126 addresses of where the sex offender lives, works, and attends an institution of higher learning
127 regardless of the classification level and registration status of the offender;

128 (bb) for victims and witnesses, to be informed by the court at the daily commencement of
129 the regular criminal docket at which accused persons are arraigned, that a summary of their
130 rights is posted and the location of said posting within the courthouse;

131 (cc) for victims of the commission or attempted commission of violent acts, and others as
132 deemed appropriate by the responding officer, to be notified by said officer who has determined
133 that a crime has been committed, of their rights under this act. Unless the officer reasonably
134 concludes that it is not practicable or safe to do so under the circumstances, he or she shall
135 present a card prepared by the Massachusetts office for victim assistance in consultation with the
136 victim and witness assistance board which includes, but is not limited to, a summary of their
137 rights under this chapter, relevant referrals to victim services and, pursuant to MGL 258C,
138 referrals for victim compensation;

139 **Section 20.** Section 6 of said chapter 258B, as so appearing, is hereby amended by striking out
140 Section 6 in its entirety;

141 **Section 21.** Section 7 of said chapter 258B, as so appearing, is hereby amended by striking out
142 after the words attorney and agency, in line 1, local;

143 **Section 22.** Section 8 of said chapter 258B, as so appearing, is hereby amended by striking out,
144 in lines 4 and 5, the words, “. The court shall impose an assessment of \$50” and inserting, in
145 place thereof, the following word:- , and;

146 **Section 23.** Said section 8 of said chapter 258B, as so appearing, is hereby further amended by
147 striking out, in lines 21-31, the words “In the discretion of the court or the clerk magistrate in the
148 case of a civil motor vehicle infraction that has not been heard by or brought before a justice, a
149 civil motor vehicle assessment imposed pursuant to this section which would cause the person
150 against whom the assessment is imposed severe financial hardship, may be reduced or
151 waived. An assessment other than for a civil motor vehicle infraction imposed pursuant to this
152 section may be reduced or waived only upon a written finding of fact that such payment would
153 cause the person against whom the assessment is imposed severe financial hardship. Such a
154 finding shall be made independently of a finding of indigency for purposes of appointing
155 counsel” and inserting, in place thereof, the following sentence:- Any assessment made pursuant
156 to this section shall not be subject to waiver by any court for any reason;

157 **Section 24.** Section 9 of said chapter 258B, as so appearing, is hereby amended by striking out
158 Section 9 in its entirety;