

HOUSE No. 00454

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

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 parental rights and child survivors of homicide..

PETITION OF:

NAME:

Peter J. Koutoujian

DISTRICT/ADDRESS:

10th Middlesex

HOUSE No. 00454

By Mr. Koutoujian of Waltham, petition (accompanied by [legType], House, No. 00454) of Peter J. Koutoujian relative to parental rights and child survivors of homicide. Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1496 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 inserting the following section
2 after Section 26A as Section 26B; Chapter 208 of the General Laws is amended by inserting the
3 following section as Section 31B after Section 31A; Chapter 209 of the General Laws is
4 amended by inserting the following section after Section 38 as Section 38A; Chapter 209C of the
5 General Laws is amended to insert the following section after Section 10 as Section 10A:-
6 Conviction of a parent for murder of a child's other parent. In issuing any judgment or
7 temporary order of visitation or custody, the conviction by a court of competent jurisdiction of
8 the parent of a child for murder in the first or second degree of the child's other parent, or
9 conviction for aiding, abetting, attempting, conspiring or soliciting to commit murder in the first

10 or second degree of the child's other parent, or a comparable crime against the other parent under
11 federal law or the law of any other state, shall create a rebuttable presumption that contact with
12 the child and exercise of parental rights, including but not limited to care and custody of the
13 child, by the convicted parent are not in the child's best interests. This rebuttable presumption
14 may be overcome only if the court determines that:

15 the child is competent to signify his or her assent and has assented to an order of the court
16 permitting contact between the convicted parent and the child or exercise of parental rights by
17 the convicted parent; or

18 the crime occurred in the context of past physical, sexual or psychological abuse committed by
19 the other parent against the convicted parent as set forth section 23F of chapter 233, and contact
20 between the child and convicted parent or award of custody, visitation or other rights to the
21 convicted parent is in the child's best interests. If the court determines that the convicted parent
22 has overcome the rebuttable presumption, it shall enter written findings of fact in support of such
23 a determination. This rebuttable presumption applies whether or not the convicted parent has
24 exhausted any right to appeal the conviction, and notwithstanding any order of a court entered
25 prior to the conviction that awarded the convicted parent custody, visitation or other rights
26 related to the child.

27 Except as authorized and ordered by a court under this section, no person who is a party in any
28 action before the court concerning custody or visitation, shall permit contact with the convicted
29 parent in the presence of the child and no person shall visit, telephone, write to, or otherwise
30 communicate with the convicted parent in the child's presence or deliver messages or other
31 communications between the child and the convicted parent.

32 SECTION 2. Section 26 of chapter 119 of the General Laws is hereby amended by deleting the
33 period at the end of the last sentence in subsection (4) and adding the following:- ; or (iii)? the
34 court hearing the petition finds that the parent of the child was convicted by a court of competent
35 jurisdiction of murder in the first or second degree of the child's other parent, or for aiding,
36 abetting, attempting, conspiring or soliciting to commit murder in the first or second degree of
37 the child's other parent, or a crime against the other parent under federal law or the law of any
38 other state that is comparable to those crimes, and (a) there has been no finding by a court that
39 the crime occurred in the context of?past physical, sexual or psychological abuse committed by
40 the other parent against the convicted parent as set forth section 23F of chapter 233; and (b) the
41 child, if competent to signify his assent, has not assented to an order to dispense with the need
42 for consent by the convicted parent to adoption of the child.

43 SECTION 3. Section 3 of chapter 210 of the General Laws is hereby amended by deleting the
44 period at the end of the sentence that appears before the last sentence of subsection (c) and
45 inserting the following:- ; (iii) the court hearing the petition finds that the parent of the child was
46 convicted of murder by a court of competent jurisdiction in the first or second degree of the
47 child's other parent, or for aiding, abetting, attempting, conspiring or soliciting to commit
48 murder in the first or second degree of the child's other parent, or a crime against the other parent
49 under federal law or the law of any other state that is comparable to those crimes, and (a) there
50 has been no finding by a court that the crime occurred in the context of?past physical, sexual or
51 psychological abuse committed by the other parent against the convicted parent as set forth
52 section 23F of chapter 233; and (b) the child, if competent to signify his assent, has not assented
53 to an order to dispense with the need for consent by the convicted parent to adoption of the child.