

SENATE No. 1005

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gomez

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 juvenile fees, fines, and restitution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Adam Gomez</i>	<i>Hampden</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/9/2023</i>

SENATE No. 1005

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 1005) of Adam Gomez and Sal N. DiDomenico for legislation relative to juvenile fees, fines, and restitution. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to juvenile fees, fines, and restitution.

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, as appearing in the 2020 Official Edition,
2 is hereby amended by striking out Section 29A.

3 SECTION 2. Section 55 of Chapter 119 of the General Laws, as appearing in the 2020
4 Official Edition, is hereby amended by striking out the following words from the first
5 paragraph:-

6 A parent, guardian or person with whom such child resides who is summoned to appear
7 before the court to show cause why such child shall not be adjudged a delinquent child by reason
8 of having committed the offense of willful or malicious destruction or wanton destruction of
9 property, in violation of the provisions of section one hundred and twenty-seven or one hundred
10 and twenty-seven A of chapter two hundred and sixty-six, and who willfully fails to so appear
11 shall be punished by a fine of not less than two hundred nor more than three hundred dollars.

12 SECTION 3. Section 58B of Chapter 119 of the General Laws, as appearing in the 2020
13 Official Edition, is hereby amended by inserting after the words “ section sixty-two “ the
14 following words:-

15 subject to a determination of the youth's ability to pay. Restitution shall not be ordered in
16 excess of the youth’s ability to pay and the length of time it may take a youth to pay may not be
17 considered in determining the length of probation.”, and by amending it further by striking out
18 the following words “; and in addition to or in lieu of such disposition, the court may impose
19 upon such child a fine not exceeding the amount of the fine authorized for the violation of such
20 statute, by-law, ordinance or regulation. Any fine imposed under the authority of this section
21 shall be collected, recovered and paid over in the manner provided by chapters two hundred and
22 seventy-nine and two hundred and eighty; provided, however, that if any child shall neglect, fail
23 or refuse to pay a fine imposed under this section, he may be arrested upon order of the court and
24 brought before the court, which may thereupon place him in the care of a probation officer or
25 commit him to the custody of the department of youth services; but no such child shall be
26 committed to any jail, house of correction, or correctional institution of the commonwealth.

27 SECTION 4. Chapter 119 of the General Laws, as appearing in the 2020 Official Edition,
28 is hereby amended by adding the following section:-

29 Section 58C. Notwithstanding any general or special law or rule or regulation to the
30 contrary, no fine or fee shall apply to any person based on an offense committed while under the
31 age of criminal majority or the person’s parent, guardian, or legal custodian.

32 SECTION 5. Chapter 119 of the General Laws, as appearing in the 2020 Official Edition,
33 is hereby amended by striking out Section 62, and inserting in its place the following:-

34 Section 62. If, in adjudging a person a delinquent child, the court finds, as an element of
35 such delinquency, that he has committed an act involving liability in a civil action, and such
36 delinquent child is placed on probation, the court may hold a restitution hearing. There shall be
37 no mandatory order of restitution, and any order shall be made at the discretion of the presiding
38 judge. At a restitution hearing, the court shall make a determination of a youth's ability to pay.
39 The amount set may not exceed the youth's ability to pay and the length of time it may take a
40 youth to pay may not be taken into consideration in determining the length of probation. The
41 youth's term of probation shall not be extended or revoked solely based upon the nonpayment of
42 restitution. There shall be a presumption of inability to pay, which may be rebutted at a
43 restitution hearing by evidence establishing that the youth (1) has an income that is 250% of the
44 federal poverty line, independent of parental or other family income; (2) is not currently
45 incarcerated, detained, or in out-of-home placement, and (3) is not receiving needs-tested
46 government benefits, including but not limited to free school lunch, SNAP, TANF, SSI, or
47 housing assistance. A juvenile for whom restitution is ordered who is not able to make
48 restitution payments in the manner ordered by the court may move the court for a modification of
49 the restitution order. If the court determines the juvenile is unable to pay the restitution in the
50 time and manner ordered, the court may modify its prior order to allow additional time for
51 payment, reduce the amount of restitution, or eliminate the amount of restitution ordered.

52 SECTION 6. Section 63 of Chapter 119 of the General Laws, as appearing in the 2020
53 Official Edition, is hereby amended by inserting after "any person" in line 1 the following
54 words:-

55 over the age of criminal majority when charged

56 SECTION 7. Section 69 of Chapter 119 of the General Laws, as appearing in the 2020
57 Official Edition, is hereby amended by inserting after “warrant for his arrest” the following
58 language:-

59 except that a warrant may not issue solely for nonpayment of fines or fees.

60 SECTION 8. Section 145 of Chapter 127 of the General Laws, as appearing in the 2020
61 Official Edition, is hereby amended by striking section (e) and inserting in its place the
62 following:-

63 (e) A justice of the trial court shall not commit a person to a prison, place of confinement
64 or the department of youth services solely for the non-payment of money based on conduct that
65 occurred committed while under the age of criminal majority.

66 SECTION 9. Section 2 of Chapter 211D of the General Laws, as appearing in the 2020
67 Official Edition, is hereby amended by inserting after the words “motor vehicles,” the following
68 words:-

69 No one accused of committing an offense while under the age of criminal majority will
70 be assessed any fee for the appointment of counsel.

71 SECTION 10. Section 2A of Chapter 211D of the General Laws, as appearing in the
72 2020 Official Edition, is hereby amended by striking out in subsection (f), the words “under 18
73 years of age,” and inserting in place thereof the following:-

74 alleged to have committed an offense committed while under the age of criminal
75 majority,

76 SECTION 11. Chapter 258B of the General Laws, as appearing in the 2020 Official
77 Edition, is hereby amended by striking out Section 8 and inserting in its place the following:-

78 Section 8. The court shall impose an assessment of no less than \$90 against any person
79 who is convicted of a felony or against whom a finding of sufficient facts for a conviction is
80 made on a complaint charging a felony committed when over the age of criminal majority. The
81 court shall impose an assessment of \$50 against any person who is convicted of a misdemeanor
82 or against whom a finding of sufficient facts for a conviction is made on a complaint charging a
83 misdemeanor when over the age of criminal majority. The court shall impose an additional
84 domestic violence prevention and victim assistance assessment of \$50 for: (i) any violation of an
85 order issued pursuant to sections 18 or 34B of chapter 208, section 32 of chapter 209, sections 3,
86 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C; (ii) a conviction for an act which
87 would constitute abuse, as defined in section 1 of chapter 209A; or (iii) a violation of section
88 13M or 15D of chapter 265, which shall be deposited in the Domestic and Sexual Violence
89 Prevention and Victim Assistance Fund, established in section 20 of chapter 17. The court,
90 including the clerk-magistrate, or the registrar of motor vehicles shall impose an assessment of
91 \$45 against any violator who fails to pay the scheduled civil assessment for a civil motor vehicle
92 infraction or to request a noncriminal hearing within the twenty day period provided for in
93 subsection (A) of section three of chapter ninety C, except where the person is required by law to
94 exercise the right to pay before a justice. When multiple civil motor vehicle infractions arising
95 from a single incident are charged, the total assessment shall not exceed \$75. In the discretion of
96 the court or the clerk magistrate in the case of a civil motor vehicle infraction that has not been
97 heard by or brought before a justice, a civil motor vehicle assessment imposed pursuant to this
98 section which would cause the person against whom the assessment is imposed severe financial

99 hardship, may be reduced or waived. If it is determined by a written finding of fact that an
100 assessment, other than for a civil motor vehicle infraction imposed by this section would cause a
101 substantial financial hardship to the person against whom the assessment is imposed or the
102 person's immediate family or the person's dependents, the court may waive the fee or structure a
103 payment plan in order to ensure compliance with payment; provided, however, that the court
104 may order a person required to pay a domestic violence prevention and victim assistance
105 assessment to complete at least 8 hours of community service in order to satisfy such assessment,
106 if a structured payment would continue to impose a severe financial hardship. Such a finding
107 shall be made independently of a finding of indigency for purposes of appointing counsel. If the
108 person is sentenced to a correctional facility in the commonwealth and the assessment has not
109 been paid, the court shall note the assessment on the mittimus.

110 All such assessments made shall be collected by the court or by the registrar, as the case
111 may be, and shall be transmitted monthly to the state treasurer. If the person convicted is
112 sentenced to a correctional facility in the commonwealth, the superintendent or sheriff of the
113 facility shall deduct any part or all of the monies earned or received by any inmate and held by
114 the correctional facility, to satisfy the victim and witness assessment, and shall transmit such
115 monies to the court monthly. The assessment from any conviction which is subsequently
116 overturned on appeal shall be refunded by the court to the person whose conviction is
117 overturned. Said court shall deduct such funds from the assessments transmitted to the state
118 treasurer. Assessments pursuant to this section shall be in addition to any other fines or
119 restitution imposed in any disposition.

120 When a determination of the order of priority for payments required of a defendant must
121 be made by the court or other criminal justice system personnel required to assess and collect

122 such fines, assessments or other payments, the victim and witness assessment and the domestic
123 violence prevention and victim assistance assessment mandated by this section shall be the
124 defendant's first obligation.

125 SECTION 12. Section 1 of Chapter 258C of the General Laws, as appearing in the 2020
126 Official Edition, is hereby amended by inserting the following language in the definition of the
127 word "victim" after the word "death":- a person who suffers a financial loss as the result of a
128 crime committed by a person under the age of criminal majority, or personal physical or
129 psychological injury or death:

130 SECTION 13. Section 2 of Chapter 258C of the General Laws, as appearing in the 2020
131 Official Edition, is hereby amended by inserting the following:-

132 Section 2. (a) No compensation shall be paid under this chapter unless the division finds
133 that a crime was committed and that such crime (i) was committed by a person under the age of
134 criminal majority and resulted in a financial loss to the victim or (ii) directly resulted in personal
135 physical or psychological injury to, or death of, the victim.

136 (b) No compensation shall be paid under this chapter unless the claimant demonstrates
137 that the crime was reported to the police or other law enforcement authorities or to an agency or
138 entity obligated by law to report complaints of criminal misconduct to law enforcement
139 authorities. Except in the case where the division finds such report to have been delayed for good
140 cause, such report shall have been made within five days after the occurrence of such crime;
141 provided, however, that a claimant who was a victim under 18 years of age shall not be required
142 to file such report within 5 days.

143 (c) A claimant shall be eligible for compensation only if such claimant cooperates with
144 law enforcement authorities in the investigation and prosecution of the crime in which the victim
145 suffered a financial loss as a result of a crime committed by a person under the age of criminal
146 majority or was injured or killed unless the claimant demonstrates that he possesses or possessed
147 a reasonable excuse for failing to cooperate.

148 (d) A claimant shall not be eligible for compensation if such compensation would
149 unjustly benefit the offender; provided, however, that a claimant shall not, except pursuant to
150 regulations enacted in accordance with section four to prevent unjust enrichment, be denied
151 compensation because of such claimant's or victim's familial relationship with the offender or
152 because of the sharing of a residence by the victim or claimant and the offender.

153 (e) An offender or an accomplice of an offender shall not be eligible to receive
154 compensation with respect to a crime committed by an offender. To the extent that the victim's
155 acts or conduct provoked or contributed to the injuries, the division may reduce or deny an award
156 to the claimant or claimants in accordance with regulations enacted pursuant to section four. In
157 the event of a victim's death by homicide, an award may be reduced except that the costs for
158 appropriate and modest funeral, burial or cremation services shall be paid by the fund.

159 [There is no subsection (f).]

160 (g) The claimant may retain counsel under this chapter. Attorneys fees shall be deducted
161 from, and not in addition to, the total award for compensation. No attorney's fees shall be paid
162 unless the attorney submits an affidavit which sets forth the hours worked and the services
163 rendered for representing the claimant in the claim for compensation. The division may include

164 as part of its award, reasonable attorney's fees to be determined by the division in an amount not
165 to exceed fifteen percent of the total award for compensation.

166 SECTION 14. Section 30 of Chapter 276 of the General Laws, as appearing in the 2020
167 Official Edition, is hereby amended by inserting in the first sentence after the words "any
168 person," the following:-

169 excepting individuals alleged to have committed an offense while under the age of
170 criminal majority,

171 SECTION 15. Section 87A of Chapter 276 of the General Laws, as appearing in the 2020
172 Official Edition, is hereby amended by striking out before (ii) the word "or" and inserting in the
173 first paragraph after the words "written certification," the following words:-

174 or (iii) solely on the basis of nonpayment of a fine, fee, restitution, or other monetary
175 obligation imposed as a result of an offense committed while under the age of criminal majority.

176 SECTION 16. Section 87A of Chapter 276 of the General Laws, as appearing in the 2020
177 Official Edition, is hereby amended by inserting the following:-

178 Notwithstanding this section or any other general or special law to the contrary, no fee or
179 surcharge required pursuant to this section shall be assessed upon any person placed on probation
180 for an offense committed while under the age of criminal majority.

181 SECTION 17. On the effective date of this section, the balance of any court-assessed or
182 court-ordered costs imposed against a juvenile, or other person who is liable for the support of a
183 juvenile, are unenforceable and not collectable.

184 SECTION 18. Section 178Q of Chapter 6 of the General Laws, as appearing in the 2020
185 Official Edition, is hereby amended by inserting after “upon every sex offender” the following:-
186 except those who committed their offense while under the age of criminal majority.