

SENATE No. 1096

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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 to empower and protect survivors of domestic violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	
<i>Steven George Xiarhos</i>	<i>5th Barnstable</i>	<i>3/9/2023</i>

SENATE No. 1096

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 1096) of Patrick M. O'Connor and Steven George Xiarhos for legislation to empower and protect survivors of domestic violence. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to empower and protect survivors of domestic violence.

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. Notwithstanding any general or special law to the contrary, there shall be
2 established a special commission to study the Commonwealth’s response to and resources for
3 victims of domestic violence and sexual assault.

4 (a) The commission shall be comprised of the following members: the commissioner of
5 probation; the director of the juvenile court probation department; the director of the probate and
6 family court probation department; the director of the office of community corrections; the
7 director of the electronic monitoring center; the executive director of the governor’s council to
8 address sexual assault and domestic violence; an assistant attorney general to be appointed by the
9 attorney general; the secretary of the executive office of public safety and security; the director
10 of the Massachusetts office for victim assistance; two SAFEPLAN advocates to be appointed by
11 the director of the Massachusetts office for victim assistance; the director of Jane Doe Inc. of
12 Boston; the director of New Hope, Inc. of Attleboro; the director of the South Shore Resource

13 and Advocacy Center; the director of the Massachusetts intimate partner abuse education
14 program; a law enforcement officer with experience in domestic violence and sexual assault
15 cases to be appointed by the governor; the head of the domestic violence unit within the Boston
16 police department; and two survivors of domestic abuse to be appointed by the governor. The
17 board shall be chaired by the director of the Massachusetts office for victim assistance. Each
18 such member may appoint a designee to serve in the member's place.

19 (b) The commission shall analyze current resource offerings to victims of domestic
20 violence and sexual assault; study the efficiency of state departments in maintaining victim
21 safety, including but not limited to probation departments; consider ways to provide robust
22 opportunities for victim and community engagement, ongoing analysis, and oversight of
23 probation department policies, practices, and procedures; analyze income-based privileges and
24 disadvantages for victims in participating with probation proceedings; consider ways to ensure
25 that victims are part of the probation process while holding offenders accountable and
26 simultaneously reducing the rates of recidivism; analyze probation violation reporting advisories
27 and other written resources and whether they are helpful, understandable, and effective for
28 victims; and determine the feasibility of a complaint communication tool for victims to report
29 probation officer misconduct.

30 (c) The first meeting of the commission shall take place no later than December 1, 2023
31 and shall be organized by the director of the Massachusetts office for victim assistance.

32 (d) The commission shall produce a report of their findings and analysis along with any
33 recommendations for legislation to the Clerks of the House and Senate and the chairs of the Joint
34 Committee on the Judiciary no later than December 1, 2024.

35 SECTION 2. Chapter 276 of the general laws, as so appearing, is hereby amended by
36 inserting the following new section:-

37 “Section 99C. Domestic violence and sexual assault probation unit

38 There shall be established in the superior court department, the Boston municipal court
39 department, and divisions of the probate and family and district court departments a domestic
40 violence and sexual assault probation unit within the court’s probation department. For the
41 purposes of this section, the word “victim” shall mean a complainant that has filed a complaint
42 under chapter 209A. For the purposes of this section, the word “unit” shall mean the domestic
43 violence and sexual assault probation unit. The unit shall consist of:

44 (a) a domestic violence and sexual assault victim advocate who shall be stationed in the
45 probation department and employed by an external non-profit organization whose mission
46 includes but is not limited to advocating for victims of domestic violence and sexual assault by
47 way of prevention and intervention services, receiving and handling victim complaints against
48 probation officers, raising public awareness, and promoting safety and justice. The victim
49 advocate shall act as the primary liaison between a victim that has filed a complaint and
50 probation officers assigned to the victim’s open case. The victim advocate shall notify victims of
51 any scheduled proceedings pursuant to the victim’s complaint, their rights in the probation
52 process as established in the Victims Bill of Rights in Section 3 of Chapter 258B of the General
53 Laws, as amended by this act, as well as the contact information of the probation officer assigned
54 to the respondent of the victim’s complaint. The victim advocate shall interact with certified
55 batterer’s treatment programs if the respondent is so enrolled to obtain current information to
56 provide associated probation officers. The victim advocate shall compile and maintain pertinent

57 information as to the victim and their complaint, including but not limited to victim contact with
58 release risk assessments, police reports relating to arrests and non-arrests, board of probation
59 record, the interstate identification index, restraining orders and affidavits, victim statements,
60 medical reports and photographs evidencing injury, and reports from certified batterer's
61 treatment programs.

62 (b) probation officers as established in section 83 of chapter 276 of the general laws who
63 shall exclusively be assigned to cases and complaints involving domestic violence and sexual
64 assault. Probation officers within the unit shall be assigned to an offender or respondent to a
65 domestic violence or sexual assault case or complaint. The probation officer that is assigned to
66 an offender or respondent shall continue to serve the same client if they are found to have re-
67 offended or committed the same offense against the original victim or a new victim. Probation
68 officers within the unit, in addition to the training and education set forth in section 85 of said
69 chapter 276, shall attend a training course on domestic violence and sexual assault and
70 interacting with offenders. Said training course shall be designed and certified by the Governor's
71 council to address sexual assault and domestic violence in collaboration with any affiliate non-
72 profit organizations. If a probation officer's assigned respondent or offender enrolls in a certified
73 batterer's treatment program and is found to be non-compliant with the requirements of the
74 program, the probation officer shall surrender the assigned respondent or offender. During
75 hearings and proceedings, probation officers shall disclose to the judge all material relative to the
76 respondent's conduct including but not limited to any contact with the victim, global positioning
77 satellite tracking device maintenance, or violations of conditions of release.

78 SECTION 3. Chapter 276 of the general laws is hereby further amended in section 58A
79 subsection (2) by inserting a new subparagraph after subparagraph (2)(B):-

80 “(C) subject to the condition that the person maintain or commence a certified batterers’
81 treatment program in the case of a violation of an order pursuant to section 3, 4 or 5 of chapter
82 209 A, or a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A
83 or of a violation of an order of protection issued under said chapter 209A in effect”

84 SECTION 4. Chapter 209A of the general laws, as so appearing, is hereby amended in
85 section 1 by striking the definition of “Abuse” and replacing it with the following:-

86 "Abuse", the occurrence of one or more of the following acts between family, intimate
87 partners, or household members:

88 (a) attempting to cause or causing physical harm;

89 (b) placing another in fear of imminent serious physical harm;

90 (c) causing another to engage involuntarily in sexual relations by force, threat or duress;

91 (d) coercive control, which is a pattern of behavior that in purpose or effect unreasonably
92 interferes with a person’s free will and personal liberty. Examples of coercive control include,
93 but are not limited to, unreasonably engaging in any of the following:

94 (1) isolating the other party from friends, relatives, or other sources of support;

95 (2) depriving the other party of basic necessities;

96 (3) controlling, regulating, or monitoring the other party’s movements, communications,
97 daily behavior, finances, economic resources, or access to services;

98 (4) compelling the other party by force, threat of force, or intimidation, including threats
99 based on actual or suspected immigration status, to engage in conduct from which the other party
100 has a right to abstain or to abstain from conduct in which the other party has a right to engage.

101 SECTION 5. Chapter 209A of the general laws is hereby further amended in section 3 in
102 subsection (i) by inserting at the end of the third paragraph the following:-

103 “When reviewing a request to extend or renew an order, the court shall take into account
104 sobriety and substance use recovery, based on independent medical standards, if substance use
105 was a factor in issuing the original order. A lack of sobriety or continuing existence of substance
106 use shall weigh in favor of extending or renewing the order.”

107 SECTION 6. Chapter 209A of the general laws is hereby further amended in section 7 in
108 the fifth paragraph by striking out the first sentence and inserting in place thereof the following:-

109 “Any violation of such order or a protection order issued by another jurisdiction shall be
110 punishable by a fine of not more than ten thousand dollars, or by imprisonment for not more than
111 five years in a house of correction, or by both such fine and imprisonment.”

112 SECTION 7. Chapter 209A is hereby further amended in section 7 by inserting after the
113 word “compliance” at the end of the sixth paragraph the following sentence:-

114 “A defendant will not be relieved of his requirement to regularly attend a certified or
115 provisionally certified batterer’s treatment program until said program can confirm in signed
116 writing with the probation department that the defendant has shown marked improvements and
117 has reached a level of understanding and reform that would deem them a non-threat to women. If
118 the defendant is arrested or investigated by the police in connection with reports of domestic

119 violence or sexual assault while enrolled with a certified batterer’s treatment program, said
120 program shall be apprised of the arrest or investigation by the defendant’s probation officer.”

121 SECTION 8. Chapter 209A is hereby further amended in section 7 by inserting after the
122 word “system” at the end of eighth paragraph the following new paragraph:-

123 “The removal or destroying of said global positioning satellite tracking device without
124 judicial approval or without a showing of necessity to prevent greater harm shall constitute a
125 felony with a mandatory minimum sentence of 2 years in a state prison.”

126 SECTION 9. Chapter 209A is hereby amended in section 9 by adding at the end the
127 following:-

128 “The form of complaint shall be supplied without withholding to any person who
129 requests said form and shall be made easily accessible to the public by the offices promulgating
130 said form.”

131 SECTION 10. The administrative justices of the superior court, probate and family court,
132 district court, and the Boston municipal court departments shall jointly promulgate a new form of
133 complaint for use under Chapter 209A of the general laws pursuant to this act which shall
134 include but not be limited to the following additional fields:

135 (1) a field wherein a petitioner may indicate whether they have reasonable cause to be in
136 fear of their life at the time of the complaint form’s submission;

137 (2) a field wherein a petitioner may indicate whether they are a victim of coercive
138 control, a form of abuse as provided in section 4 of this act.

139 SECTION 11. Chapter 258B of the general laws, as so appearing, is hereby amended in
140 section 3 in paragraph (b) by adding at the end the following:-

141 “If the respondent or offender has obtained approval to reschedule a hearing or
142 proceeding, the court shall postpone the commencement of the proceeding if the victim is not
143 present and if they have received communication that the victim is in transit to the proceeding,
144 provided that the court may begin the proceeding within one hour of learning that the victim is in
145 transit. The court may within its discretion postpone the proceeding for any amount of time to
146 allow the victim to be present. If the victim cannot be present for a hearing or proceeding that
147 was rescheduled by the respondent, the court may allow the victim advocate probation officer to
148 offer remarks on behalf of the victim.”

149 SECTION 12. Chapter 258B is hereby further amended in section 3 in paragraph (g) by
150 inserting after the word “recommendation”, the second time it appears, the following:-

151 “The prosecutor shall provide ample time to confer with the victim to fully explain the
152 position and answer questions or address concerns.”

153 SECTION 13. Chapter 258B is hereby further amended in section 3 in paragraph (p) by
154 adding at the end the following:-

155 “The court has the discretion to allow a victim to make a statement at any time during the
156 proceeding prior to sentencing. The court shall allow a victim of domestic violence abuse as
157 defined in Section 1 of Chapter 209A to make a brief statement at a hearing or proceeding prior
158 to sentencing in response to a statement by the defendant or his attorney regarding a violation of
159 a protective order, a violation of a condition of release, improper tampering with a global
160 positioning satellite tracking device system, or failure to disclose relevant information on such

161 matters. A judge may allow the victim or victim advocate probation officer to stipulate facts
162 provided by the respondent;”

163 SECTION 14. Chapter 258B is hereby further amended in section 3 by adding the
164 following new subparagraph:-

165 “(x) In the event of a necessitated change in prosecutors assigned to the victim’s case, the
166 victim shall have the right to confer with the new prosecutor for a minimum of one hour to
167 discuss the facts of the case and familiarize the victim with the prosecutor.”

168 SECTION 15. This Act shall go into effect upon its passage.