

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,
5 in lines 12-14, the words “or found delinquent or against whom a finding of sufficient facts for conviction
6 or 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
9 the word “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
11 inserting, 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,
16 in line 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
18 deleting, after the word “incompetent” in line 31, the words: “or deceased” and inserting, in place thereof,
19 the words:- “, the family members of such person if the person is deceased even if no arrest, indictment,
20 or complaint has been issued”;

21 **Section 7.** Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking,
22 in line 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
24 inserting, after the word “prosecution”, in line 41, the following words:- or family member or guardian if
25 such 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
27 by 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
29 amended by striking, in lines 31-34, the words “protection from local law enforcement agencies from
30 harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts”
31 and inserting, in place thereof, the following words:- assistance in developing safety plans and appropriate
32 referrals to address harm, threats of harm, or fears arising out of their cooperation with law enforcement
33 and prosecution efforts;

34 **Section 11.** Said section 3 of said chapter 258B, as so appearing, is hereby amended by
35 striking 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
63 amended by 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
65 amended by 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
67 amended by inserting, at the end thereof, the following:- provided further, defense counsel may not seek
68 to interview a victim or witness under the age of majority, incompetent, or cognitively impaired, until the
69 victim or witness has been informed, in the presence of a parent/guardian or accompanying adult who is
70 not the 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
72 amended by striking, in line 111, the word “at” and inserting, in place thereof, the following word:-
73 before;

74

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

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

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

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

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

96 (w) for victims and witnesses who are minor children or adults with disabilities as
97 defined in subsection (k) of section 13 of chapter 265, as so appearing, notwithstanding any law
98 to the contrary, to have parents, a counselor, friend or other person having a supportive
99 relationship with the victim or witness, in addition to the victim witness advocate, remain in the
100 courtroom during the child's or adult's testimony unless, in written findings made and entered,
101 the court finds that the defendant's constitutional right to a fair trial will be prejudiced;

102 (x) for victims and witnesses who are minor children or adults with disabilities, as
103 defined in subsection (k) of section 13 of chapter 265, as so appearing, for prosecutors to provide

104 an orientation, as defined in this chapter, to the courtroom setting, court personnel, and rules of
105 the court, to the extent practicable under the circumstances;

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

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

122 (aa) for victims, to be notified by the prosecutor that they have the right to provide the
123 sex offender registry board with a written impact statement for inclusion in the convicted sex
124 offender's classification determination pursuant to section 178K(1)(k) of chapter 6. Upon the
125 specific request of the victim to the sex offender registry board, the sex offender registry board

126 shall inform the victim of the sex offender's (i) registration and classification status and (ii) the
127 addresses of where the sex offender lives, works, and attends an institution of higher learning
128 regardless of the classification level and registration status of the offender;

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

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

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

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

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

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

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