

**SENATE . . . . . No. 00640**

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:
<i>Frederick E. Berry</i>	<i>Second Essex</i>
<i>Steven A. Tolman</i>	<i>Second Suffolk and Middlesex</i>
<i>Stephen M. Brewer</i>	<i>Worcester, Hampden, Hampshire, Franklin</i>
<i>Steven A. Baddour</i>	<i>First Essex</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Michael R. Knapik</i>	<i>Second Hampden and Hampshire</i>
<i>Kathi-Anne Reinstein</i>	<i>16th Suffolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Steven M. Walsh</i>	<i>11th Essex</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

*F. Jay Barrows*

*1st Bristol*

*John W. Scibak*

*2nd Hampshire*

*Bradley H. Jones, Jr.*

*20th Middlesex*

# SENATE . . . . . No. 00640

By Mr. Berry, petition (accompanied by bill, Senate, No. 640) of Story, Walsh, Reinstein and other members of the General Court for legislation to protect and enhance the rights of child and adult victims and witnesses of crime [Joint Committee on the Judiciary].

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
\_\_\_\_\_

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  
2 Edition, is hereby amended by inserting, after the word “delinquency”, in line 10, the following  
3 words:- or conviction as a youthful offender;

4           Section 2. Said section 1 of chapter 258B, as so appearing, is hereby further amended by  
5 striking, in lines 12-14, the words “or found delinquent or against whom a finding of sufficient  
6 facts for conviction or finding of delinquency is made” and inserting, in place thereof, the  
7 following words:- adjudicated as a delinquent or convicted as a youthful offender, or against  
8 whom a finding of sufficient facts is made;

9           Section 3. Said section 1 of said chapter 258B, as so appearing, is hereby further  
10 amended, after the word “stepparent” in lines 15-16, the following word:- grandparent;

11 Section 4. Said section 1 of said chapter 258B, as so appearing, is hereby further  
12 amended by inserting, after the word “victim” in line 20, the following words:-“Orientation”, a  
13 familiarization with the courtroom setting, court personnel, and rules of the court, to the extent  
14 practicable under the circumstances as required within this chapter; this requirement may be  
15 satisfied through the use of diagrams, photographs, or other reasonable methods;

16 Section 5. Said section 1 of chapter 258B, as so appearing, is hereby further amended by  
17 striking, in line 25, the word “which”, and inserting, in place thereof, the following word:- that;

18 Section 6. Said section 1 of said chapter 258B, as so appearing, is hereby further  
19 amended, by deleting, after the word “incompetent” in line 31, the words: “or deceased” and  
20 inserting, in place thereof, the words:- “, the family members of such person if the person is  
21 deceased even if no arrest, indictment, or complaint has been issued”;

22 Section 7. Said section 1 of chapter 258B, as so appearing, is hereby further amended by  
23 striking, in line 40, the words “is expected to”, and inserting, in place thereof, the following  
24 word:- may;

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

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

30 Section 10. Subsection (d) of said section 3 of said chapter 258B, as so appearing, is  
31 hereby amended by striking, in lines 31-34, the words “protection from local law enforcement

32 agencies from harm and threats of harm arising out of their cooperation with law enforcement  
33 and prosecution efforts” and inserting, in place thereof, the following words:- assistance in  
34 developing safety plans and appropriate referrals to address harm, threats of harm, or fears  
35 arising out of their cooperation with law enforcement and prosecution efforts;

36 Section 11. Subsection (l) of said section 3 of said chapter 258B, as so appearing, is  
37 hereby amended by striking the word “A” in line 86 and inserting, in place thereof, the following  
38 word:- “B”;

39 Section 12. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is  
40 hereby amended by inserting, in line 88, after the word “informed”, the following words:- by the  
41 prosecutor;

42 Section 13. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is  
43 hereby amended by inserting, at the end thereof, the following:- provided further, defense  
44 counsel may not seek to interview a victim or witness under the age of majority, incompetent, or  
45 cognitively impaired, until the victim or witness has been informed, in the presence of a  
46 parent/guardian or accompanying adult who is not the defendant, of the right to submit to or  
47 decline the interview;

48 Section 14. Subsection (p) of said section 3 of said chapter 258B, as so appearing, is  
49 hereby amended by striking, in line 111, the word “at” and inserting, in place thereof, the  
50 following word:- before;

51 Section 15. Said subsection (p) of said section 3 of said chapter 258B, as so appearing, is  
52 hereby further amended by inserting after the word “defendant”, in lines 111-112, the following

53 words:- , even if there is admission to sufficient facts, the sentence is mandatory, or there is an  
54 agreed upon plea;

55 Section 16. Said subsection (p) of said chapter 3 of said chapter 258B, as so appearing, is  
56 hereby further amended by inserting, at the end thereof, the following:- provided further, upon  
57 showing by the prosecutor that a personal appearance by the victim will cause an unreasonable  
58 hardship on the victim, the court shall permit the victim to exercise the right to be heard by  
59 submitting a statement through audio tape or videotape to be heard or viewed before sentence or  
60 disposition is imposed;

61 Section 17. Said section 3 of said chapter 258B, as so appearing, is hereby amended by  
62 striking out subsection (t) in its entirety and replacing it with the following new subsection:-

63 (t) for victims and witnesses to be informed by the prosecutor about their notification rights and  
64 the certification process required to access the criminal offender record information files under  
65 sections 172 and 178A of chapter 6. The criminal history systems board, or in the case of a  
66 juvenile , the department of youth services, shall be informed by the appropriate custodial  
67 authority if the offender escapes from custody and shall receive advance notification when the  
68 offender receives a temporary, provisional or final release from custody or is transferred from a  
69 secure facility to a less secure facility. Certified individuals shall provide the criminal systems  
70 history board or the department of youth services in the case of a juvenile, with current contact  
71 information;

72 Section 18. Said section 3 of said chapter 258B, as so appearing, is hereby further  
73 amended by inserting, at the end thereof, the following new subsections:-

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

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

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

93 (y) for victims, to confer with the prosecution prior to the acceptance of a plea of  
94 guilty or admission to sufficient facts. Before the judge accepts a plea of guilty, an admission to  
95 sufficient facts, a disposition, or an agreed-upon sentence recommendation, the judge shall ask

96 the prosecutor if the victim has been consulted regarding plea discussions, whether or not the  
97 victim agrees or disagrees with the plea discussions and agreement, if the victim was notified of  
98 the court date and is present, and if the victim would like to assert their right to offer a victim  
99 impact statement;

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

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

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

118           Section 19. Section 6 of said chapter 258B, as so appearing, is hereby amended by  
119 striking out Section 6 in its entirety;

120           Section 20. Section 7 of said chapter 258B, as so appearing, is hereby amended by  
121 striking out after the words attorney and agency, in line 1, local;

122           Section 21. Section 8 of said chapter 258B, as so appearing, is hereby amended by  
123 striking out, in lines 4 and 5, the words, “. The court shall impose an assessment of \$50” and  
124 inserting, in place thereof, the following word:- , and;

125           Section 22. Said section 8 of said chapter 258B, as so appearing, is hereby further  
126 amended by striking out, in lines 21-31, the words “In the discretion of the court or the clerk  
127 magistrate in the case of a civil motor vehicle infraction that has not been heard by or brought  
128 before a justice, a civil motor vehicle assessment imposed pursuant to this section which would  
129 cause the person against whom the assessment is imposed severe financial hardship, may be  
130 reduced or waived. An assessment other than for a civil motor vehicle infraction imposed  
131 pursuant to this section may be reduced or waived only upon a written finding of fact that such  
132 payment would cause the person against whom the assessment is imposed severe financial  
133 hardship. Such a finding shall be made independently of a finding of indigency for purposes of  
134 appointing counsel” and inserting, in place thereof, the following sentence:- Any assessment  
135 made pursuant to this section shall not be subject to waiver by any court for any reason;

136           Section 23. Section 9 of said chapter 258B, as so appearing, is hereby amended by  
137 striking out Section 9 in its entirety;