

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

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**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
Christine E. Canavan	10th Plymouth
Mary E. Grant	6th Essex
Louis L. Kafka	8th Norfolk
John D. Keenan	7th Essex
Richard T. Moore	Worcester and Norfolk
Denise Provost	27th Middlesex
Mark C. Montigny	Second Bristol and Plymouth
Jennifer L. Flanagan	Worcester and Middlesex

# 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, in lines  
5 12-14, the words “or found delinquent or against whom a finding of sufficient facts for conviction or  
6 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 the  
9 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 inserting,  
11 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, in line  
16 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 deleting,  
18 after the word “incompetent” in line 31, the words: “or deceased” and inserting, in place thereof, the

19 words:- “, the family members of such person if the person is deceased even if no arrest, indictment, or  
20 complaint has been issued”;

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

34 **Section 11.** Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking  
35 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 amended by  
63 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 amended by  
65 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 amended by  
67 inserting, at the end thereof, the following:- provided further, defense counsel may not seek to  
68 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 amended by  
72 striking, in line 111, the word “at” and inserting, in place thereof, the following word:- before;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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