SENATE DOCKET, NO. 1106 FILED ON: 1/20/2011

SENATE . . . . . No. 640

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:

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	☐ *[District]* ☐
Steven A. Tolman	☐ *[District]* ☐
Stephen M. Brewer	*Worcester, Hampden, Hampshire, Franklin*
Steven A. Baddour	☐ *[District]* ☐
Gale D. Candaras	☐ *[District]* ☐
James E. Timilty	☐ *[District]* ☐
James B. Eldridge	☐ *[District]*

	□
Bruce E. Tarr	□ *[District]* □
Michael R. Knapik	□ *[District]* □
Kathi-Anne Reinstein	*16th Suffolk*
Stephen Kulik	*1st Franklin*
David Paul Linsky	*5th Middlesex*
Steven M. Walsh	*11th Essex*
John D. Keenan	*7th Essex*
Louis L. Kafka	*8th Norfolk*
Anne M. Gobi	*5th Worcester*
Ellen Story	*3rd Hampshire*
F. Jay Barrows	*1st Bristol*
John W. Scibak	*2nd Hampshire*
Bradley H. Jones, Jr.	*20th Middlesex*

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SENATE . . . . . No. 640

By Mr. Berry, a petition (accompanied by bill, Senate, No. 640) of Frederick E. Berry, Steven A. Tolman, Stephen M. Brewer, Steven A. Baddour and other members of the General Court for legislation to protect and enhance the rights of child and adult victims and witnesses of crime. The Judiciary.

The Commonwealth of Massachusetts

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:

Section 1. of chapter 258B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting, after the word “delinquency”, in line 10, the following words:- or conviction as a youthful offender;

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

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

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

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

Section 6. Said section 1 of said chapter 258B, as so appearing, is hereby further amended, by deleting, after the word “incompetent” in line 31, the words: “or deceased” and inserting, in place thereof, the words:- “, the family members of such person if the person is 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
64 rights and the certification process required to access the criminal offender record information
65 files under sections 172 and 178A of chapter 6. The criminal history systems board, or in the
66 case of a juvenile , the department of youth services, shall be informed by the appropriate
67 custodial authority if the offender escapes from custody and shall receive advance notification
68 when the offender receives a temporary, provisional or final release from custody or is
69 transferred from a secure facility to a less secure facility. Certified individuals shall provide the
70 criminal systems history board or the department of youth services in the case of a juvenile, with
71 current contact 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;