SENATE DOCKET, NO. 814 FILED ON: 1/20/2011

SENATE . . . . . No. 976

The Commonwealth of Massachusetts

PRESENTED BY:

***Steven A. Baddour*, (BY REQUEST)**

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 relative to abuse prevention .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Hector Montalvo	*92 Perry Ave* *Methuen, MA 01844*

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SENATE . . . . . No. 976

By Mr. Baddour (by request), a petition (accompanied by bill, Senate, No. 976) of Hector Montalvo for legislation relative to abuse prevention. Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

An Act relative to abuse prevention .

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. Subsection (b) of Section 1 of Chapter 209A is hereby amended by striking out subsection (b) and replacing it with:-"(b) Threatening another with imminent serious physical harm;"

SECTION 2. Section 3 of said chapter 209A is hereby amended by striking out the first paragraph and replacing it with:-

"A person suffering from abuse from an adult or minor family or household member may file a complaint request protection from such abuse provided there is clear and convincing evidence, including, but not limited to the following orders:"

SECTION 3. Subsection (d) of said section 3 of said chapter 209A is hereby amended by striking out subsection (d) and replacing it with:- "(d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by clear and convincing evidence or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an “abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;"

SECTION 4. Said section 3 of said chapter 209A is hereby amended by striking the paragraph in lines 69-72, as appearing in the 2008 Official Edition, and replacing it with the following paragraph:-

"No filing fee shall be charged for the filing of the complaint. Neither parties nor their attorneys shall be charged for certified copies of any orders entered by the court, or any copies of

24 the file reasonably required for future court action or as a result of the loss or destruction of
25 plaintiff's copies."

26 SECTION 5. Said section 3 of said chapter 209A is hereby amended by adding the
27 following paragraph at the end thereof:- "Any false allegations will result in the case against the
28 accuser being referred to the attorney general or a district attorney for the charge of perjury. Any
29 person making false claims under this section shall pay the costs of the hearing(s) and any
30 attorney's fees incurred to the accused."

31 SECTION 6. Section 4 of said chapter 209A is hereby amended by striking out the first
32 paragraph and replacing it with the following:- "Upon the filing of a complaint under this chapter
33 and giving clear and convincing evidence of abuse, the court may enter such temporary orders as
34 it deems necessary to protect a plaintiff from abuse, including relief as provided in section three.
35 Such relief shall not be contingent upon the filing of a complaint for divorce, separate support, or
36 paternity action."

37 SECTION 7. Said section 4 of said chapter 209A is hereby amended by adding the
38 following new paragraph:-

39 "If the plaintiff does not appear at any hearing with out reasonable cause and notice to the
40 court with in ten days after the hearing the 209A order shall be automatically vacated 14 days
41 from the hearing date. Should the plaintiff not appear for reasonable causes and notifies the court
42 (personally or through an agent) the court shall notify the defendant of the new hearing date to be
43 held within 45 days of the original hearing date (hearing may not be extended unless the plaintiff
44 is hospitalized for an extended period of time (30 days or more)."

45 SECTION 8. Section 6 of said chapter 209A is hereby amended by striking out lines 98-
46 99, as appearing in the 2008 Official Edition, and replacing it with the following:- "Both parties
47 shall be provided a copy of the full incident report at no cost upon request to the appropriate law
48 enforcement department."

49 SECTION 9. Section 7 of said chapter 209A is hereby amended by striking out the
50 second paragraph and replacing it with the following paragraph:-

51 "Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of
52 chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections
53 three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and
54 nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the
55 plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified
56 copies of each such order and one copy of the complaint and summons "along with a copy of the
57 affidavit filed with the court" forthwith to the appropriate law enforcement agency which, unless
58 otherwise ordered by the court, shall serve one copy of each order upon the defendant, together
59 with a copy of the complaint, order and summons "and Affidavit" and notice of any suspension

60 or surrender ordered pursuant to section three B of this chapter. The law enforcement agency
61 shall promptly make its return of service to the court."