

# HOUSE . . . . . No. 1301

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*James J. Dwyer*

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*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 adoption of the accompanying bill:

An Act relative to parental rights and child survivors of homicide.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>1/15/2013</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>	
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	
<i>James J. O'Day</i>	<i>14th Worcester</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	

# HOUSE . . . . . No. 1301

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By Mr. Dwyer of Woburn, a petition (accompanied by bill, House, No. 1301) of James J. Dwyer and others relative to parental rights and child survivors of homicide. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 454 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act relative to parental rights and child survivors of homicide.

*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. Chapter 119 of the General Laws is amended by inserting the following  
2 section after Section 26A as Section 26B; Chapter 208 of the General Laws is amended by  
3 inserting the following section as Section 31B after Section 31A; Chapter 209 of the General  
4 Laws is amended by inserting the following section after Section 38 as Section 38A; Chapter  
5 209C of the General Laws is amended to insert the following section after Section 10 as Section  
6 10A:-

7           Conviction of a parent for murder of a child's other parent. In issuing any judgment or  
8 temporary order of visitation or custody, the conviction by a court of competent jurisdiction of  
9 the parent of a child for murder in the first or second degree of the child's other parent, or  
10 conviction for aiding, abetting, attempting, conspiring or soliciting to commit murder in the first  
11 or second degree of the child's other parent, or a comparable crime against the other parent under  
12 federal law or the law of any other state, shall create a rebuttable presumption that contact with  
13 the child and exercise of parental rights, including but not limited to care and custody of the  
14 child, by the convicted parent are not in the child's best interests. This rebuttable presumption  
15 may be overcome only if the court determines that:

16           the child is competent to signify his or her assent and has assented to an order of the court  
17 permitting contact between the convicted parent and the child or exercise of parental rights by  
18 the convicted parent; or

19 the crime occurred in the context of past physical, sexual or psychological abuse  
20 committed by the other parent against the convicted parent as set forth section 23F of chapter  
21 233, and contact between the child and convicted parent or award of custody, visitation or other  
22 rights to the convicted parent is in the child's best interests. If the court determines that the  
23 convicted parent has overcome the rebuttable presumption, it shall enter written findings of fact  
24 in support of such a determination. This rebuttable presumption applies whether or not the  
25 convicted parent has exhausted any right to appeal the conviction, and notwithstanding any order  
26 of a court entered prior to the conviction that awarded the convicted parent custody, visitation or  
27 other rights related to the child.

28 Except as authorized and ordered by a court under this section, no person who is a party  
29 in any action before the court concerning custody or visitation, shall permit contact with the  
30 convicted parent in the presence of the child and no person shall visit, telephone, write to, or  
31 otherwise communicate with the convicted parent in the child's presence or deliver messages or  
32 other communications between the child and the convicted parent.

33 SECTION 2. Section 26 of chapter 119 of the General Laws is hereby amended by  
34 deleting the period at the end of the last sentence in subsection (4) and adding the following:- ;  
35 or (iii) the court hearing the petition finds that the parent of the child was convicted by a court of  
36 competent jurisdiction of murder in the first or second degree of the child's other parent, or for  
37 aiding, abetting, attempting, conspiring or soliciting to commit murder in the first or second  
38 degree of the child's other parent, or a crime against the other parent under federal law or the law  
39 of any other state that is comparable to those crimes, and (a) there has been no finding by a court  
40 that the crime occurred in the context of past physical, sexual or psychological abuse committed  
41 by the other parent against the convicted parent as set forth section 23F of chapter 233; and (b)  
42 the child, if competent to signify his assent, has not assented to an order to dispense with the  
43 need for consent by the convicted parent to adoption of the child.

44 SECTION 3. Section 3 of chapter 210 of the General Laws is hereby amended by  
45 deleting the period at the end of the sentence that appears before the last sentence of subsection  
46 (c) and inserting the following:- ; (iii) the court hearing the petition finds that the parent of the  
47 child was convicted of murder by a court of competent jurisdiction in the first or second degree  
48 of the child's other parent, or for aiding, abetting, attempting, conspiring or soliciting to commit  
49 murder in the first or second degree of the child's other parent, or a crime against the other parent  
50 under federal law or the law of any other state that is comparable to those crimes, and (a) there  
51 has been no finding by a court that the crime occurred in the context of past physical, sexual or  
52 psychological abuse committed by the other parent against the convicted parent as set forth  
53 section 23F of chapter 233; and (b) the child, if competent to signify his assent, has not assented  
54 to an order to dispense with the need for consent by the convicted parent to adoption of the child.