

SENATE No. 1041

The Commonwealth of Massachusetts

PRESENTED BY:

James T. Welch

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 to enhance the rights of crime victims in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James T. Welch</i>	<i>Hampden</i>	
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>1/31/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/4/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/8/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/19/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>9/11/2019</i>

SENATE No. 1041

By Mr. Welch, a petition (accompanied by bill, Senate, No. 1041) of James T. Welch, Todd M. Smola, David Henry Argosky LeBoeuf, Daniel J. Hunt and other members of the General Court for legislation to enhance the rights of crime victims in the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to enhance the rights of crime victims in the Commonwealth.

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. Section 1 of chapter 258B, as appearing in the 2016 Official Edition, is
2 hereby amended by inserting after the word “stepparent” in line 16 the following word:-
3 grandparent,

4 SECTION 2. Said Section 1 of chapter 258B, as so appearing, is hereby further amended
5 by inserting after the words “two hundred and fifty-eight C,” in line 17 the following words:-
6 person with whom the victim lived and in a relationship similar to marriage,

7 SECTION 3. Said Section 1 of chapter 258B, as so appearing, is hereby further amended
8 by inserting, before the definition of “Prosecutor” the following definition:-

9 “Probation officer”, an associate probation officer, probation officer, assistant chief
10 probation officer, chief probation officer, regional probation supervisor, statewide probation
11 supervisor, victim service coordinator, the deputy commissioner of field services, and any other
12 personnel whom the commissioner of probation shall direct.

13 SECTION 4. Chapter 258B is hereby further amended by striking out section 2, as so
14 appearing, and inserting in place thereof the following section:-

15 Section 2. Services provided in this chapter shall be afforded to victims and family
16 members of violent crimes, including homicide and sexual assault, to the fullest extent possible
17 in matters that have not resulted in complaints or indictments have not been issued.

18 Furthermore, prosecutors shall not be precluded from providing, subject to appropriation,
19 services under this chapter to any natural person or family member of such natural person who
20 suffers direct or threatened physical, emotional or financial harm as the result of the commission
21 or attempted commission of a crime or delinquency offense in which complaints or indictments
22 have not been issued.

23 SECTION 5. Subsection (l) of Section 3 of said chapter 258B, as so appearing, is hereby
24 amended by striking the word "A" in line 91 and inserting, in place thereof, the following word:-
25 B

26 SECTION 6. Said section 3 of said chapter 258B, as so appearing, is hereby further
27 amended by striking out subsection (p) and inserting in place thereof the following subsection:-

28 (p) for victims, to be present and heard at sentencing or the disposition of the case against
29 the defendant. If a victim is unavailable or not present at the time the defendant pleads or is
30 found guilty, delinquent, or admits to sufficient facts, the court shall delay sentencing by no less
31 than one business day to afford victims the opportunity to be present and or heard. The court may
32 inquire of the prosecutor, on the record, whether the victim has indicated their desire to not be
33 present or heard at sentencing. Victims have the right to be heard through an oral and written
34 victim impact statement at sentencing or the disposition of the case against the defendant, even if

35 there is admission to sufficient facts, the sentence is mandatory, or there is an agreed upon plea,
36 about the effects of the crime on the victim and as to a recommended sentence, pursuant to
37 section four B of chapter two hundred and seventy-nine, and to be heard at any other time
38 deemed appropriate by the court. The court shall consider said victim impact statement in
39 disposition of the case against the defendant. The victim also has a right to submit the victim
40 impact statement to the parole board for inclusion in its records regarding the perpetrator of the
41 crime;

42 SECTION 7. Subsection (t) of said section 3 of said chapter 258B, as so appearing, is
43 hereby further amended by inserting after the word “custody” in line 144 the following words:-
44 including a release on bail,

45 SECTION 8. Said section 3 of said chapter 258B, as so appearing, is hereby further
46 amended by inserting the following sections:-

47 (x) for victims, to be notified by the prosecutor that they have the right to provide the sex
48 offender registry board with a written impact statement for inclusion in the convicted sex
49 offender’s classification determination pursuant to section 178K(1)(k) of chapter 6. Upon the
50 specific request of the victim to the sex offender registry board, the board shall inform the victim
51 of the sex offender’s (i) registration and classification status and (ii) the addresses of where the
52 sex offender lives, works, and attends an institution of higher learning regardless of the
53 classification level and registration status of the offender.

54 (y) for victims, to be notified by the probation officer if an offender has a violation of
55 probation hearing, any sentencing after a finding of a violation of probation, and any motion to
56 modify the sentence or disposition of probation, including a transfer of supervision or a motion

57 to terminate. This section shall apply to victims (i) named in the complaint or indictment for
58 which the offender is on probation or (ii) named in any charge that was included as part of the
59 sentence on the case.

60 (z) for victims, to be heard through an oral or written statement after a finding of a
61 violation of probation, and any motion to modify the sentence or disposition, including a motion
62 to terminate. This section shall apply to victims (i) named in the complaint or indictment for
63 which the offender is on probation or (ii) named in any charge that was included as part of the
64 sentence on the case.

65 SECTION 9. Section 7 of said chapter 258B, as so appearing, is hereby amended by
66 inserting after the words “district attorney,” in line 1 the following words:- probation service,
67 parole board, sex offender registry board, department of correction, department of youth
68 services, sheriffs,

69 SECTION 10. Chapter 279, as appearing the in 2016 Official Edition, is hereby amended
70 by striking section 4B and inserting the following section:-

71 Section 4B. Before disposition in any case where a defendant has been found guilty of
72 any felony or any crime against a victim as defined by chapter 258B, the district attorney shall
73 give the victim actual notice of the time and place of sentencing and of the victim's right to make
74 a statement to the court, orally or in writing at the victim's option, as to the impact of the crime
75 and as to a recommended sentence. Before disposition, the court shall allow any victim who
76 elects to make such an oral statement the opportunity to do so in the presence of the defendant.
77 Before disposition, the district attorney shall file any such written statement with the court and
78 shall make it available to the defendant.

79 If the victim is unable to make an oral or written statement because of his mental,
80 emotional, or physical incapacity or his age, his attorney or a designated family member shall be
81 provided the notice and the opportunity to make a statement prescribed in this paragraph.

82 Before said disposition the office of the district attorney shall cause to be prepared a
83 written statement as to the impact of the crime on the victim, which shall be filed with the court
84 as part of the presentence report and made available to the defendant. The statement shall include
85 the following: (1) the name of the victim; (2) documentation of the net financial loss, if any,
86 suffered by the victim or a family member as a result of the crime; (3) in cases where the crime
87 has had an impact on the victim's personal welfare or family relationship or has had a
88 psychological impact on the victim or his family, a statement of such impact.

89 The court shall allow the defendant to have the opportunity to rebut the victim's oral or
90 written statement and the district attorney's written statement if the court decides to rely upon
91 such statements or parts thereof in imposing sentence.

92 The court shall consider said victim impact statement in disposition of the case against
93 the defendant.

94 No sentence shall be invalidated because of failure to comply with the provisions of this
95 section. This section shall not be construed to create any cause of action or any right of appeal on
96 behalf of any person.

97 SECTION 11. There shall be a bail notification special commission established pursuant
98 to section 2A of chapter 4 of the General Laws, referred to in this section as the commission. The
99 commission shall evaluate policies and procedures related to the current bail system and

100 recommend improvements or changes related to notification services, pursuant to section 3(t) of
101 chapter 258B, for victims and family members of crime, as defined by chapter 258B.

102 (a) The commission shall consist of 8 members: 1 of whom shall be the executive
103 director of the massachusetts office for victim assistance or designee, whom shall serve as chair;
104 1 of whom shall be a member of the house of representatives appointed by the speaker of the
105 house of representatives; 1 of whom shall be a member of the senate appointed by the president
106 of the senate; 1 of whom shall be the chief justice of the trial court or designee; 1 of whom shall
107 be the secretary of the executive office of public safety and security or designee; 1 of whom shall
108 be the commissioner of probation service or designee; 1 of whom shall be the president of the
109 massachusetts chiefs of police association or designee; 1 of whom shall be the president of the
110 massachusetts sheriffs association or designee; 1 of whom shall be the president of the
111 massachusetts district attorneys association or designee; and no more than 2 of whom shall be
112 crime victims appointed by the victim and witness assistance board.

113 (b) The commission shall submit its final report to the governor, the house and senate
114 chairs of the joint committee on the judiciary and the house and senate chairs of the joint
115 committee on public safety and homeland security not later than December 31, 2019 which shall
116 include: (i) an evaluation of the current practices relative to bail notification to victims and
117 family members when an offender is released from custody; (ii) an evaluation of what shall
118 constitute appropriate notification to victims and family members and the best practice in which
119 to provide notification (iii) a policy recommendation to ensure appropriate notification services
120 are provided to victims and family members dependent on the custodial authority in which an
121 offender is held; (iv) any proposed technology or multi-disciplinary system recommendations to
122 provide notification services, including contracting with state or non-state entities to develop

123 implementation plans and estimated costs to the commonwealth; and (v) any additional proposed
124 policy, regulatory, or statutory changes concerning notification services for victims and family
125 members within the pretrial system.