SENATE DOCKET, NO. 2228 FILED ON: 2/19/2021

SENATE . . . . . No. 1123

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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 empower and protect survivors of domestic violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Patrick M. O'Connor	*Plymouth and Norfolk*	
Steven G. Xiarhos	*5th Barnstable*	*2/25/2021*
Bruce E. Tarr	*First Essex and Middlesex*	*3/3/2021*
Michael O. Moore	*Second Worcester*	*3/15/2021*
Mathew J. Muratore	*1st Plymouth*	*4/21/2021*
Marcos A. Devers	*16th Essex*	*4/22/2021*
David F. DeCoste	*5th Plymouth*	*4/22/2021*
Hannah Kane	*11th Worcester*	*4/22/2021*
James M. Kelcourse	*1st Essex*	*6/15/2021*

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SENATE . . . . . No. 1123

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 1123) of Patrick M. O'Connor, Steven G. Xiarhos, Bruce E. Tarr and Michael O. Moore for legislation to empower and protect survivors of domestic violence. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to empower and protect survivors of domestic violence.

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. Notwithstanding any general or special law to the contrary, there shall be established a special commission to study the Commonwealth's response to and resources for victims of domestic violence and sexual assault.

(a) The commission shall be comprised of the following members: the commissioner of probation; the director of the juvenile court probation department; the director of the probate and family court probation department; the director of the office of community corrections; the director of the electronic monitoring center; the executive director of the governor's council to address sexual assault and domestic violence; an assistant attorney general to be appointed by the attorney general; the secretary of the executive office of public safety and security; the director of the Massachusetts office for victim assistance; two SAFEPLAN advocates to be appointed by the director of the Massachusetts office for victim assistance; the director of Jane Doe Inc. of Boston; the director of New Hope, Inc. of Attleboro; the director of the South Shore Resource

and Advocacy Center; the director of the Massachusetts intimate partner abuse education program; a law enforcement officer with experience in domestic violence and sexual assault cases to be appointed by the governor; the head of the domestic violence unit within the Boston police department; and two survivors of domestic abuse to be appointed by the governor. The board shall be chaired by the director of the Massachusetts office for victim assistance. Each such member may appoint a designee to serve in the member's place.

(b) The commission shall analyze current resource offerings to victims of domestic violence and sexual assault; study the efficiency of state departments in maintaining victim safety, including but not limited to probation departments; consider ways to provide robust opportunities for victim and community engagement, ongoing analysis, and oversight of probation department policies, practices, and procedures; analyze income-based privileges and disadvantages for victims in participating with probation proceedings; consider ways to ensure that victims are part of the probation process while holding offenders accountable and simultaneously reducing the rates of recidivism; analyze probation violation reporting advisories and other written resources and whether they are helpful, understandable, and effective for victims; and determine the feasibility of a complaint communication tool for victims to report probation officer misconduct.

(c) The first meeting of the commission shall take place no later than December 1, 2021 and shall be organized by the director of the Massachusetts office for victim assistance.

(d) The commission shall produce a report of their findings and analysis along with any recommendations for legislation to the Clerks of the House and Senate and the chairs of the Joint Committee on the Judiciary no later than December 1, 2022.

SECTION 2. Chapter 276 of the general laws, as so appearing, is hereby amended by inserting the following new section:-

“Section 99C. Domestic violence and sexual assault probation unit

There shall be established in the superior court department, the Boston municipal court department, and divisions of the probate and family and district court departments a domestic violence and sexual assault probation unit within the court’s probation department. For the purposes of this section, the word “victim” shall mean a complainant that has filed a complaint under chapter 209A. For the purposes of this section, the word “unit” shall mean the domestic violence and sexual assault probation unit. The unit shall consist of:

(a) a domestic violence and sexual assault victim advocate who shall be stationed in the probation department and employed by an external non-profit organization whose mission includes but is not limited to advocating for victims of domestic violence and sexual assault by way of prevention and intervention services, receiving and handling victim complaints against probation officers, raising public awareness, and promoting safety and justice. The victim advocate shall act as the primary liaison between a victim that has filed a complaint and probation officers assigned to the victim’s open case. The victim advocate shall notify victims of any scheduled proceedings pursuant to the victim’s complaint, their rights in the probation process as established in the Victims Bill of Rights in Section 3 of Chapter 258B of the General Laws, as amended by this act, as well as the contact information of the probation officer assigned to the respondent of the victim’s complaint. The victim advocate shall interact with certified batterer’s treatment programs if the respondent is so enrolled to obtain current information to provide associated probation officers. The victim advocate shall compile and maintain pertinent

information as to the victim and their complaint, including but not limited to victim contact with release risk assessments, police reports relating to arrests and non-arrests, board of probation record, the interstate identification index, restraining orders and affidavits, victim statements, medical reports and photographs evidencing injury, and reports from certified batterer's treatment programs.

(b) probation officers as established in section 83 of chapter 276 of the general laws who shall exclusively be assigned to cases and complaints involving domestic violence and sexual assault. Probation officers within the unit shall be assigned to an offender or respondent to a domestic violence or sexual assault case or complaint. The probation officer that is assigned to an offender or respondent shall continue to serve the same client if they are found to have re-offended or committed the same offense against the original victim or a new victim. Probation officers within the unit, in addition to the training and education set forth in section 85 of said chapter 276, shall attend a training course on domestic violence and sexual assault and interacting with offenders. Said training course shall be designed and certified by the Governor's council to address sexual assault and domestic violence in collaboration with any affiliate non-profit organizations. If a probation officer's assigned respondent or offender enrolls in a certified batterer's treatment program and is found to be non-compliant with the requirements of the program, the probation officer shall surrender the assigned respondent or offender. During hearings and proceedings, probation officers shall disclose to the judge all material relative to the respondent's conduct including but not limited to any contact with the victim, global positioning satellite tracking device maintenance, or violations of conditions of release.

SECTION 3. Chapter 276 of the general laws is hereby further amended in section 58A subsection (2) by inserting a new subparagraph after subparagraph (2)(B):-

“(C) subject to the condition that the person maintain or commence a certified batterers’ treatment program in the case of a violation of an order pursuant to section 3, 4 or 5 of chapter 209 A, or a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or of a violation of an order of protection issued under said chapter 209A in effect”

SECTION 4. Chapter 209A of the general laws, as so appearing, is hereby amended in section 1 by striking the definition of “Abuse” and replacing it with the following:-

"Abuse", the occurrence of one or more of the following acts between family, intimate partners, or household members:

(a) attempting to cause or causing physical harm;

(b) placing another in fear of imminent serious physical harm;

(c) causing another to engage involuntarily in sexual relations by force, threat or duress;

(d) coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

(1) isolating the other party from friends, relatives, or other sources of support;

(2) depriving the other party of basic necessities;

(3) controlling, regulating, or monitoring the other party’s movements, communications, daily behavior, finances, economic resources, or access to services;

(4) compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

SECTION 5. Chapter 209A of the general laws is hereby further amended in section 3 in subsection (i) by inserting at the end of the third paragraph the following:-

"When reviewing a request to extend or renew an order, the court shall take into account sobriety and substance use recovery, based on independent medical standards, if substance use was a factor in issuing the original order. A lack of sobriety or continuing existence of substance use shall weigh in favor of extending or renewing the order."

SECTION 6 Chapter 209A of the general laws is hereby further amended in section 7 in the fifth paragraph by striking out the first sentence and inserting in place thereof the following:-

"Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than ten thousand dollars, or by imprisonment for not more than five years in a house of correction, or by both such fine and imprisonment."

SECTION 7. Chapter 209A is hereby further amended in section 7 by inserting after the word "compliance" at the end of the sixth paragraph the following sentence:-

"A defendant will not be relieved of his requirement to regularly attend a certified or provisionally certified batterer's treatment program until said program can confirm in signed writing with the probation department that the defendant has shown marked improvements and has reached a level of understanding and reform that would deem them a non-threat to women. If the defendant is arrested or investigated by the police in connection with reports of domestic

violence or sexual assault while enrolled with a certified batterer's treatment program, said program shall be apprised of the arrest or investigation by the defendant's probation officer."

SECTION 8. Chapter 209A is hereby further amended in section 7 by inserting after the word "system" at the end of eighth paragraph the following new paragraph:-

"The removal or destroying of said global positioning satellite tracking device without judicial approval or without a showing of necessity to prevent greater harm shall constitute a felony with a mandatory minimum sentence of 2 years in a state prison."

SECTION 9. Chapter 209A is hereby amended in section 9 by adding at the end the following:-

"The form of complaint shall be supplied without withholding to any person who requests said form and shall be made easily accessible to the public by the offices promulgating said form."

SECTION 10. The administrative justices of the superior court, probate and family court, district court, and the Boston municipal court departments shall jointly promulgate a new form of complaint for use under Chapter 209A of the general laws pursuant to this act which shall include but not be limited to the following additional fields:

(1) a field wherein a petitioner may indicate whether they have reasonable cause to be in fear of their life at the time of the complaint form's submission;

(2) a field wherein a petitioner may indicate whether they are a victim of coercive control, a form of abuse as provided in section 4 of this act.

SECTION 11. The office of public safety and security shall establish, advertise, and maintain a toll-free telephone hotline that shall be capable of responding to and forwarding complaints including but not limited to instances of domestic violence and violations of probation to ensure full and immediate safety of the complainant. For the purposes of this section, “domestic violence” shall have the same meaning as “abuse” as defined in Section 1 of Chapter 209A and as amended by this act.

SECTION 12. Chapter 258B of the general laws, as so appearing, is hereby amended in section 3 in paragraph (b) by adding at the end the following:-

“If the respondent or offender has obtained approval to reschedule a hearing or proceeding, the court shall postpone the commencement of the proceeding if the victim is not present and if they have received communication that the victim is in transit to the proceeding, provided that the court may begin the proceeding within one hour of learning that the victim is in transit. The court may within its discretion postpone the proceeding for any amount of time to allow the victim to be present. If the victim cannot be present for a hearing or proceeding that was rescheduled by the respondent, the court may allow the victim advocate probation officer to offer remarks on behalf of the victim.”

SECTION 13. Chapter 258B is hereby further amended in section 3 in paragraph (g) by inserting after the word “recommendation”, the second time it appears, the following:-

“The prosecutor shall provide ample time to confer with the victim to fully explain the position and answer questions or address concerns.”

SECTION 14. Chapter 258B is hereby further amended in section 3 in paragraph (p) by adding at the end the following:-

"The court has the discretion to allow a victim to make a statement at any time during the proceeding prior to sentencing. The court shall allow a victim of domestic violence abuse as defined in Section 1 of Chapter 209A to make a brief statement at a hearing or proceeding prior to sentencing in response to a statement by the defendant or his attorney regarding a violation of a protective order, a violation of a condition of release, improper tampering with a global positioning satellite tracking device system, or failure to disclose relevant information on such matters. A judge may allow the victim or victim advocate probation officer to stipulate facts provided by the respondent;"

SECTION 15. Chapter 258B is hereby further amended in section 3 by adding the following new subparagraph:-

"(x) In the event of a necessitated change in prosecutors assigned to the victim's case, the victim shall have the right to confer with the new prosecutor for a minimum of one hour to discuss the facts of the case and familiarize the victim with the prosecutor."

SECTION 16. This Act shall go into effect immediately upon its passage.