HOUSE DOCKET, NO. 3689 FILED ON: 1/20/2023

HOUSE . . . . . No. 3786

The Commonwealth of Massachusetts

PRESENTED BY:

Kip A. Diggs

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 protect victims and the public from sexual assault and other violent crimes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Kip A. Diggs	*2nd Barnstable*	*1/20/2023*
Paul R. Feeney	*Bristol and Norfolk*	*3/16/2023*
Samantha Montaño	*15th Suffolk*	*7/31/2023*

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By Representative Diggs of Barnstable, a petition (accompanied by bill, House, No. 3786) of Kip A. Diggs and Paul R. Feeney for legislation to protect victims and the public from sexual assault and other violent crimes. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to protect victims and the public from sexual assault and other violent crimes.

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. Section 26 of chapter 218 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the figure 274, in line 28, the following words:- , section 13F of chapter 268.

SECTION 2. Chapter 268 of the General Laws, as so appearing, is hereby amended by inserting after section 13E the following section:-

Section 13F. (a) Whoever unlawfully removes, destroys, damages or interferes with the proper functioning of a geolocation monitoring device, breath-testing instrument or other mechanism intended to facilitate recognizance or compliance with conditions of pretrial release, probation or parole shall be punished by imprisonment in the state prison for no more than 10 years or imprisonment in a house of correction for no more than 2½ years.

(b) In any proceeding under sections 57 to 58B, inclusive, of chapter 276, the fact of a person's prior conviction pursuant to subsection (a) shall be prima facie evidence that there is no

financial condition or other condition of release that will reasonably assure the presence of the person so convicted.

SECTION 3. Section 57 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

In a case involving a dangerous crime as defined in subsection (1) of section 58A with an identified victim, no person shall be released, pursuant to section 57 to 58B, inclusive, before the alleged victim is notified of the defendant's imminent release; provided, however, that the defendant shall not be held more than 6 hours in order to permit prior notice to the alleged victim. When a defendant is to be released from the custody of a police department, such notice shall be provided by the police department. When a defendant is to be released from a courthouse, such notice shall be provided by the district attorney's office. When a defendant is to be released from a jail or correctional facility, such notice shall be provided by the superintendent. The person or agency responsible for providing notice shall undertake to provide notice promptly.

SECTION 4. Section 58 of said chapter 276, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

In a case involving a dangerous crime as defined in subsection (1) of section 58A with an identified victim, no person shall be released, pursuant to section 57 to 58B, inclusive, before the alleged victim is notified of the defendant's imminent release; provided, however, that the defendant shall not be held more than 6 hours in order to permit prior notice to the alleged victim. When a defendant is to be released from the custody of a police department, such notice

shall be provided by the police department. When a defendant is to be released from a courthouse, such notice shall be provided by the district attorney's office. When a defendant is to be released from a jail or correctional facility, such notice shall be provided by the superintendent. The person or agency responsible for providing notice shall undertake to provide notice promptly.

SECTION 5. Section 58A of said chapter 276, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:-

(1) For the purposes of this section the following term shall, unless the context clearly requires otherwise, have the following meaning:

"Dangerous crime", any of the following:

(a) a felony that has as an element of the crime: the use, attempted use or threatened use of physical force against the person of another;

(b) a violation of an order pursuant to section 18, 34B or 34C of chapter 208; section 32 of chapter 209; section 3 to 5, inclusive, of chapter 209A; or section 15 or 20 of chapter 209C;

(c) a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A;

(d) a sex offense involving a child as defined in section 178C of chapter 6;

(e) a violation of section 13B to 13 B ¾, inclusive, 13F, 22 to 24, inclusive, 26B, 26C, 50 or 51 of chapter 265 or a violation of section 13D of said chapter 265 in which the public employee is a police officer;

(f) a violation of section 4A, 4B or 29A to 29C, inclusive, of chapter 272;

(g) a violation of section of section 24 of chapter 90 or section 8 of chapter 90B;

(h) threats to kill, rape or cause serious bodily injury; and

(i) conspiracy or solicitation to commit any of the above enumerated crimes.

SECTION 6. Subsection (3) of said section 58A of said chapter 276, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- A person detained under this subsection shall be detained until the disposition of the case and shall be brought to trial as soon as reasonably possible as defined in Massachusetts

Rules of Criminal Procedure Rule 36(b).

SECTION 7. Subsection (4) of said section 58A of said chapter 276, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs:-

When a person is held under arrest for an offense listed in subsection (1), a hearing shall take place no later than the next day that the superior, district, Boston municipal or juvenile court

in the place of jurisdiction is in session, provided the case involves a crime of abuse. In the case involving a crime of abuse: (i) the commonwealth shall be the only party permitted to move for arraignment within 3 hours of a complaint being signed by a magistrate or a magistrate’s designee; and (2) a defendant arrested, who has attained the age of 18 years, shall not be released sooner than 6 hours after arrest, except by a judge in open court.

In any pending case where the defendant has been first arraigned in the district, Boston municipal or juvenile court and is subsequently arraigned in superior court for the same or related crimes arising out of the same incident, the superior court may conduct a new hearing upon motion of the commonwealth provided that any order of the district, Boston municipal or juvenile court concerning the defendant shall remain in effect until such time as the superior court issues a new order. In any such new hearing in the superior court, the judge shall consider the defendant's compliance with any previously ordered conditions of release.

SECTION 8. Said subsection (4) of said section 58A of said chapter 276, as so appearing, is hereby further amended by inserting after the seventh sentence the following sentence:- At the hearing, the judge shall have immediate access to all pending and prior criminal offender record information, board of probation records, out of state criminal records and police and incident reports related to the defendant over the previous 5 years, upon oral, telephonic, facsimile or electronic mail request, to the extent practicable.

SECTION 9. Said subsection (4) of said section 58A of said chapter 276, as so appearing, is hereby further amended by striking out the tenth sentence and inserting in place thereof the following sentence:- A person detained under this subsection shall be detained until the disposition of the case and shall brought to trial as soon as reasonably possible as defined in Massachusetts Rules of Criminal Procedure Rule 36(b).

SECTION 10. Said subsection (4) of said section 58A of said chapter 276, as so appearing, is hereby further amended by striking out the eleventh sentence and inserting in place thereof the following 2 sentences:- Any hearing may be reopened by the judge or upon motion of the commonwealth or the defendant, provided that the judge determines by a preponderance of

the evidence that: (1) information exists that was not known to the movant at the time of the hearing or there has been a material change in circumstances; and (2) such information or change in circumstances has a substantial bearing on the issue of whether the defendant's detention, defendant's release on conditions, or conditions imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the defendant and the safety of any other person and the community. In any such reopened hearing, the judge shall consider the defendant's compliance with any previously ordered conditions of release.