

# HOUSE . . . . . No. 4989

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, August 8, 2024.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 962) of Ryan C. Fattman for legislation relative to dangerousness hearings, the petition (accompanied by bill, Senate, No. 1011) of Patricia D. Jehlen, Liz Miranda, Rebecca L. Rausch, Ruth B. Balsler and other members of the General Court for legislation relative to compensation for victims of wrongful conviction, the petition (accompanied by bill, Senate, No. 1098) of Patrick M. O'Connor and Steven George Xiarhos for legislation relative to GPS tampering, the petition (accompanied by bill, Senate, No. 1101) of Patrick M. O'Connor and Kathleen R. LaNatra for legislation to protect victims of crimes and the public, the petition (accompanied by bill, Senate, No. 1129) of Bruce E. Tarr for legislation relative to protecting the residents of the Commonwealth from dangerous persons, the petition (accompanied by bill, Senate, No. 1140) of John C. Velis for legislation relative to dangerousness hearings, the petition (accompanied by bill, House, No. 1492) of Carole A. Fiola, Alan Silvia and Paul A. Schmid, III relative to dangerousness offenses, the petition (accompanied by bill, House, No. 1752) of Jeffrey N. Roy relative to compensation for victims of wrongful conviction, the petition (accompanied by bill, House, No. 1820) of Christopher J. Worrell and others relative to compensation for victims of wrongful conviction, the 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, and the petition (accompanied by bill, House, No. 3957) of Russell E. Holmes relative to compensation for erroneous felony convictions, reports recommending that the accompanying bill (House, No. 4989) ought to pass.

For the committee,

MICHAEL S. DAY.



**HOUSE . . . . . No. 4989**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
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An Act relative to safety and justice.

*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 4 of chapter 211D of the General Laws, as appearing in the 2022  
2 Official Edition, is hereby amended by inserting after the fifth sentence the following sentence:-  
3 The committee shall establish a system for the assignment of social service vendors to assist  
4 counsel to indigent clients who are eligible to obtain relief under Chapter 258D of the General  
5 Laws

6           SECTION 2. Section 9 of said chapter 211D, as so appearing, is hereby amended by  
7 striking out subsection (e) and inserting in place thereof the following subsection:

8           (e) method for the provision of social services or social services referrals including, but  
9 not limited to, referrals for post release transitional services.

10          SECTION 3. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby  
11 amended by inserting, in line 28, after the figure “274” the following words:- , section 13F of  
12 chapter 268.

13 SECTION 4. Section 1 of chapter 258D of the General Laws, as so appearing, is hereby  
14 amended by striking out, in line 24, the words “clear and convincing” and inserting in place  
15 thereof the following words:- a preponderance of the.

16 SECTION 5. Section 5 of said chapter 258D, as so appearing, is hereby amended by  
17 striking out subsection (A) and inserting in place thereof the following subsection:-

18 (A) Upon a finding or verdict that the claimant has met the requirements of section 1 by  
19 the requisite standard of proof and is not barred from compensation by section 2, the court or the  
20 jury shall determine the damages that shall be payable to the claimant. In making such  
21 determination, the court or jury shall consider, but not be limited to, the consideration of: the  
22 income the claimant would have earned, but for his conviction, incarceration, parole or other  
23 supervised release,; the particular circumstances of the claimant's trial and other proceedings; the  
24 length and conditions under which the claimant was incarcerated or on parole or other supervised  
25 release and; any other factors deemed appropriate under the circumstances in order to fairly and  
26 reasonably compensate the claimant. The court, in its discretion, may admit expert testimony on  
27 these or any factors. The court may include, as part of its judgment against the commonwealth,  
28 an order requiring the commonwealth to provide the claimant with services to address the  
29 individual’s physical, social, and emotional needs, including financial literacy training, and  
30 waive tuition and fees for the claimant for any educational services from a state or community  
31 college in the commonwealth including, but not limited to, the University of Massachusetts at  
32 Amherst and its satellite campuses. Once the damages have been determined, the court shall  
33 enter a judgment against the commonwealth for the claimant in an amount certain. A judgment  
34 against the commonwealth may not include punitive or exemplary damages. The total liability of  
35 the commonwealth for any judgment entered under this chapter shall not exceed \$1,000,00 for up

36 to 10 years of incarceration, shall not exceed \$2,000,000 for up to 20 years of incarceration, shall  
37 not exceed \$3,000,000 for up to 30 years of incarceration and shall not exceed \$4,000,000 for up  
38 to 40 years of incarceration. The damages award shall not be reduced by any award of services,  
39 tuition or fees under Sections 5(A) or (E) or Section 10 or any award of reasonable attorney fees  
40 and costs of litigation as provided in section 6 below. Notwithstanding any general or special law  
41 to the contrary, the clerk of court shall not add to the judgment and the commonwealth shall not  
42 be liable for paying, any prejudgment or post judgment interest on damages. Subject to section 4,  
43 relative to award or settlements, the rights and remedies afforded to certain individuals by this  
44 chapter are not intended to limit in any way any rights or remedies that such individuals or other  
45 individuals may be entitled to exercise and pursue under common law or under any other state or  
46 federal statute including without limitation chapter 258 and 42 U.S.C. Sec. 1983. Any monetary  
47 award received by the claimant as the result of a federal civil rights lawsuit under 42 U.S.C.  
48 Section 1983 shall be deducted from the damages awarded under this subsection; provided that  
49 the claimant shall reimburse the state for damages awarded under this subsection if the monetary  
50 award under 42 U.S.C. Section 1983 is received after judgment entry herein.

51 SECTION 6. Section 6 of said chapter 258D, as so appearing, is hereby amended by  
52 inserting, in lines 1 to 2, after the word “chapter” the following words:- , or who enters into a  
53 settlement agreement with the commonwealth in connection with a claim asserted under this  
54 chapter.

55 SECTION 7. Section 7 of said chapter 258D, as so appearing, is hereby amended by  
56 striking out subsection (A) and inserting in place thereof the following subsection:-

57 (A) Upon the entry of a judgment in favor of a claimant under this chapter or upon  
58 settlement of a claim brought pursuant to this chapter and following a separate hearing on the  
59 matter, on motion of the claimant the court shall enter an order either directing the expungement  
60 or sealing of those records of the claimant maintained by the department of criminal justice  
61 information services, the probation department, and the sex offender registry that directly pertain  
62 to the claimant's erroneous felony conviction case, including documents and other materials and  
63 any samples obtained from the claimant. The commonwealth, as well as any other law  
64 enforcement agency that may be directly affected by such expungement or sealing of such  
65 records including, but not limited to, the district attorney that prosecuted the felony case against  
66 the claimant, shall be given reasonable notice and an opportunity to be heard on the issue of  
67 whether such records, documents and materials shall be so expunged or sealed. In making its  
68 determination as to whether such records, documents and materials shall be so expunged or  
69 sealed, the court shall consider the interests of privacy and justice pertaining to the claimant's  
70 erroneous felony conviction as well as the probable effect of such expungement or sealing on  
71 relevant law enforcement entities and their ability to appropriately investigate and prosecute  
72 other persons for the felony which forms the basis of the claim or other crimes that may relate to  
73 the information contained in such records, documents and materials.

74 SECTION 8. Chapter 268 of the General Laws is hereby amended by inserting after  
75 section 13E the following section: -

76 Section 13F. Whoever intentionally removes, destroys, damages, or interferes with the  
77 proper functioning of a global positioning system device used to facilitate recognizance or  
78 compliance with conditions of pretrial release, probation or parole shall be punished by

79 imprisonment in the state prison for not more than 5 years or imprisonment in a house of  
80 correction for not more than 2 ½ years.

81 SECTION 9. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby  
82 amended by striking out subsection (1) and inserting in place thereof the following subsection:-

83 (1) The commonwealth may move, based on dangerousness, for an order of pretrial  
84 detention or release on conditions when a person has been charged with any of the following  
85 offenses:

86 (A) a third or subsequent violation of section 24 of chapter 90 or section 8 of chapter 90B  
87 within 10 years of the previous conviction for such violation;

88 (B) a violation of section 24G of chapter 90;

89 (C) a violation of section 8B of chapter 90B;

90 (D) an offense for which a mandatory minimum term of 3 years or more is prescribed in  
91 chapter 94C ;

92 (E) a violation of section 131N of chapter 140;

93 (F) a violation of an order pursuant to section 18, 34B or 34C of chapter 208;

94 (G) a violation of an order pursuant to section 32 of chapter 209;

95 (H) a violation involving abuse as defined in section 1 of chapter 209A while an order of  
96 protection issued under said chapter was in effect against the defendant;

97 (I) a violation of an order pursuant to section 3, 3B, 3C, 4 or 5 of chapter 209A;

- 98 (J) a violation of an order pursuant to section 15 or 20 of chapter 209C;
- 99 (K) a violation of an order involving abuse as defined pursuant to section 1 of chapter  
100 258E;
- 101 (L) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F,18B, 22, 22A, 22B, 22C,  
102 23, 23A, 23B, 24, 24B, 26, 26B, 26C, 26D, 43A, 50 or 51 of chapter 265;
- 103 (M) a violation of section 1, 2, 14, 17, 102, 102A, 102B, 102C or 112 of chapter 266;
- 104 (N) a violation of section 13B of chapter 268;
- 105 (O) a violation of subsection (a), (c), (d), (h), (j), (m) or (n) of section 10 of chapter 269;
- 106 (P) a violation of section 10A, 10E, 10F, 10G or 11C of chapter 269;
- 107 (Q) a violation of section 4A, 4B, 29A, 29B, 29C, 35A, 77 or 94 of chapter 272;
- 108 (R) a felony violation of section 105 of chapter 272;
- 109 (S) any other violation of any general or special law that constitutes a felony offense that  
110 has as an element of said offense the use, attempted use or threatened use of physical force  
111 against the person of another; or
- 112 (T) any violation of any general or special law that constitutes conspiracy or solicitation  
113 to commit any crime identified in clauses (A) through (S), inclusive.

114 SECTION 10. Said chapter 276 is hereby amended by inserting after section 58B the  
115 following section:-



116           Section 58C. No person 18 years of age or older who has been charged with any act that  
117 would constitute abuse, as defined in section 1 of chapter 209A, or a violation of sections 13M or  
118 15D of chapter 265, or any offense enumerated in subsection 1 of section 58A that involves an  
119 identified victim, shall be admitted to bail before the alleged victim is notified of the person's  
120 imminent release; provided, however, that the person charged shall not be held more than 6  
121 hours in order to permit prior notice to the alleged victim.

122           When a person so charged is to be released from the custody of a police department, such  
123 notice shall be provided by the police department. When a person so charged is to be released  
124 from a courthouse, such notice shall be provided by the commonwealth. When a person so  
125 charged is to be released from a jail or correctional facility, such notice shall be provided by the  
126 superintendent or superintendent's designee. The person or agency responsible for providing  
127 notice shall undertake to provide notice promptly.