



# The Massachusetts Victim-Witness Advocate Reference Manual

Second Edition  
2010

First Edition (2002) written by Kathleen Reagan and edited by Janet Dinsmore

Second Edition updated and revised by Jennifer Franco



One Bulfinch Place, Suite 202  
Boston, Massachusetts 02114  
617-723-0642  
[www.mass.gov/mdaa](http://www.mass.gov/mdaa)

Geline W. Williams  
*Executive Director*

# **THE MASSACHUSETTS VICTIM-WITNESS ADVOCATE REFERENCE MANUAL**

**Second Edition  
2010**

First Edition (2002) written by Kathleen Reagan and edited by Janet Dinsmore

Second Edition updated and revised by Jennifer Franco



**This manual was funded by a VAWA STOP Grant awarded to the Massachusetts District Attorneys Association by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice, through the Executive Office of Public Safety and Security, Office of Grants & Research. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice, the Executive Office of Public Safety and Security, or the Massachusetts District Attorneys Association.**

### **Acknowledgements**

This manual was produced with the support of Diane DeAngelis and Candice McKenna, Violence Against Women Act Grant Program Administrators at the Executive Office of Public Safety & Security, Office of Grants and Research. The Massachusetts District Attorneys Association expresses its appreciation

Additional thanks to Patrice Provitola, Chief, Victim Witness Service Bureau, Middlesex District Attorney's Office, Cheryl Watson, Chief, Victim Witness Services, Essex District Attorney's Office, Liam Lowney, Chief, Victim Witness Services, Office of the Attorney General, Katia Santiago-Taylor, SAFEPLAN Program Manager, Massachusetts Office for Victim Assistance.

### **Language**

Throughout this manual, victims, witnesses and advocates are often, though not exclusively, referred to in the feminine gender. The contents of this manual, however, pertain equally to male victims, witnesses and advocates.



## Table of Contents

Introduction .....	1
The Massachusetts Victim Bill of Rights (M.G.L. c. 258B) .....	1
The Advocate's Role and Responsibilities .....	2
Crisis Intervention .....	5
How Crime Victims React to Trauma .....	8
<i>Secondary Injuries</i> .....	13
<i>Secondary Victims</i> .....	13
Communication Strategies .....	13
Record Keeping Tips .....	17
Media Tips .....	17
Cultural Competency .....	20
Advocate Self-Care .....	21
Mandated Reporters .....	22
Domestic Violence Victims .....	23
<i>The Power and Control Wheel</i> .....	24
<i>The Cycle of Violence</i> .....	25
<i>Blaming the Victim</i> .....	27
<i>Why Victims Stay</i> .....	28
<i>Why Victims Leave</i> .....	28
<i>The Gay, Lesbian, Bisexual, Transgender (GLBT) Domestic Violence Victim</i> .....	29
<i>The Immigrant Domestic Violence Victim and the U Visa</i> .....	29
<i>How Advocates Can Help Victims of Domestic Violence</i> .....	30
<i>Other Criminal Charges in Domestic Violence Cases</i> .....	31
<i>Victims Reluctant to Participate in the Criminal Justice Process</i> .....	32
<i>Restraining Orders</i> .....	37
<i>Lethality and Risk Assessments</i> .....	45
<i>The Safety Plan</i> .....	46
<i>Domestic Violence Shelters and Service Providers</i> .....	50
<i>The Address Confidentiality Program</i> .....	50
Sexual Assault Victims .....	53

<i>Terminology and Legal Issues</i> .....	55
<i>Harassment Prevention Orders</i> .....	57
<i>Male Victims</i> .....	58
<i>Gay/Lesbian/Bisexual/Transgender Domestic Violence Victims</i> .....	59
<i>Victim Rights Law Center</i> .....	59
<i>Rape Crisis Centers</i> .....	60
Child Victims and Witnesses .....	61
<i>The Sexual Assault Intervention Network (SAIN) Team</i> .....	61
<i>Children's Advocacy Centers</i> .....	62
<i>Mandatory Reporting of Child Abuse</i> .....	62
<i>Competency</i> .....	67
<i>Children as Witnesses</i> .....	67
Homicide/Motor Vehicle Homicide Survivors.....	69
Elderly Victims and Witnesses.....	73
Persons with Disabilities .....	79
Victims of Violent Crime Compensation Act .....	81
Civil Justice for Victims .....	83
Overview of the Massachusetts Criminal Justice Process .....	85
<i>The District Court Process</i> .....	85
<i>The Superior Court Process</i> .....	89
<i>Motions</i> .....	90
<i>Advocate Responsibilities in the Criminal Justice Process</i> .....	91
<i>The Reluctant Witness</i> .....	96
<i>The Victim Impact Statement</i> .....	96
<i>The Sentencing Hearing</i> .....	99
<i>The Restitution Hearing</i> .....	100
Post-Conviction Proceedings and Victim Service Agencies.....	101
<i>Parole Board Victim Services</i> .....	101
<i>Sexually Dangerous Persons</i> .....	102
<i>DNA Evidence in Unsolved and Post-Conviction Cases</i> .....	103
<i>The Criminal History Systems Board: CORI and Victim Certification</i> .....	105
<i>The Sex Offender Registry Board: Victim Services Unit</i> .....	109

Juvenile Cases.....	113
---------------------	-----





## Introduction

Victim-witness advocates are professionals trained to support crime victims and witnesses. Victims and witnesses are guaranteed rights, services and protections under the law. Advocates have a duty to make sure that victims and witness get what they are entitled to. Advocates also must ensure that all victims and witnesses are treated with compassion, dignity and fairness. Advocates help stabilize lives by tending to the emotional and physical needs of victims and witnesses, and by addressing safety concerns. Advocates guide people through the criminal justice process. Victim-witness advocates make a big difference in people's lives, and they are invaluable members of the prosecution team.

## The Massachusetts Victim Bill of Rights (M.G.L. c. 258B)

The Victim Bill of Rights provides specific rights to victims, their family members and to witnesses. In general, the rights allow for the attendance and participation in the criminal proceedings, the right to be heard and informed, and the right to protection and compensation. The following list is a brief summary. Please review Chapter 258B, provided in the Appendix, for a complete list of rights.

### Some of the rights afforded to victims and witnesses include:

- The right to be informed about:
  - the rights and the services available;
  - the criminal case as it progresses through the court;
  - what is expected of victims and witnesses;
  - court dates and continuances in a timely manner;
  - the final disposition of the case;
  - the sentence imposed.
- The right to speak with the prosecutor *before*:
  - the case begins;
  - the case is dismissed;
  - the sentence recommendation is made to the court.
- The right to be present at all court proceedings (unless the person is required to testify and the judge determines that the testimony may be influenced by his or her presence in court).
- The right to agree or to refuse to participate in interviews with the defense attorney or investigator (and to set reasonable conditions on such interviews).

- The right to provide a Victim Impact Statement at sentencing, which informs the court about the physical, emotional and financial impact of the crime, and any opinions regarding sentencing.
- The right to financial assistance, which may include:
  - restitution for a financial or property loss, or a physical injury;
  - if eligible, the right to apply for Victim Compensation for certain out-of-pocket expenses, including medical, counseling or funeral costs;
  - the right to receive a witness fee (if the person received a summons to appear in court).
- The right, upon request, to be notified of an offender's temporary, provisional or final release from custody.

### **The Advocate's Role and Responsibilities**

Advocates' responsibilities vary depending on their job description and office policy. The role of an advocate may include:

- Crisis intervention and emotional support;
- Providing information on victimization;
- Providing information on victims' legal rights and protections;
- Safety planning, including help applying for protective orders;
- Referrals for medical and/or counseling services;
- Explaining court processes and providing ongoing status updates;
- Accompaniment to court proceedings;
- Assistance with restitution, witness fees and property returns;
- Intervening with creditors, landlords and employers on the victim's behalf;
- Assistance in drafting victim impact statements;
- Assistance with applying for inmate status notifications;
- Arranging for victims to provide input to prosecutors regarding sentencing recommendations, case dismissals and when confidential records are heard in court;

- Assistance with arrangements for transportation to court and child care;
- Providing referrals for other services for victims;
- Helping to make funeral arrangements.



## **Crisis Intervention<sup>1</sup>**

The importance of crisis intervention for victims of crime is paramount. A crisis generally involves an event that is unexpected, arbitrary and outside the individual's normal coping ability. The goal of crisis intervention is to help victims confront the reality of what happened, to deal with the crisis, and to work through the pain and to move forward with strength. Crisis intervention requires immediate assessment to provide effective resources and services.

### **Critical elements of crisis intervention include providing:**

- Psychological first aid;
- Needs assessment; and
- Empathetic support

## **The Phases of Crisis Intervention<sup>2</sup>**

Immediate crisis intervention or “psychological first aid” involves establishing rapport with the victim, gathering information for short-term assessment and service delivery, and averting a potential state of crisis.

### **The phases of crisis intervention include:**

- Caring for immediate physical and mental health needs;
- Determining how the crisis affects the victim's life so that you can provide support, assess needs and provide services and referrals; and
- Helping the victim re-stabilize his or her life, and helping prevent further victimization.

Many victims may be resistant to crisis intervention due to fear and anxiety. Resistance is one form of the victim's response to a crisis situation. The immediacy of the response is critical to ensure the safety of the victim and his or her family. Time may be extremely important because of impending danger to the victim or the family. Also of paramount concern is whether the victim *feels* safe.

*Allow the victim to tell his or her story without interruption.* The first outreach to the victim requires patience, confidence and empathy in order to address the victim's possible apprehensiveness and to build trust. The advocate should explain upfront and clearly his or her role and responsibilities, as well as how he or she may be contacted to provide further assistance. Certain victims may be unable or unwilling to articulate their needs, especially if they are experiencing emotional or physical trauma provoked by the

---

<sup>1</sup> Please see the Appendix for further reading material relative to crisis intervention.

<sup>2</sup> The National Center for Victims of Crime, “Crisis Intervention,” Factsheet, 2001.

crime. Persuading a victim to talk freely depends on the victim's trust in the advocate. Empathy and listening skills are a must.

### **Helpful Phrases for Crisis Interveners**

#### Empathy and Rapport

*I am sorry that this happened to you.*

*This must be a very difficult time for you right now.*

*I can hear/see that you are having a hard time with this.*

*You don't have to handle this on your own.*

#### Identify with the victim

*What I hear you saying is....*

*Do you think it would be helpful if we talked about how you felt at the time?*

*How do you think you reacted at the time?*

*I know that it may not be easy to do, but can we talk about this some more.*

#### Validation – make it clear that most reactions to horrific events are NORMAL.

*You are angry right now.*

*You did not do anything wrong.*

*What you are feeling is not uncommon.*

Source: The National Center for Victims of Crime, "Crisis Intervention," Factsheet, 2001.

Immediate crisis intervention includes caring for the medical, physical, mental health and personal needs of the victim, and providing information to the victim about local resources or services. Advocates often have to make community-based referrals for mental health and counseling services. At the same time, *advocates must remember not to discuss or document the victim's experience with outside counselors, because notes can potentially be obtained by the defendant, thereby violating the victim's privacy, undermining recovery, and possibly harming the prosecution's case.*

### **Caring for immediate physical and mental health needs:**

The advocate must first address safety and basic needs, such as shelter, medical care and food, with priority placed on safety and safety planning. If fundamental needs are not addressed, nothing else will be relevant to the victim. Every victim's safety needs are different, from the elderly fraud victim to the domestic violence victim who is in constant danger.

Providing for shelter can require specific questions: *"So where are you going from here? Where will you sleep tonight? How can you get your clothes?"* Offer to help get a police escort to the victim's home to retrieve necessary belongings. *"How will you get*

*money for food needs?”* With immediate living needs settled, the victim is more likely to be able to think about long-term issues including participation in the criminal justice system.

**Determine how the crisis affects the victim’s life so that you can provide support, assess needs and provide services and referrals.**

The needs assessment must consider how the victim can reasonably live with the crime and the court process—e.g., continue working, caring for children, going to school, etc. Discussions on these issues are likely to continue throughout the course of the case as circumstances change.

As part of assessing victims’ needs for counseling and other support services, such as substance abuse treatment, always offer referrals. A large supportive network of family and friends cannot replace the impartial support of a therapist. Discuss these options and encourage the victim to take advantage of services. In making a referral, advocates should recognize that many victims react defensively to the notion of counseling. Mental health treatment may carry a stigma for them. The decision to seek counseling belongs to the victim alone. The advocate can only point out that help is available if the victim wants that kind of support. An advocate can also suggest that the victim take the agency’s or counselor’s number for the future. Referrals to mental health services should be guided by an assessment of the victim’s support system, as well as any special needs, such as disabilities or cultural differences that are separate from the victimization.

Appropriate services will differ according to the nature of the victim’s needs. Referrals will also depend on the availability of resources in a community. Rape crisis centers and domestic violence shelters provide services to specific victim populations. Advocates should be prepared with referrals to organizations that staff psychiatrists, psychologists, social workers, and mental health therapists.

After assessing the victim’s needs, summarize the issues with the victim, and make sure the victim agrees with the assessment. Multiple problems may require a list to prioritize their importance so that the victim does not become overwhelmed. A plan, as discussed below, should then be put in place for dealing with immediate issues.

**Helping the victim re-stabilize his or her life, and helping prevent further victimization.**

Re-stabilizing the victim’s life may include interceding on his or her behalf to help them with daily matters. Advocates can be called upon to intercede when victims of crime have difficulty meeting financial or work obligations. Creditors and employers need to be educated to the realities of the effects of crime upon victims and burdens imposed by the criminal justice system. Victim safety must be considered in any creditor intercession; a repayment plan that discloses a hidden victim’s home address does



more harm than good. Further, employers are mandated by law not to interfere with witnesses who have been summoned or served with a subpoena to testify in court.

To prevent further victimization, the advocate often has to develop a safety plan with the victim. For example, how can the work environment be kept safe? What about the trip between home and job? Can arrangements be made for regular calls to friends or for calls to the police? Events may suggest the victim is at high risk, especially domestic violence victims. The issue of safety planning necessarily encompasses risk assessment, especially given increasing evidence that victimization tends to be repeated, regardless of the kind of crime. Since every victim can benefit from some type of a safety plan, advocates must be able to assess the level of risk that a victim faces, bearing in mind they should not substitute their own judgment for the victim's nor simply accept a victim's claim that she is safe.

Concerns about witness safety arise consistently in domestic violence cases, but apply to many other circumstances such as gang-related violent crimes, child abuse and murder cases. Special arrangements for ensuring witness safety may have to be made with the prosecutor and police department, and relocation may have to be considered. This presents difficult challenges. Creative thinking on the part of the entire office is needed to provide safety for victims at risk.

## **How Crime Victims React to Trauma**

A crime's toll on a victim can be devastating. The advocate's role is critical and can impact the psychological well-being of the victim. Advocates must understand trauma reactions to help ensure that a victim receives appropriate services and assistance, and to ensure that the victim's credibility is not undermined. Victims of all types of crime may experience trauma – physical damage to their bodies or emotional wounds or shock caused by the crime.

Reactions to trauma are very specific to an individual – no two persons will respond in exactly the same way. The effects of trauma may last for hours, days, weeks, months or years.

### **How a victim reacts to trauma depends upon many factors, including:**

- *Age*
- *Severity of the crime*
- *Coping skills*
- *Stability (home, work, finances)*
- *Prior exposure to crime, violence, or the criminal justice system*
- *Support system (family and friends)*
- *Past experiences*
- *Current circumstances*

**Physical trauma:** Crime victims may experience physical trauma – serious injury or shock to the body, similar to that experienced from a major accident. Victims may have cuts, bruises, swelling, fractured bones, various internal injuries, or sexually transmitted diseases. They may also have an increase in heart rate, blood pressure, breathing, or sweating, or their muscles may tighten. Victims may be exhausted (yet unable to sleep), and they may experience headaches, changes in appetite, nausea, incontinence or digestive problems.

**Emotional trauma:** Crime victims may experience emotional wounds that vary in intensity and duration, depending on many internal and external factors. Emotional trauma may take different forms<sup>3</sup>:

- **Shock or Numbness:** Victims may feel “frozen” and cut off from their own emotions. Some victims say they feel as if they are “watching a movie” rather than having their own experiences. Victims may not be able to make decisions or conduct their lives as they did before the crime.
- **Denial, Disbelief, and Anger:** Victims may experience “denial,” an unconscious defense against painful or unbearable memories and feelings about the crime. Or they may experience disbelief, telling themselves, “this just could not have happened to me!” They may feel intense anger and a desire to get even with the offender.
- **Acute Stress Disorder:** Some crime victims may experience trouble sleeping, flashbacks (repeated, intense, vivid mental images of past traumatic experiences), extreme tension or anxiety, outbursts of anger, memory problems, trouble concentrating, and other symptoms of distress for days or weeks following trauma. A person may be diagnosed as having acute stress disorder (ASD) if these or other mental disorders continue for a minimum of two days for up to four weeks within a month of trauma. If these symptoms persist after a month, the diagnosis becomes posttraumatic stress disorder (PTSD).

---

<sup>3</sup> The National Center for Victims of Crime, “How Crime Victims React to Trauma,” Get Help: Helping Victims of Crime Rebuild Their Lives. 2008

### **Some Common Reactions to Trauma:**

**Denial:** “I’m Fine.” “It’s really no big deal.” “I just overacted.” “Nothing happened.” “I must have imagined it.” “I don’t think it really happened.”

**Guilt:** “I’m to blame.” “I should/shouldn’t have....” “Why did/didn’t I....”

**Shame:** embarrassment and humiliation.

**Anger:** can be directed toward the perpetrator, family and friends, oneself, the criminal justice system, the world.

**Shock:** stunned and in disbelief, feeling powerless and immobilized, unable to recollect the crime and/or things happening prior to, during or after the crime. Why me?

**Overwhelmed:** feeling disorganized and forgetful, possibly needing to have things repeated.

**Scared:** fear may prevent a victim from coming forward or from participating in the criminal justice process.

**Vulnerability:** looking over one’s shoulder, removing self from social settings, or avoiding going out in public.

**Grief:** feeling of loss.

**Fear of Retaliation:** afraid of future harm, worry about safety of family.

**Fear of Blame:** “Why were you out alone?” “Why did you wear that?” “Did you lock your door?” “How much did you drink?”

**Altered Perceptions:** anxiety and fear may make it difficult to trust others, hyper-vigilance.

### **Provide the Victim with Tips to Help Cope with Trauma or Loss:**

- Find someone to talk with about how you feel and what you are going through. Keep the phone number of a good friend nearby to call when you feel overwhelmed or panicked.
- Allow yourself to feel pain. It will not last forever.
- Spend time with others, but make time to spend time alone.
- Take care of your mind and body. Rest, sleep, and eat regular, healthy meals.
- Re-establish a normal routine as soon as possible, but don't over-do-it.
- Make daily decisions, which will help to bring back a feeling of control over your life.
- Exercise, though not excessively and alternate with periods of relaxation.
- Undertake daily tasks with care. Accidents are more likely to happen after severe stress.
- Recall the things that helped you cope during trying times and loss in the past and think about the things that give you hope. Turn to them on bad days.

Source: The National Center for Victims of Crime, "Trauma of Victimization" Factsheet 2006.

**Post-Traumatic Stress Disorder:** Some crime victims suffer post-traumatic stress disorder (PTSD) as a lingering result of their victimization. PTSD is a diagnosis used by mental health professionals for individuals who have suffered severe trauma and, as a result, exhibit certain symptoms. If victims receive appropriate crisis intervention, the chances of developing PTSD are reduced.

PTSD occurs when a person has been exposed to a traumatic event and both of the following are present:

- The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others, and
- The person's response involved intense fear, helplessness, or horror. Persons suffering from this disorder experience at least one month of symptoms that produce clinically significant distress or impairment of social interactions, job duties, or other important areas of living.

*Professional counseling should be recommended for victims suffering any of these three major indications of trauma:*

- Persistent re-experiencing of the event
  - Recurrent and intrusive recollections of the event including images, thoughts or perceptions;
  - Recurrent nightmares when the event is replayed;
  - Illusions, hallucinations, flashbacks--acting or feeling as if the event were re-occurring;
  - Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the event.
- Persistent numbness or avoidance of things associated with the traumatic event
  - Efforts to avoid activities, places or people that arouse recollections of the trauma; including efforts to avoid thoughts, feelings or conversations associated with the trauma;
  - Inability to remember important aspects of the trauma;
  - Markedly diminished interest or participation in significant activities;
  - Feelings of detachment or estrangement from others;
  - Sense of a foreshortened future regarding career, marriage, children or life span;
  - Feeling a restricted range of emotion; inability to feel or care deeply.
- Persistent arousal
  - Difficulty falling or staying asleep;
  - Irritability or outbursts of anger;
  - Difficulty concentrating;
  - Hyper-vigilance;
  - Exaggerated startle response.

### **Trigger Events**

Internal or external events may “trigger” a crisis reaction, creating intense feelings of panic and fear. Trigger events are unique to each individual.

Some common trigger events include:

- Identification of the assailant
- Anniversaries of the event
- Holidays
- Important family and life events
- Sensing (touch, scent, sound)
- Criminal justice proceedings

### **Depression and Other Problems**

The crime’s effects may invade every part of a victim's life for many years. Many victims avoid normal activities out of fear. Crime victims may find it difficult to form satisfying relationships, and they may experience persistent problems with sexual

relations. Some victims become cynical and bitter against society, and some act out in a self-destructive manner.

## **Secondary Injuries**

After the crime, victims may suffer “secondary” injuries when they feel that they are not receiving the support and assistance they need from family, friends and criminal justice professionals. For some victims, the reactions (real or perceived) from others may almost be as traumatizing as the crime itself. A victim’s self-esteem and recovery may be damaged when others fail to acknowledge the seriousness of the crime, or they do not express sympathy and empathy. Advocates must pay attention to both verbal and nonverbal cues – behaviors such as shrugging shoulders, hand gestures, yawning, rushing and not making eye contact may, while unintended, make the victim feel that you are minimizing her and her concerns.

## **Secondary Victims**

Secondary victims can include those who:

- witnessed the crime,
- responded to the crime scene,
- provided assistance to the victim,
- are family members or friends of the victim,
- feel connected to the crime and/or the victim (neighbors, community members, co-workers, classmates).

Secondary victims may react to a crime in a manner similar to the actual victim. Although unintended, the reactions and emotional state of some secondary victims may present challenges to the victim and the advocate. Secondary victims may feel helpless, be accusatory or judgmental, become overly protective, or express anger toward the victim. Secondary victims, particularly family members and friends, may need support, services and an opportunity to talk about the crime.

## **Communication Strategies**

Good communication is the foundation of your relationship with the victim. Advocates must be ready to apply different conversational techniques and listening skills depending on the victim and his/her situation. An effective advocate adapts her communication style to suit the victim – she establishes rapport, conveys empathy, elicits trust, and expresses her understanding of the victim and his/her concerns.

### **Some useful communication strategies:**

- **Making connections.** Noticing and identifying repetitive incidents, themes or feelings—e.g., "You mentioned feeling sad before about your brother's death and now this."
- **Pointing out apparent contradictions or omissions.** Making the victim aware of omissions by making such comments as: "I'm confused. You said before... How does that fit in with...Can we back up a minute...I don't understand."
- **Helping to find solutions.** Identifying major and minor problems that require action and asking the victim for suggestions on how they might be handled. Offering suggestions and alternatives where possible.
- **Using tentative statements to introduce potentially touchy issues.** Saying "I wonder...Maybe...Is it possible," thereby allowing the advocate to maintain a position without disagreeing directly and encouraging the victim to consider alternative approaches.

**The following two lists illustrate conversation and listening techniques that the advocate may use to communicate effectively with the victim.**

## **Conversational Techniques**

<b><u>Purpose</u></b>	<b><u>Statement/Action</u></b>
<b>Time to reflect</b>	Silence
<b>Let victim hear advocate understands</b>	"Yes, mmmm, I follow what you said."
<b>Offering information</b>	"My name is...My purpose in being here is...They are located at..."
<b>Offering yourself</b>	"I'll sit with you awhile. I'll stay here with you."
<b>Giving broad openings</b>	"Is there something you would like to talk about? What are you thinking? Where would you like to begin?"
<b>Offering general leads</b>	"Go on.... Tell me about it."
<b>Making observations</b>	"You seem worried. Are you uncomfortable?"
<b>Encouraging description of perceptions</b>	"Tell me when you feel anxious." "What is happening now?"
<b>Encouraging comparison</b>	"Have you felt like this before?"
<b>Reflecting</b>	VICTIM: "Do you think I should tell my parents?" ADVOCATE: "You are wondering whether your parents should know?" "VICTIM: "I'm worried what my father might do." ADVOCATE: "You're concerned about his reaction."
<b>Focusing</b>	"This point seems worth looking at more closely."
<b>Exploring</b>	"Tell me more about that. How did that make you feel?"
<b>Seeking clarification</b>	"I'm not sure that I follow. Can you help me understand what you mean?"

Source: Essex County Victim Witness Program. Victim/Witness Training Manual, 1986.



## Listening Techniques

<u>Purpose</u>		<u>Example</u>
<b>CLARIFYING</b>	To prompt additional information and help the victim explore all sides of a problem	“Can you clarify this?” “Do you mean this...?” “Is this the problem as you see it?”
	To check meaning	“As I understand it your plan is....”
<b>RESTATEMENT</b>	To demonstrate listening and understanding	“This is what you have decided to do and these are the reasons why.”
	To encourage the victim to think further about a particular issue or problem and to discuss it	“I see.”
<b>NEUTRAL</b>	To convey interest and attention	“That’s very interesting.”
	To encourage the person to continue talking	“That makes sense to me.”
<b>REFLECTIVE</b>	To show that understanding of how victim feels	“It sounds like you”  “It was a shocking thing as you saw it.”
	To help victim evaluate his or her own feelings	“You felt you didn’t get a fair shake....” Followed by “Is that right? Did I understand you correctly?”
<b>SUMMARIZING</b>	To bring the discussion into focus.	“These are the key ideas you have expressed.”
	To serve as a springboard for further discussion on a new aspect or problem.	“If I understand how you feel about the situation.”

Source: Middlesex County Victim/Witness Bureau, *Training Manual*, 1989.

## **Record Keeping Tips**

The advocate must follow office policy regarding record keeping. Obtaining victim contact information and clearly identifying it in the file are essential. Keep up-to-date home address, telephone number, job address and telephone number, and contact information for the victim's family and trusted friends. The advocate should obtain "safe numbers," if needed and information on safe times to call. Try to determine who among the victim's network is likely to know the victim's whereabouts should she move, and emphasize the importance of notifying the prosecutor's office of any move. Generally, an advocate's daily notes are considered part of the "work product" of the prosecution team. However, since the work product doctrine may not apply, advocates should keep records with the following caveats in mind:

- Victims and witnesses should be told their conversations with the advocate are not confidential.
- Notes should not be written in such a way that they could be construed as actual witness statements, and victim-witnesses should not be given the impression that their words are being recorded verbatim in the advocate's notes.
- The importance of protecting the victim's privileged communication should be explained to victims. Advocates should avoid writing notes concerning privileged information or information revealed in counseling.
- With exculpatory information, it is sufficient that the advocate inform the prosecutor. The advocate should not take notes, since they can be released to the defendant, especially if they contain a statement by the victim.

## **Media Tips**

Media coverage of criminal cases can serve a number of public interest goals, such as: timely attention to missing person's cases and emergency crisis services, analyses of school shootings or workplace crimes, and coordination needs in handling child abuse and juvenile justice. High-profile cases can be a catalyst for changing public policies and reforming legislation. Educating readers can change public attitudes about crimes like domestic violence and impaired driving.

However, an onslaught of media attention to a case can create multiple problems for the victim and for the prosecution. And, aside from M.G.L. c. 265 § 24C, which prohibits media from disseminating the names of sexual assault victims, no statute or common agreement constrains the media in publishing stories about crime.

Insensitive and intrusive reporting often seriously impacts a victim's emotional and physical well-being. Victims often fear that reporters are searching for the "negative" about the victim, or are otherwise blaming the victim. Victims also worry that reporters

will investigate and report on private information from their past, or otherwise invade their privacy.

**Advice for Victims:**

- Victims need to understand that they have certain privacy rights that they can enforce or relinquish.
- Victims enforce privacy rights by declining to give interviews or restricting the information given to the press. Opting to speak to the media initially does not require them to continue to do so. (This does not necessarily mean the press will shift its attention to other matters.)
- If inaccurate information is reported, victims have the right to demand a correction.
- Victims can control the circumstances of the media contact. Sometimes victims are served by having a spokesperson speak on their behalf.
- In discussing media issues with victims, advocates must stress that the prosecutor's office cannot suggest a course of action; the victim must decide for herself. However, giving interviews can compromise the investigation or affect trial proceeding.

*Advocates should prepare victims for possible secondary trauma that can arise from extensive media coverage.*

## Media Tips

### You have the right to:

- Grieve in private.
- Say no to an interview. But privacy cannot be guaranteed, because journalists usually have other sources.
- Select a spokesperson.
- Select the time and location for interviews.
- Request a specific reporter.
- Refuse an interview with a specific reporter even though you have granted interviews to other reporters.
- Say no to an interview even though you have granted other interviews.
- Release a written statement through a spokesperson in lieu of an interview.
- Exclude children and other family members from interviews.
- Refrain from answering any questions that make you uncomfortable or that you feel are inappropriate.
- Advance information about the general angle of the story.
- Avoid a press conference atmosphere and speak to one reporter at a time.
- Demand a correction when inaccurate information is reported.
- Ask that offensive photographs or visuals be omitted from broadcast or publication.
- Non-disclosure of interview location and protection of your identity.
- Completely give your side of the story.
- Refrain from answering reporters' questions during trial.
- File a complaint against a journalist.
- Suggest training about media and victims for print and electronic media in your community.

Source: The National Center for Victims of Crime, "Privacy and the Media," 2004.

Heavy media coverage increases the stress of the trial and its attendant proceedings for all concerned. Because courts can be expected to grant defendant motions to change the trial venue based on the likelihood that pre-trial publicity has undermined the defendant's right to a fair trial, everyone involved faces the extra burden of frequent long-distance travel. Advocates dealing with a trial that might be moved should prepare victims for that possibility. When the venue does change, reach out to advocates in the new county for help with lodging, restaurants, safety measures during the trial, and liaison with the local police departments.

## Discussing Non-Confidential Information with the Press

While court proceedings are matters for the public record, prosecutors may not comment publicly or make editorial comments to a reporter if that comment will result in prejudicial publicity. Accordingly, District Attorneys' Offices have established procedures regarding the release of information and assigned press officers to deal with inquiries. In some situations, the prosecutor may speak directly to the press. *Advocates should be familiar with the office policies regarding the media, and they should not release information to the public or to reporters.*

## Cultural Competency

Advocate cultural competence includes:

- Respecting differing cultural practices and beliefs,
- The willingness to examine personal biases, and
- The knowledge of how cultural distinctions influence reactions.

Cultural competence requires the ability to be compassionate and respectful to all victims regardless of racial, ethnic or cultural background, socioeconomic status, religion, gender or sexual orientation. Perceptions of bias and insensitivity can re-traumatize the victim. Be careful not to stereotype victims' behaviors based on cultural classifications, but do be mindful of cultural issues that may help you to better respond to the particular needs of a particular victim.

Advocates must be mindful that cultural values may significantly impact the way a victim handles certain crimes (such as sexual assaults or those perpetuated by family members). Advocates must also pay careful attention to privacy boundaries.

It is important to develop cultural awareness – you cannot learn about every culture, but if your office services some groups more than others, you should increase your knowledge of those groups' values, practices and beliefs.

Make every effort to improve communication – use a court-certified interpreter when necessary. Even if the victim speaks English, she may not be comfortable speaking it, and may have difficulty understanding it.

Always demonstrate your respect – be mindful of such things as body language, eye contact, gesturing, sitting too close or too far away; learn how to pronounce names properly.

## Advocate Self-Care

The essential nature of the advocate's job exposes her to the raw emotions of a crime victim's pain, fear, anger and helplessness. Constant exposure to victimization can lead to exhaustion, cynicism and numbness. It is critical for victim-witness advocates to understand the personal toll their job can take, and to develop effective ways to take care of themselves. An advocate's stress may make it difficult to assist victims, and it may cause victims more harm.

Advocates must be aware of the following work-related hazards:

- **Burnout:** characterized by emotional exhaustion or "overload," depersonalization and reduced sense of personal accomplishment. Some symptoms of burnout include boredom, cynicism, depression, loss of compassion and discouragement.
- **Vicarious Trauma:** While vicarious trauma usually occurs to therapists and counselors, advocates who repeatedly work with victims of trauma may experience feelings that question their basic beliefs in safety, security, trust and justice. Symptoms of vicarious trauma include feelings of isolation, disruptions in cognitive thinking and memory systems and questioning of life stability.
- **Compassion Fatigue:** characterized by individuals who listen to painful and traumatic stories of others and consequently feel similar pain because they care. Symptoms of compassion fatigue include excessive blaming, bottling up emotions, apathy, and isolating one's self from others.

It is essential that advocates pay close attention to how they are interacting, reacting, and working through the situations they face on a daily basis – both on the job and in their personal lives. Self-care involves the recognition of stressful conditions, as well as strategies to ensure good health and well-being.

Coping strategies include:

- Being aware of and paying attention to feelings – discuss feelings with a supervisor or co-worker.
- Discussing opportunities to balance the workload to avoid dealing exclusively with a particular type of crime.
- Acknowledging limitations and personal issues – consider therapy for unresolved problems or trauma.
- Talking regularly with family members, friends, or colleagues who provide emotional support.
- Taking time for activities that balance work – exercise, hobbies, spiritual pursuits and activities that provide hope and joy.
- Scheduling time regularly for doing something special.

- Making a conscious effort to take a break out of the office during the work day.

## **Mandated Reporters**

Advocates often work on cases that arise from laws that protect children, the elderly, and disabled persons from abuse and neglect. Mandated reporters are required by law to file a report to a specified agency when they learn of abuse or neglect (or suspect abuse or neglect) while acting in their professional capacity. Oral reports should be filed immediately, and a written report should follow within 48 hours. Advocates who are social workers are mandated reporters under the law. Each office has a policy regarding mandated reporting. It is very important for the advocate to become familiar with the office policy, and to consult with a supervisor each time a mandated reporting issue arises.

There are four agencies that receive mandated reports, and each is discussed later in this manual:

1. The Department of Children and Families (DCF): protects children under the age of 18;
2. The Executive Office of Elder Affairs (EOEA): protects persons age 60 and older;
3. The Disabled Persons Protection Commission (DPPC): protects persons with disabilities between the ages of 18 to 59 when the disability requires that the person wholly or partially depend on other to meet daily living needs;
4. The Department of Public Health (DPH): protects individuals of all ages residing in hospitals and long-term care facilities.

## Domestic Violence Victims

Domestic violence is the abuse of a family or household member, intimate partner, or former partner. Domestic violence involves attempts by one partner to exercise power and control over the other, generally using an escalating pattern of coercive behavior and violence. The severity of domestic violence usually increases over time.

Domestic violence is prevalent and dangerous. The abuse takes many forms – it may be physical, sexual, emotional (controlling, threatening, manipulating, intimidating) or financial (controlling a victim's access to money). Domestic violence exists in gay, lesbian, bisexual and transgendered couples, and across all racial, religious and ethnic communities. Domestic violence does not have cultural or socioeconomic boundaries.

Understanding the complex dynamics of the domestic violence relationship is critically important, along with developing effective personal methods of dealing with the frustration that can result from prolonged exposure to these cases.

### **Abusers use a variety of behaviors to exercise power and control over their partners:**

- Slapping, punching, hitting, pushing, kicking, pinching, biting, or burning;
- Grabbing, choking, pulling hair, or restraining;
- Using weapons, throwing things, or keeping an intimidating weapon;
- Destroying furniture, personal possessions, or pets;
- Threatening the victim directly or indirectly;
- Using intimidation- e.g., blocking a doorway, pulling out phone wires, shouting, etc.;
- Harassment including unwanted phone calls, mail and visits, stalking, etc.;
- Isolating the victim by restricting or tracking the victim, opening mail, etc.;
- Humiliating and criticizing, mocking, denigrating, etc.;
- Pressuring the victim to make decisions using guilt, accusations or sulking;
- Threatening to withhold money, manipulating children;
- Interrupting, changing topics, not listening or responding;
- Withholding money or the car, refusing to pay bills, or sabotaging attempts to work or attend school;
- Claiming to be the authority, to know the truth, to use logic in contrast to the victim's "irrational thinking;"
- Threatening to disclose immigration status or withhold vital paperwork, falsely reporting welfare fraud or child abuse, exposing or claiming homosexuality;
- Threatening to take the children to another state or country;
- Making accusations of infidelity.



## The Batterer's Sense of Entitlement

Abusers are responsible for domestic violence. Domestic violence is not directly caused by alcohol or drug abuse, depression, unemployment, economic difficulties, sickness or mental illness. **Batterers often blame the victim for domestic violence, but abusers make the choice to commit the abuse.** The batterer's behavior has little or nothing to do with the actions of his partner — though he blames her — he believes that he has privileges that do not extend to his partner. He has two standards of behavior: one for himself and one for his partner.

Confronting the mindset of entitlement is very difficult. Anger or stress management programs that address violence but ignore the dynamics of an entitlement-driven thought process generally fail to change abusive behavior. These programs often ignore the fact that batterers usually intend to carry out the acts they commit; they are not “out of control.” In public, their self-control can be seen in the likable personality they often project to others. They may enjoy a respected reputation in the community. At home, the same person can terrorize a partner with brutality. *Certified batterer intervention programs (programs certified by the Department of Public Health specifically designed to work with domestic violence offenders) are the most appropriate way to confront the mindset of a batterer.*

Please see the Appendix for the handout entitled “*What’s the Difference Between Anger Management and Certified Intervention Programs.*” Victim advocates often share this document with ADAs to help them explain to judges why a certified batterer intervention program is necessary.

## The Power and Control Wheel

The Domestic Abuse Intervention Project in Duluth, Minnesota developed the “Power and Control Wheel,” which often is used to depict the dynamics of domestic violence. The “Power and Control Wheel” illustrates the methods used by batterers, as well as the social forces that support batterers and minimize the disapproval they might otherwise attract.

To contrast the “Power and Control Wheel,” the Domestic Abuse Intervention Project also developed the “Equality Wheel,” which often is used to demonstrate the dynamics of a healthy relationship, and it may be shared with victims. A copy of the “Equality Wheel” is in the Appendix.



nothing right. During this stage, the abuser will strongly enforce the “rules” of a partnership. Minor infractions or a wrong attitude (by the batterer's definition) are grounds for expressions of disgust or anger. Each incident builds on the next, adding to the tension. Victims prepare psychologically and emotionally for an onslaught that appears imminent. Many victims describe their own behavior during this period as “walking on eggshells.” The process of “walking on eggshells” to avoid confrontation is exhausting for the victim. Sometimes, the tension becomes so great that being hit seems actually a relief.

**Second: The Storm.** The batterer acts out physically by hitting, slapping, kicking, choking, using weapons, sexually abusing or being verbally threatening or abusive. Usually the shortest period in the cycle, it is also the most dangerous.

**Third: The Calm After the Storm or the Honeymoon Stage.** The abuser appears to repent his violence. He may apologize, give flowers, make excuses for what was said and done, promise it will never happen again, and beg forgiveness. The rage of the storm is spent; tension in the air has cleared; and love appears to triumph. The batterer, however, is still in complete control. By using another subtle form of manipulation, he usually persuades her that he has changed and that she is safe — claims the victim desperately wishes to believe. The “hearts and flowers” stage gently coerces the partner back into a submissive, affectionate relationship. Some victims admit willingness to undergo physical attacks because the honeymoon period so compellingly restores their faith in the partnership.

Early in an abusive relationship, the calm phase may last relatively long — longer than the bruises take to heal. Over time the stage can be expected to shorten while the tension and abuse phases intensify. While the cycle pattern characterizes many cases, it is most common at the start of an abusive relationship and not always predictable. Some victims experience violence at any time.

Advocates often recognize the cycle of violence and the following dynamics as they work with victims who insist on dropping charges against the abuser, yet return to the criminal justice system when new storms erupt.

- Intervention by the criminal justice system typically coincides with the honeymoon stage. At the same time the abuser is apologizing and promising it will never happen again, the victim is facing the stressful demands involved with cooperating with the criminal justice system and prospect of testifying against her now-loving partner.
- Cultural pressures that hold women responsible for holding a marriage together come into play. Religious beliefs that disapprove of divorce may influence the abused partner to “give it another try.”

- The victim may be told repeatedly that she is at fault. If she is convinced that she is responsible and her apparently repentant batterer can change, she will often opt not to cooperate with the court system.
- Research shows the most dangerous point for a domestic violence victim is when she attempts to report or leave an abusive relationship. It is not unrealistic for victims to fear being killed if they try to leave. Many victims are murdered at that point. In seeking to retain control, the batterer may turn his anger against anyone who supports the victim, including the advocate, making the advocate's safety a critical additional consideration.
- The forces keeping victims in abusive relationships are genuine and powerful: economic threats to deny child support or sabotage the victim's attempts to hold a job; fears of losing custody or having the children kidnapped; lack of a support network; previous hostile responses from the criminal justice system reinforcing the victim's fear there is no alternative; fear of deportation in the case of immigrant women.
- The victim may have disclosed abuse to trusted individuals in the past only to have those attempts backfire: she may not have been believed or received worse treatment when her confidential disclosures were betrayed. She has no reason to believe that escape is possible.

## **Blaming the Victim**

The abuser is responsible for domestic violence. *Domestic violence is not caused by or provoked by the actions or inactions of the victim.* Victim blaming occurs when responsibility for the violence is placed on the victim rather than the abuser. It is reflected in such questions as, "Why doesn't she just leave?" Advocates also run the risk of expressing victim-blaming attitudes, thereby avoiding focusing on the pivotal role of the batterer in domestic violence. It is important to remember that a crime was committed.

Questions that indicate the victim could have prevented the abuse legitimize the batterer's actions. They imply that the victim deserved the abuse to some extent because she failed to act correctly. They ignore the wealth of research documenting that the victim's behavior is usually irrelevant to the incidence of abuse. Although she may be able to postpone violence for a time by "walking on eggshells" or use confrontation to prematurely provoke an inevitable storm, there is no way to avert abuse from a partner who uses that means of dominating the relationship.

## Why Victims Stay

Regardless of the reason for staying with an abusive partner, **the decision to leave is a process**. The advocate's support of the victim can help that process immensely. In addition to fear, cultural pressure, and economic dependence, victims of domestic abuse remain in abusive relationships for numerous other reasons. The following list is not comprehensive:

- The victim loves her abuser.
- The victim fears losing custody of her children.
- The victim has no money to support her and the children.
- The victim thinks she alone can help him to quit battering, believes he is sick or a victim of outside forces.
- The victim believes all women are beaten in relationships.
- The victim thinks she is the only one who is abused and is too ashamed to admit it.
- In addition to threatening her, the abuser has threatened to kill others or him if she leaves.
- The victim has no home or resources other than what the abuser provides. The abuser has destroyed all outside relationships.
- The victim wants to protect her partner's image and family's image in the community.
- The victim's family was abusive and she feels that violence in the home is normal.
- The victim feels that if she will only stop making mistakes then the violence will stop.
- The victim feels any father is better than no father for her children.
- The abuser returns to being the loving partner she fell in love with for a time.
- Leaving would be sinful in the eyes of religious authorities.
- The victim suffers from immobilizing fear and helplessness.
- The victim fears living alone and loneliness.
- The victim believes attempts to contact outside help will result in worse treatment when the abuser is returned home.
- The victim is afraid of the legal system.
- The victim has no money of her own.

## Why Victims Leave

Each victim's reason for leaving the abusive relationship is unique to her situation, but there are several frequent catalysts:

- The victim's belief that the next beating may kill her.
- The abuser has turned violence on the children, either sexually or physically.

- The children have begun to be abusive, forcing her to realize they must be removed from that environment.
- The victim heard about help or about another victim who managed to leave.
- A friend, family member or counselor has given the victim sufficient support to risk leaving.

Sometimes a victim leaves and returns several times. The first time may be a test to see if the abuser will try to get help for his problem. If the violence persists, she will leave again, and perhaps gathers more information about available community resources. If she reconciles but leaves again, she may have returned to marshal financial and educational resources in preparation for a later leave.

*It is vital that the advocate convey to the victim that the “door is always open” – returning to the batterer or refusing to cooperate with a prosecution – does NOT impede the victim from seeking future assistance.*

### **The Gay, Lesbian, Bisexual, Transgender (GLBT) Domestic Violence Victim**

The dynamics of GLBT domestic violence are similar to the dynamics of heterosexual abuse, with the most significant difference being that homophobia (or bi-phobia, or trans-phobia) add an extra layer of terror. The batterer may threaten to disclose the victim’s GLBT status to those who may not be aware because the victim has not “come out of the closet.” The batterer may also convince the victim that law enforcement will not help because of a bias or phobia, or the batterer will claim that the abuse is “mutual.”

Many victims may not “out” themselves right away, and they may refer to the perpetrator as a “roommate” or “friend.” The advocate has to be patient and build a trusting relationship where the victim feels comfortable revealing the true nature of the underlying relationship. There are few support services that specialize in GLBT victim issues. It may be harder for these victims to turn to family and friends for support. These victims often fear hostile reactions from law enforcement and the community. The advocate must not make presumptions and assumptions regarding the victim, his/her sexuality, or gender identity. The advocate may want to reach out to the few service providers that do specialize in GLBT cases, and certainly provide the victim with such referrals.

### **The Immigrant Domestic Violence Victim and the U Visa**

Victim cooperation is often the key to prosecuting crimes, and concern regarding immigration status can directly impact whether a victim is willing to cooperate with law enforcement. In immigrant domestic violence situations, the batterer often convinces the victim that she will be deported if she reports the abuse. Congress has created a process for immigrant crime victims to obtain lawful immigration status, which is known

as the “U Visa.” The U Visa can protect the immigration status of victims of domestic violence, sexual assault, kidnapping and other crimes.

To qualify for a U Visa, the applicant must demonstrate that she:

1. Is the victim of domestic violence (or other applicable crime);
2. Has been helpful, is being helpful, or is likely to be helpful in the investigation and prosecution of the domestic violence/crime; and
3. Has suffered substantial mental or physical harm related to the domestic violence/crime.

Additionally, the applicant must submit a certification from a federal, state or local qualifying official, including:

- Police Officers
- District Attorneys
- Judges
- Agents of the United States Citizenship and Immigration Services (USCIS)

The certification must affirm that the immigrant victim “has been helpful, is being helpful, or is likely to be helpful” in the *investigation* OR *prosecution* of the domestic violence/crime.

Successful U Visa applicants are deemed “lawful temporary residents” for up to three years, after which time the immigrant is eligible to apply to become a lawful permanent resident (Green Card holder). A copy of the U Visa certification form is in the Appendix.

## **How Advocates Can Help Victims of Domestic Violence**

The advocate’s job is not to judge, but to educate the victim to the possibilities of living a life free of psychological, emotional, or physical coercion. While encouraging victims to feel empowered, advocates must remember that they are not counselors. Advocates can provide crisis intervention and assistance on using the criminal justice system for protection and support.

### **Make an effort to:**

- Return control of the victim's life to the victim to the greatest extent possible;
- Encourage the victim to feel she can make difficult decisions on her and her children's behalf;
- Reinforce that the victim ultimately knows what is best for her;
- Communicate in a supportive and non-judgmental fashion as you ask vital questions and relay important information;
- Listen to the victim;

- Avoid giving an opinion if the victim asks, “What do you think I should do?” Instead, restate the facts, lay out the options, and offer support to the victim as a competent decision maker. For example: “You have said that you are frightened about returning home while the defendant is out on bail. You have a sister who lives in the next town, and you have a bed in the shelter for battered women if you want to go there. I know you need to go to work. What do you think makes sense?” Help the victim walk through the consequences of each choice- e.g., “If you stay with your sister, the defendant knows where that is, so you may still be in danger.”
- Reinforce that it is the victim who has made the decision and must deal with the consequences of her actions.

### **Other Criminal Charges in Domestic Violence Cases**

Domestic abuse often involves several criminal acts. Advocates should review domestic violence case details with the prosecutor to consider the potential for additional criminal charges. Domestic violence often involves:

- Annoying Phone Calls
- Arson
- Assault
- Assault by means of a Dangerous Weapon
- Assault with Intent to Commit a Felony
- Assault with Intent to Murder
- Assault with Intent to Rape
- Indecent Assault and Battery
- Assault and Battery
- Assault and Battery with a Dangerous Weapon
- Attempt to Murder
- Firearms, Use of in Committing a Felony
- Kidnapping/Unlawful Restraint
- Criminal Harassment
- Disturbing the Peace and Disorderly Conduct
- Intimidation of a Witness
- Malicious Destruction of Property
- Stalking
- Threat to Commit a Crime
- Trespass
- Violation of Restraining Order



## **Victims Reluctant to Participate in the Criminal Justice Process**

Some offices have a “no drop” policy on domestic violence cases, meaning that prosecution will be pursued regardless of the victim's consent or cooperation. Other offices follow a case-by-case approach. For some battered women, the lack of control over the decision to prosecute is a relief. Others react in fear and anger. Their inability to halt prosecution of their abuser exacerbates the sense they have no control over anything in their lives. The issue raises controversy among women's advocates who oppose ignoring the victim's wishes and those who feel prosecution is ultimately in the victim's best interest.

Many victims are ambivalent about the criminal justice process due to misconceptions. The advocate can discuss the prosecution process thoroughly to alleviate some concerns, and to clear up false impressions. Advocates must be mindful of a victim's concerns regarding privacy, safety, financial resources, and employment and housing stability – every aspect of the victim's life is impacted by the violence, and every decision she makes needs careful consideration.

In all domestic violence situations, and in many sexual assaults, the victim and her family know the perpetrator. Therefore, it is likely that the victim's social network of family and friends also know the abuser, and in some cases, the victim may not receive the understanding and support of those close to her.

In discussing a victim's reluctance to go forward, advocates can consider making the following points.

**When the victim expresses responsibility for the crime**, it may mean that the victim feels sorry for the defendant and does not want him punished. The victim may blame herself for simply being “in the wrong place at the wrong time.”

Possible Responses:

- Remind the victim that the defendant committed a crime, and he is the *only* one responsible for his choice to commit illegal actions.
- Do not attack the defendant's character when discussing his behavior.
- Explain it is natural to try to make sense of a senseless act with some cause or explanation. However, the defendant alone is still responsible for choices and actions.
- Help the victim remember how hurt and frightened she was right after she was abused or assaulted, but be careful not to re-traumatize the victim.
- Discuss the tradition of victim blaming as a possible source of feelings.
- Educate domestic violence victims that one of the dynamics of abusive relationships is that the perpetrator blames the victim for everything.
- Remind the victim that a criminal prosecution does not condemn or judge a person's entire character or worth as a human being, only the commission of a criminal act.
- Remind the victim that it is the responsibility of the prosecutor's office to prosecute crime and that a judge or jurors will render a verdict. If the defendant is convicted, the judge will pass sentence with her input, if desired, but she is not responsible for the criminal justice process.

**Fear of retaliation** combined with fear that no one will be able to protect them. This fear is often justified and should be discussed with the prosecutor along with taking safety precautions.

Possible Responses:

- Execute a detailed safety plan including escape plans, emergency numbers, emergency shelters, and special police services if available. Continually update the safety plan with the victim as safety needs change.
- Discuss the reality that the offender's behavior will probably occur again and may increase in severity unless serious intervention deters the abuser.
- Let the victim know that the advocate and prosecutor are available for her to check in with.

**Fear that participation in the prosecution will anger the defendant and end the relationship.**

Possible Responses:

Help the victim understand that the defendant's claim that the criminal prosecution is destroying the relationship provides another way for him to deny responsibility for the crime.

**Fear that the court case will be harmful to the children** can be well-founded depending on the circumstances. Children may have been victims or witnesses to the abuse.

Possible Responses:

- Tell the victim that the greatest threat to the lives, safety and emotional well-being of the children is the defendant's violence or criminal act.
- Tell the victim that it is important for her children to see the violence in their household handled seriously and stopped, to alleviate their fears for her and their safety.
- Help the victim understand the serious, long-term impact that violence may have on her children.

### **Fear of not being believed by the judge or jury.**

#### **Possible Responses:**

- Emphasize all the efforts that will be made to prosecute the case effectively.
- Explain that the victim is not the only voice in the case. Ask the prosecutor to explain about other witnesses, corroborative evidence, exhibits, and physical evidence, but be careful not to provide information that could affect the witness's testimony.
- Tell the victim that it is not her role to convince the judge or jury but to simply tell the truth.
- Be realistic about possible outcomes. Ask the prosecutor to explain that no trial is a sure thing. Explain that juries can be unpredictable and judges temperamental. Review case strengths and remind the victim that regardless of the outcome, she is sending a message that the defendant cannot intimidate her, that many others believe that he has committed a crime and should be held accountable.
- Remind the victim of her own strength and courage. Tell her that participation and testifying will help build confidence for taking other important steps toward safety and recovery.

### **Humiliation**

#### **Possible Responses:**

- Discuss protections in the courtroom including the rules of decorum. Explain rules against badgering a witness and the objections the prosecutor can make to defense questions.
- Remind the victim that court is very different from the dramatics portrayed on television.
- Reassure the victim that it is human to not remember every detail and that she will be prepared for testimony and trial.

**Financial dependence on the defendant.**Possible Responses:

- Validate these concerns and explain sentencing options. Explore with the prosecutor the possibility of a sentence that does not involve incarceration and addresses the victim's concerns.
- Remind the victim that the defendant threatened the family's financial well-being when he committed the crime.
- Make referrals to social services, legal, and financial assistance agencies.

**Belief that the defendant has changed and will never abuse again.**Possible Responses:

- Remind the victim that the defendant made similar promises in the past.
- Explain that defendants often promise to reform only to persuade victims to do what they want and to avoid legal consequences for their actions.
- Ask the victim what steps the defendant has initiated in the past to change his behavior.
- Ask the victim if her heart wants to believe his promise but her head tells her not to.
- Educate the victim about the Power and Control Wheel and the cycle of abuse.
- Explain that the prosecution cannot back down, especially since that may only reinforce defendant beliefs he can get away with hurting her.
- Discuss the possibility that participating in the case may empower her.

**Fear of re-traumatization** obligates the advocate to distinguish between the victim's manageable discomfort and unmanageable trauma. If the victim is visibly upset by discussing the events but can discuss them, she may be able to testify in court.

Possible Responses:

- Explain the players and processes and, then, the similarities between retelling the events to an advocate and retelling them to a larger audience.
- Discuss the rules defining what questions are allowed by the prosecutor and defense attorney, and what types of conduct attorneys may exhibit.
- If the victim appears traumatized, don't pressure her. Make appropriate referrals to assist her decision on testifying and encourage her to discuss concerns. Do not discuss the victim's counseling or make notes concerning counseling.

## Victims Who Will Not Participate in the Criminal Justice Process

If the victim is adamant about not testifying, acknowledge the difficulty of her situation and the decision. Let her know whether the Commonwealth plans to continue with the case without her cooperation and — after discussions with the prosecutor — whether she will receive a summons to testify. It is important to maintain sensitivity in choice of words and tone of voice. The use of pressure and coercion under the guise of prosecutorial intervention should be avoided. *The advocate should create a safety plan with the victim, remind her that her door is always open for this or future cases, and convey that other victims have returned for help when they are ready.*

## Restraining Orders<sup>4</sup>

Each court has protective authority against abuse, and can issue restraining orders, often referred to as “209A orders,” “abuse prevention orders,” or in probate cases involving divorce “domestic relations protective orders.” The courts may issue orders that prohibit abuse, require the defendant to refrain from contacting the plaintiff, or to vacate and stay away from the plaintiff’s home or workplace. In some instances, courts may award temporary custody of a minor child to the plaintiff, and may order temporary support payments. The restraining order process is used only to protect persons from abuse, and it is not appropriate to use this process for mediation or reconciliation.

To obtain a restraining order, a preponderance of the evidence must show that the plaintiff has a reasonable fear of “imminent serious physical harm.”

### Chapter 209A, the Massachusetts Abuse Prevention Statute

#### Section 1 - definitions

Abuse is defined as the occurrence of one or more of the following acts between family or household members:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm; causing another to engage involuntarily in sexual relations by force, threat or duress.

Family or household members are persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of whether they have ever married or lived together; or have been in a “substantive dating or engagement relationship,” which shall be decided by courts in consideration of the following factors:
  - the length of time of the relationship;
  - the type of relationship;
  - the frequency of interaction between the parties;

---

<sup>4</sup> **Harassment Prevention Orders** are discussed in the Sexual Assault section of this manual.

- if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

**Section 1** also discusses *orders to vacate*, specifying when a defendant is ordered to vacate the home or workplace, he must surrender keys, must not damage any personal belongings of the victim, and may not stop the mail or the utilities when vacating.

**Section 2** states where restraining orders may be brought: in the court having jurisdiction over the victim's current residence, or the court having jurisdiction over the victim's former residence, if the victim left the home to escape abuse.

**Section 3** describes the remedies to prevent abuse from re-occurring. Under its provisions, the victim may seek an order:

- That the defendant stop abusing the victim;
- That the defendant refrain from contacting the victim unless authorized by the court;
- That the defendant vacate immediately and remain away from the household (even if it is a multiple family dwelling) or workplace for one year;
- That awards the victim temporary custody of minor children. The award of temporary custody is often contentious. Many defendants will often fight harder to retain custody of children than they will against the restraining order, and at times a spouse or partner may file a petition for a restraining order as a tactic to gain advantage in a divorce proceeding. Essentially, the law allows for the award of temporary custody by the District Court, but any Probate Court order regarding custody or visitation automatically supersedes the District Court provision. Advocates can learn whether there are pending probate matters such as custody or visitation from information provided by the victim on the restraining order application form.

When a victim with children seeks protection, many courts automatically send victims with children to Probate Court to obtain a restraining order. This should not be done for several reasons:

- The law entitles the victim to seek a restraining order from any District or Superior Court, including the Boston Municipal Court;
- A victim traumatized by abuse and reeling from the decision to seek a restraining order may be far from any decisions regarding separation, divorce, custody, or visitation;
- The logistics of going to another court and beginning the process all over again may overwhelm the victim, particularly since there is only one Probate Court per county, and the victim may not have either the transportation or the time to go there.

Section 3 also contains provisions allowing courts to order *temporary orders for support* for the victim, to pay the victim *compensation* for out-of-pocket expenses suffered from

the abuse such as medical expenses, reasonable attorney's fees and property damage, including the costs of getting the locks changed, etc. The law also allows that the *victim's current address be impounded* by the court, that is kept confidential by the court from the defendant and from the public.

**Section 3A** provides that the complainant (victim) must be informed that *proceedings under c. 209A are civil but violations are punished criminally*, and that the prosecutor's office must inform the victim about other pertinent criminal offenses such as assault and battery, stalking, etc.

**Section 3B** provides upon the issuance of a temporary or emergency order by the court, the court can order the *immediate surrender of all guns owned, controlled, or possessed by the defendant* and immediate suspension and surrender of the defendant's license to carry firearms or firearms identification card if there is an immediate danger of abuse.

**Section 4** concerns *temporary orders*. If the victim files a complaint under this section and demonstrates an immediate danger of abuse, then the court can order sufficient relief to protect her without the defendant being present through an *ex parte* hearing. The court must give the defendant notice and an opportunity to be heard no later than ten days from the issuance of the order. If the defendant does not appear after receiving notice, the order will be extended for up to one year, so long as the victim appears. After ten days, however, the victim may not wish to renew the restraining order. The court has an array of conditions that it can order in such cases. Advocates should inform victims that ordering the defendant to refrain from abuse will help protect her even if she decides she wants the abuser back in the home. If he violates this order, a criminal complaint can be issued giving her and the court further options.

**Section 5** allows issuance of *temporary orders by a judge after a telephone conference to deal with emergencies* that occur outside court hours. This step usually takes place at the time when the police respond to the scene of the abusive incident.

**Section 5A** gives *full faith and credit* to restraining orders issued by other jurisdictions when the victim files an out-of-state (or other jurisdiction) order with the court along with an affidavit swearing that the order is currently in effect as written.

**Section 6** details the *powers of police* to prevent abuse and assist the victim, which includes a mandate that police remain in the dwelling for a time to ensure the victim's safety. It allows police to drive the victim to the emergency room for medical treatment and to shelter in another home. The police responding to domestic abuse calls must give the victim written notice of protections contained in the Abuse Prevention law and activate the emergency judicial response procedure if warranted. *This section mandates police to arrest defendants when the police witness or have probable cause to believe that the defendant has violated a temporary or permanent restraining order.* They may also arrest those who have committed abuse as defined under the statute even if it is a misdemeanor, those who have committed an assault and battery, and those who have



committed a felony. Arrest is the preferred response. The law protects police from civil complaints regarding their behavior while investigating incidents under this chapter, so long as they acted in good faith.

Section 6 also details the *procedures following the defendant's arrest and release on bail*. The law requires the court, if the victim so requests, to issue the defendant a written order to stay away from the victim and to give the victim a copy of the order. The court must use all reasonable means to notify the victim upon the defendant's release.

**Section 7** allows for the entry of the defendant's name into a *statewide database* if a restraining order is issued or violation of that restraining order occurs.

**Section 8** defines the means by which the *victim's personal information*—residence, telephone number, workplace name, address, and telephone number—is kept confidential. Clerk Magistrates and their staff should tell victims to exclude this information from their application and include it on the “Confidential Information Form.” Victims should specify the persons authorized to obtain this information. Police, prosecutors, victim witness advocates, domestic violence counselors, and sexual assault counselors may seek this information if needed to carry out their duties.

**Section 9** contains the *standard complaint form* used throughout Massachusetts.

**Section 10** orders defendants who have been sent to a certified batterer's program to pay a \$300 assessment into the General Fund, unless they are indigent, in addition to the cost of the program.

## The Restraining Order Process

- Step 1:** If the police respond to the incident after court hours, the judge grants an emergency, civil, temporary restraining order, a 209A, over the telephone. If the order is granted over the phone, the victim must appear in court the next time it is in session to extend the order. Or, during court hours, the victim can file an application for a temporary restraining order with the court. This order covers ten days, after which both victim and defendant appear in court for a 209A hearing.
- Step 2:** The police serve a copy of the temporary restraining order on the abuser, giving him notice to appear in court at the 209A hearing scheduled within ten days.
- Step 3:** The victim must appear in court for the hearing. If she fails to appear, the order expires. If the victim appears but the defendant does not despite notification, then the order may be continued for up to one year. If the police were unable to serve the defendant, then the order may be continued for a short period to give time for the defendant to be notified. If

both appear, the court conducts a hearing on the merits of continuing the order. Both victim and defendant are given an opportunity to be heard.

- Step 4:** The protective order may be continued for up to one year. If the defendant has not appeared in court and the order is extended, then the police will serve the defendant with a copy of the extended order. If the defendant does appear in court, then the clerk will give him a copy of the extended order.
- Step 5:** If the defendant violates the restraining order, the victim should notify the police immediately or call 911. Victims with ongoing cases or relationships with an advocate, should also notify the advocate and/or District Attorney's Office. Since a violation of a restraining order is a criminal complaint, the police will attempt to arrest the defendant. If they cannot locate the defendant, the police will apply for a complaint alleging violation of a restraining order with either an arrest warrant or a summons returnable for a specific day. In some cases, applications for complaint are scheduled for a "show cause hearing" by the clerk.
- Step 6:** The defendant is arrested by the police or appears in court for arraignment, if a complaint was issued. If the defendant is released on bail, the court may give an oral or written stay-away order to the defendant.

## **209A Court Forms**

**The Complaint Form & Affidavit.** Page one should contain all the information the judge will need to decide whether to issue a restraining order. It is important that the victim provides specific details about the alleged abuse and signs the Affidavit (which is on the back of page one). The second (separate) page records past or ongoing proceedings involving the children of the parties, including divorce, paternity, or support actions. Parts A and B must be completed even if the victim is not requesting any orders regarding children.

**Defendant Information Form.** This provides information needed to serve the defendant with a copy of the restraining order — important for the victim's safety. The victim should be encouraged to list all locating information available regarding the defendant's work, home, family and friends so that the police can serve the order and the victim can be spared multiple returns to court while police are trying to locate the defendant.

This form can warn the police about firearms, past history of violence or other safety risks to the officer who will serve the order. If the judge issues a restraining order, this form must be given to the police along with their copies of the order. This can be a critical safety issue for both victim and police. Courts should keep a copy of the form in the case file.

**Affidavit Disclosing Care or Custody Proceedings.** This page must be completed by victims who, on page one of the complaint form, indicated that they have children.

**Confidential Information Form.** This form contains the victim's contact information, which must be kept confidential. Advocates may need to fill out a "Request for Access to Confidential Information Form."

**Abuse Prevention Order (2 pages).** This is the official record of the judge's orders.

**Return of Service.** This form is used by the police department to indicate whether he served the abuse prevention order on the defendant.

### **The Advocate's Role in the Restraining Order Process**

The primary role of the advocate is to provide assistance in obtaining a restraining order – explaining the process, helping to complete the complaint, standing with the person throughout the proceedings, and aiding and supporting them in whatever way possible. Advocates often are helpful in reminding the person of relevant facts and particular circumstances that would assist the court in issuing the order. Advocates can also:

- Explain courtroom logistics; where she will go when the judge calls her to the bench; what to expect from the judge's questions, the etiquette of addressing the judge as "Your Honor" and waiting until spoken to.
- Usually it is the victim's choice whether the advocate accompanies her to speak to the judge. The advocate is there only for support, although he may respond if the judge questions him.
- Encourage victims to talk about the most recent incident of abuse, any past abuse, and whether or not they are in fear, when they speak to the judge.
- Explain, for the victim's safety, that she should tell the court about any weapons owned by the defendant.

### **SAFEPLAN<sup>5</sup>**

SAFEPLAN is a partnership program between MOVA and community-based domestic violence programs. SAFEPLAN collaborates with the District Attorneys' Offices, criminal justice agencies and social service groups. SAFEPLAN provides certified advocates to victims of domestic violence that seek court intervention and protection. SAFEPLAN advocates are based in many district and probate courts throughout the

---

<sup>5</sup> Information from the MOVA Website: [www.mass.gov/mova](http://www.mass.gov/mova)

Commonwealth. SAFEPLAN advocates specialize in assisting victims with the restraining order process and they provide court advocacy and referrals. All SAFEPLAN services are free of charge.

SAFEPLAN advocates work in collaboration with the victim-witness advocates employed by the District Attorneys. While victim-witness advocates assist victims in obtaining restraining orders, they also assist victims throughout the entire criminal justice process. SAFEPLAN advocates primarily assist victims with advocacy involving the restraining order process. Victim-witness advocates and SAFEPLAN advocates work together to ensure that domestic violence victims receive comprehensive and coordinated services.

### **Post-Restraining Order Issues**

Prepare the victim to wait until the Clerk's office can complete the order. During that period, the advocate can discuss the following issues.

- Explain the service and return date, usually ten days.
- Once the victim receives a copy of the order, she should keep a copy with her at all times. She should also photocopy the order and keep a copy in a safe place accessible to her if she has to flee.
- Explain that the restraining order is civil but violations are criminal and cause for arrest.
- Explain that if the victim wants to vacate the order, she must come to court. However, the victim should consider the danger factor and a safety plan. Urge the victim to consider the “refrain from abuse only” option.
- Invite the victim back and explain that even if she decides to vacate the order, that she may obtain another one if she needs to and an advocate will provide support.
- Explain that only the defendant can violate the order: its provisions do not bind her. In cases where she initiates the contact, third parties could call the police and the defendant could still be arrested for violating the order. The duty to comply rests upon the defendant. The duty to remove the restraining order and report violations rests largely with the victim.
- Depending on office procedure, photograph any injuries observed or send the victim to the police to have the injuries photographed. Since injuries like bruises may not appear for several days, the advocate may have to arrange for the victim to return for photographs.
- Conduct a lethality assessment.

- Make a safety plan for this victim and referrals for housing assistance, financial counseling, shelters, counseling, hotline numbers and support groups.
- Make copies of the applications for restraining order.
- Discuss Victim of Violent Crime Compensation application.
- Ensure contact information, including contact information through third parties.
- Conduct follow-up calls, regarding the victim's well-being, her access to services and to reiterate the importance of following her safety plan.
- In cases that involve mandated reporting, check that the necessary reports have been filed by police or medical personnel with DCF, Executive Office of Elder Affairs, or the Disabled Persons Protection Commission.

### **The Ten-Day Hearing**

After the emergency order has been issued in the defendant's absence, a number of events may occur. First, the police make an effort to serve the defendant with a copy of the restraining order and notice of the ten-day hearing. If they cannot accomplish this, the restraining order is not effective. Much depends upon the quality of locating information provided and the vigorousness with which the police department pursues this task. Advocates can help the process by calling the domestic violence officer in the police department to monitor whether the orders have been served. If they have not, the advocate can contact the victim for additional information about the defendant's whereabouts and to discuss safety concerns. In many circumstances, the defendant learns about the restraining order from the victim herself. If he appears in court on the day of the hearing, he is considered to have received notice, regardless of police contact. If there is no indication the defendant received notice and he does not appear, some judges will postpone the hearing for another ten days, order service by mail at the last known address, and then extend the order for a year.

Frequently, the defendant will appear with the victim who wishes to vacate (remove) the order. In these situations, the advocate should speak to the victim alone and arrange a safety plan. Seek assistance from a court officer, if necessary, to ensure this occurs. Encourage the victim to have the order extended for one year, with the order that he refrain from abuse. If the defendant keeps his promise never to assault her again, then the order will lapse with no effect. If he does become violent, the law has additional means to deal with the situation since any violations become criminal. *Remind the victim that the order is only a piece of paper and will not deter a defendant determined to commit violence. Safety planning is crucial.*

## Violations of Restraining Orders

*When the police have probable cause to believe that an existing order has been violated, they are required to make a warrantless arrest.* If they cannot arrest him on the scene or shortly thereafter, the police may go to court and obtain a warrant for his arrest on the charge of violating a restraining order. The police can also apply for a criminal complaint — calling for the clerk's office to issue a summons returnable for a specific day — but this option is not preferred since it presents increased danger. If a summons has been issued in a case that raises concerns, the advocate should alert the supervisor.

Under typical circumstances, the defendant is arrested and appears in court for arraignment and a bail hearing. The prosecutor will rely on the advocate's views on the seriousness of the offense and danger presented by the defendant. This is a judgment call separate from concerns voiced by the victim. Bear in mind the victim does not have the advocate's experience with multiple similar cases and may minimize the incident once it is over. *Be prepared at the bail hearing to act quickly if the defendant is released or makes bail.* Many offices have a protocol for notifying victims of domestic violence at this point. If the defendant is held on bail, advocates must ensure that the bail notification procedures are in place so that notification may be made quickly.

In addition to, or in lieu of criminal proceedings, the court may enforce a restraining order through civil contempt. The purpose of civil contempt proceedings is to coerce compliance with the order, not to punish the defendant for violating the order. Such proceedings sometimes are used to enforce provisions of the order requiring the defendant to do something such as turning over car or apartment keys.

## Lethality and Risk Assessments

Risk assessment involves identifying and examining an abuser's past behavior to assess his capacity and likelihood for serious or lethal violence. There are various tools used to conduct lethality and risk assessments, but the basic factors are often similar. When speaking to the victim, ask her to think carefully about these factors and whether or not they pose significant risk in her situation. It is important for the victim to give more detail than a simple "yes" or "no" when discussing each factor. When risk assessment identifies a dangerous situation, you must do a safety plan and discuss the situation with your supervisor.

These factors are difficult to discuss – they involve sensitive topics designed to make the victim recall past abuse to help predict future behavior.

A non-exhaustive list of factors to discuss:

- **Threats**

- Has the abuser threatened you, friends, family or co-workers?
- What was the specific content of the threat(s)?

- Did you believe the threat(s)?
- Are the threats detailed and specific?
- Does the abuser have the means to carry out the threat(s)?
- **History of Violence**
  - Has the violence increased in frequency or intensity?
  - Was attempted strangulation involved?
  - Were objects/weapons used during violence?
  - Have you ever had a head injury as a result of the violence?
  - Any violence during pregnancy?
  - Any sexual violence?
  - Any violence toward children, family members, others or pets?
- **Weapons/Alcohol Drug Use**
  - Does the abuser own or have access to weapons? Do you?
  - Has past violence included the display, use or threat of weapons?
  - Does the abuser use alcohol or drugs?
  - Are alcohol or drugs used often, or in a noticeable pattern?
- **Stalking**
  - Does the abuser “check-up” on you? Or follow you when you leave home?
  - Does he invade your privacy, such as by reading your mail or listening to phone calls?
  - Does the abuser ask others about your whereabouts?

## **The Safety Plan**

A safety plan should be developed for every victim of domestic violence and other victims when circumstances warrant—e.g., cases involving gang violence. Safety plans allow the victim to think carefully about measures that she can implement to protect herself and her children, even if she chooses to stay in the relationship. Beyond the direct benefits of having a detailed safety plan in place, the process helps victims accept the reality of her danger.

Advocates can support and educate the victim by going through the steps with her, examining each option carefully, and reminding the victim that she cannot control the batterer's behavior, only her response to it. Never attempt to reassure a victim by overruling her judgment. Some victims believe the defendant will never follow through on their threats; others are not in a condition to assess the level of risk accurately. Do not abandon the discussion on the victim's assurance that she feels safe. One approach is to comment, “I know you feel safe but I'm fearful for you because....”

*Reading through safety needs can help the victim start the planning process.*

### **Safety before or during a violent incident.**

- ✓ How can you get out of the house if you need to?
- ✓ Teach children not to get in the middle of a fight.
- ✓ Do you have a place to go in mind in case of an emergency situation?
- ✓ Are car keys and money easy to grab?
- ✓ Do you have a bag packed, kept in a secret place, but easily accessible?
- ✓ How can the children be safe? Should they leave? Where to?
- ✓ Does someone know when to call the police?
- ✓ Where is the safest place in the house to be during an argument e.g., away from weapons, such as the kitchen and knives or places you might be trapped?
- ✓ Do the children know how to call 911?

### **Safety if there is time for planning.**

- ✓ Where can you go — for a short time or indefinitely?
- ✓ Where can you keep money, phone numbers, important papers, clothes, an extra set of keys?
- ✓ Who can you talk to who will help you—friends, relatives, a battered women's hotline? How much can you tell the children, and when.

### **Safety in the house when he's not living there.**

- ✓ Have you changed locks, reinforced doors and windows, made sure smoke alarms are working?
- ✓ Can someone come and stay with you for a while?
- ✓ Do the children, babysitters, and neighbors know specifically when to call the police?
- ✓ Are phone numbers taped by the phone?
- ✓ Check in regularly with someone; what should they do if there is no call at the regular time?
- ✓ Do family members, schools and your church know that you are living apart, and that the children are not to supposed to go with your partner?

### **Safety with a protective order.**

- ✓ Protective orders do NOT work in all situations, but it is a good idea to have one.
- ✓ The court can order the abuser to move out or stay away from you, the children, your house, work, school.
- ✓ Orders can give the victim custody of children, set up visitation and order child support, give the victim control of a car or other property, or order the abuser to pay for damage. Give copies of the orders to the children's school, child care facility, your employer and keep a copy with you.
- ✓ Call the police if he violates the order.
- ✓ If he has an open criminal case, even if it is unrelated, let the District Attorney's Office know about the no-contact order.



- ✓ Let the police or the prosecutor's office know of intimidation attempts.

### **Safety on the job and in public.**

- ✓ Tell employers about the restraining order so appropriate steps can be taken if the defendant appears.
- ✓ Use the receptionist or a co-worker to screen telephone calls.
- ✓ Exercise caution when leaving work, such as leaving the building with a group of people and letting people know when you are leaving and due to arrive home.
- ✓ What can you do if the defendant accosts you on your way home?
- ✓ What safety precautions can you take while waiting at the bus stop or train stop?

### **Safety and drug or alcohol consumption.**

- ✓ Understand the use of any alcohol or other drug can reduce your awareness and ability to act quickly to protect yourself.
- ✓ The abuser's use of alcohol or other drugs may be an excuse for violence.
- ✓ Think about consuming alcohol in a safe place with people who understand the risk of violence and are committed to your safety.
- ✓ How can you protect yourself and your children if your abuser is consuming drugs or alcohol?
- ✓ Note that the legal outcomes of using illegal drugs can be disastrous in terms of potential losses for a battered woman.

### **Safety and your emotional health.**

- ✓ How can you enhance and preserve your emotional well-being?
- ✓ Use the referrals offered by the advocate and get the numbers of support hotlines.
- ✓ If you are thinking of returning to the batterer, discuss your safety plan with someone you trust.
- ✓ If you need to communicate with a batterer, only do it through a third person.
- ✓ The statewide domestic violence multi-lingual hotline SAFELINK (1-877-785-2020) offers links to battered women's shelters, counseling referrals, information about domestic violence, and direct advocate support.
- ✓ Find something you like to do for yourself. You deserve to have happiness.

### **Checklist for Implementing A Safety Plan**

#### **What I need to take when I leave:**

*Identification for myself and my children including:*

- ✓ Driver's license
- ✓ Birth Certificate(s)
- ✓ Passport(s)
- ✓ Social Security Card(s)

- ✓ Green Card/Work Permits
- ✓ Health Insurance/Welfare/ Medicaid Card(s)

*Financial resources:*

- ✓ Money
- ✓ Bank Book(s)
- ✓ Credit Cards(s)
- ✓ Checkbook
- ✓ ATM cards
- ✓ Food Stamps
- ✓ Welfare checks or other state/government-issued checks

*Important papers:*

- ✓ Lease or rental agreements
- ✓ House deed
- ✓ Mortgage payment book
- ✓ Insurance papers
- ✓ Medical records for the whole family
- ✓ School records
- ✓ Divorce/Custody/Support documents
- ✓ Car payment book (if you own or are taking that car)

*Miscellaneous:*

- ✓ Keys to house, car, office, safety deposit box, post office box, etc.
- ✓ Medications
- ✓ Clothing, jewelry and other valuables
- ✓ Address (phone numbers) book, pictures, picture albums
- ✓ Items of special sentimental value
- ✓ Children's favorite toys and /or blankets
- ✓ Medications/eyeglasses/hearing aids/canes/wheelchairs

Important telephone numbers: Call **911** for all emergencies.

Police Department: \_\_\_\_\_

Battered Women's Shelter: \_\_\_\_\_

Victim Advocate: \_\_\_\_\_

Other: \_\_\_\_\_

**SafeLink: (877) 785-2020**

*SafeLink* is a 24-hour, multilingual, statewide domestic violence hotline answered by a trained advocate. *SafeLink* connects callers to emergency shelter programs. *SafeLink* is a resource for all domestic violence victims, and it is designed to complement, but not replace, other services.

## Domestic Violence Shelters and Service Providers

The primary goal of domestic violence shelters is to provide counseling and services to domestic violence victims and their children. Domestic violence agencies often assist victims with relocation efforts, job training, finding employment and obtaining financial assistance. When available, some agencies provide residential shelter to victims and their children. Most shelters and agencies provide education, outreach and prevention services in the community. Often these agencies provide training and assistance to medical and law enforcement personnel to explain the dynamics of abuse.

Many shelters and agencies have trained advocates that assist the victim with obtaining restraining orders, filing complaints and participating in the criminal prosecution. It is important to remember that all advocates are working toward the common goal of assisting the victim. The primary focus of any advocate is to ensure that the victim's needs are being met, regardless of where the advocacy is based.

## The Address Confidentiality Program

The Secretary of the Commonwealth administers the "Address Confidentiality Program," which was established by law to assist survivors of **domestic violence, sexual assault and stalking**. The Address Confidentiality Program (ACP) provides a means for victims to use a confidential address to help prevent the perpetrator from locating them.

*Participants must have relocated recently to a new address that is unknown to the perpetrator.*

To be certified as a program participant, the applicant must show that disclosure of his or her address threatens the safety of the applicant or the applicant's children. The ACP allows the program participants to use a substitute mailing address when interacting with government agencies. The substitute address is used as the participant's legal residence, mailing address, work address and/or school address. This program protects the participant's true location, but it allows government agencies to disclose public records that include address information. The government records do not include the victim's true location.

### How the ACP works:

Victims of domestic violence, sexual assault and stalking can participate in the program. Program staff assigns a substitute address to the participant to be used as the participant's legal mailing address. ACP staff retrieves the participant's mail and forward it to the participant's actual physical location.

How to contact the ACP: 1-866-SAFE-ADD

ACP  
P.O. Box 9120  
Chelsea, MA 02150-9120  
(617) 727-3261



## Sexual Assault Victims

Sexual assault is forcing another person into sexual acts. Sexual assaults may involve touching, fondling, contact between the mouth and either the victim's or the abuser's genital area, and putting body parts or other objects inside the victim's body. Some victims are sexually assaulted by strangers. Most victims, however, are sexually assaulted by someone they know – family members, friends, romantic partners, acquaintances, or dates. It is important to remember that rape and other sexual crimes can occur within an intimate relationship. Whatever the circumstances, no one asks or deserves to be sexually assaulted.

### The Aftermath

When the victim goes to an emergency room for treatment immediately after the attack, she is usually in a state of shock. This can manifest itself in expressiveness — crying, trembling, yelling — or non-expressiveness. Non-expressive victims appear coherent, logical and matter-of-fact in contrast to expressive victims who experience difficulty making any decisions or talking about the incident. Regardless of the victim's affect, she is likely to experience a range of reactions. Sexual assault is a highly traumatizing experience with potentially lifelong effects for almost all victims.

*Many factors influence an individual's response to, and recovery from, sexual assault, including, but not limited to:*

- the victim's age and maturity;
- the victim's social support network;
- the victim's relationship to the offender;
- the response to the attack by police, medical personnel, and victim advocates;
- the response to the attack by the victim's loved ones;
- the frequency, severity and duration of the assault(s);
- the setting of the attack;
- the level of violence and injury inflicted;
- the response by the criminal justice system;
- community attitudes and values; and
- the meaning attributed to the traumatic event by the victim.

### Common Reactions to Sexual Assault

**Fear.** The crime of sexual assault directly threatens the life and physical being of the victim. In the aftermath of terror that she will be maimed or killed, the victim may fear all men, refuse to be alone, in the dark, or in crowds. She may fear that the assailant will return, that no one will believe her, that she has been ruined for any future normal relationship, etc.

**Self-blame.** The victim often blames herself for the assault especially if she knew her assailant. She can blame herself for being in the wrong place at the wrong time -a belief often supported by remarks of friends and family members. Self-blame can also serve the purpose of convincing victims that they have some control over their lives.

**Loss of control.** Victims frequently continue to feel as helpless as they did during the attack, to be tortured by the sense they could not control what was happening to their own body. The result is hopelessness: one can do nothing to prevent something bad from happening or to positively influence the environment.

**Humiliation.** Having the most intimate parts of one's body exposed and touched against one's will, frequently injured, is extremely degrading. The victim may believe everyone knows or will learn she was violated, that her private shame will be forever made public.

**Denial/Shock/Numbness.** Victims may not be ready to accept the fact that someone has just violated them. Denial — when mind and body disconnect in self-defense — may serve to protect the victim immediate physical and emotional pain. Symptoms included overwork, work avoidance, isolation from family and friends, sleeplessness or too much sleep, etc.

**Anger.** Fury may frequently overcome the victim -- toward the assailant, herself, men or women in general, society, etc.

## **Helping the Sexual Assault Victim**

Patience and sensitivity are key to helping the sexual assault victim cope with the trauma and shame she is experiencing. Keep the following guidelines in mind:

- **Speak in privacy.** The victim will already feel embarrassed and shameful about discussing the assault. A private room may help put her more at ease.
- **Avoid blame.** Advocates should think carefully about the language they use. Asking a “why” question such as “Why didn't you scream?” implies blame and is irrelevant. Explain that questions asked during the criminal justice process are likely to feel judgmental or intrusive, to even have the potential to re-traumatize her.
- **Be supportive.** The victim is likely to feel quite unstable at this time. Let her know that you care and that you are available should she have any questions. For example, “I know that you're probably feeling shaky right now. I admire you for being so strong.”

- **Be attentive.** It often comforts a victim for others to check up on her regularly but the advocate must respect boundaries. Physical contact may be experienced as painful or upsetting, and can even trigger reliving the crime itself.
- **Be informative.** Knowledge is power. The victim will feel more in control of the situation knowing the options. Information about the case should be accompanied by referrals to sexual assault crisis counseling. Avoid giving advice; the victim should be encouraged to make decisions herself.

## Terminology and Legal Issues

**Sexual Assault Nurse Examiners (SANEs)** are experts specifically trained and certified to perform forensic medical-legal exams on persons age 12 and over<sup>6</sup>. The SANEs are available by beeper and respond immediately to designated facilities to care for victims of sexual assault. The SANEs document the assault by providing the necessary medical exams, testing and treatment, and collecting evidence using the Sexual Assault Evidence Collection Kit. SANEs also testify at trial.

**The Sexual Assault Evidence Collection Kit** refers to a set of protocols followed as part of the medical examination of the rape victim in the immediate aftermath of the rape. Its purpose is to acquire trace evidence such as hair or semen that the rapist may have left on the body or clothes of the victim. It is usually performed by SANEs or emergency room personnel. The kit involves combing of pubic hair, taking vaginal swabs to obtain semen samples, and taking photographs to document physical injuries, among other procedures. The victim may decline the entire exam, or any part of it, at any time. The decision to conduct an exam is unrelated to the victim's decision to report the crime.

**The SANE Response Team** consists of SANEs administering the medical-legal exams and the Rape Crisis Center Community-Based Counselors delivering the immediate crisis intervention and support, as well as medical and legal follow-up through counseling and advocacy.

**The Rape Shield Law** (M.G.L. c. 233, § 21B) provides that a victim's prior sexual conduct is not admissible evidence in court. One of the biggest factors prohibiting the disclosure of rape to law enforcement is the victim's reasonable fear that her entire sexual history will be exposed and dissected in court by defense lawyers. The Rape Shield statute provides victims with some protection against this personal invasion. The only two exceptions to this rule are the existence of a previous sexual relationship between the victim and the defendant, or the possibility that another sexual experience could have caused the victim's physical condition. Any evidence introduced under the above exceptions first must be reviewed by the trial judge.

---

<sup>6</sup> There is a separate pediatric SANE protocol for those victims under the age of 12.



This law applies to the following crimes:

- Indecent A&B on a child
- Indecent A&B on a mentally retarded person
- Indecent A&B
- Rape
- Rape of a child with force
- Rape and abuse of a child
- Assault with intent to commit rape
- Assault with intent to rape a child

**The Statute of Limitations** (M.G.L. c. 277, § 63) determines the statute of limitations for all crimes. In general, the statute of limitations for a crime is six years from the date of the crime. Murder, and certain sex offenses involving a child, does not have a statute of limitations. Generally, rape and assault to rape have a 15-year statute of limitations. Determining when the statute of limitations commences, and what time period applies, are very complex legal determinations that must be made by the assistant district attorney and his/her supervisor. An accurate statute of limitations determination considers numerous factors, particularly with sex offenses, such as the age of the victim at the time of the offense, the specific crimes applicable, and when the crimes were discovered. An advocate must be careful not to discuss, hint at or guess the statute of limitations when dealing with a victim.

**The Dwyer Protocol (formerly known as the Bishop/Fuller protocol).** The Dwyer Protocol refers to how the court handles a defendant's request to review the counseling records (mental health and rape crisis counseling records) of a victim or witness that are in the possession of a third party. The counseling records sought may not be limited to the counseling related to the crime – the defense may try to obtain records and information relative to any counseling that the victim or witness ever had. The SJC designed the Dwyer protocol to provide “a reasonable opportunity for defense counsel to inspect pretrial presumptively privileged records produced by a third party, subject to a stringent protective order.”

The Dwyer protocol includes a provision that requires victims and witnesses to receive written notice that the defense counsel has requested to see their records. Victims and witnesses have the right to be heard, or to have representation at a hearing. The District Attorney's Office represents the Commonwealth – not the victim, but the victim is entitled to have an attorney. The Victim Rights Law Center provides free, statewide representation to victims in Dwyer proceedings.

The Victim Rights Law Center can be reached at 617-399-6720, or toll-free at (877) 758-8132.

**Prior False Accusations.** In certain, special circumstances, the defendant accused of sexual assault is entitled to introduce evidence of the victim or witness' prior false accusations of sexual assault. So-called *Bohannon* motions are based on the allegation

that the victim has made prior false complaints. The judge conducts a hearing to determine whether there are special circumstances that justify allowing the evidence of prior false allegations. The Bohannon exception is narrow, and applies only in “unusual fact situations where justice demands.”

**First Complaint Witness.** The first complaint witness is unique to sexual assault cases. Formerly known as the “fresh complaint” witness, the Supreme Judicial Court, in 2005, renamed the doctrine the “first complaint” doctrine.

A witness to a sexual assault victim’s “first complaint” of the crime may testify regarding the:

- Facts of the first complaint;
- Details of the crime; and
- Circumstances surrounding the disclosure of the first complaint.

First complaint testimony cannot be used to prove the truth of the criminal allegations. First complaint testimony is used solely to assist the jury in assessing and determining the victim’s credibility regarding the sexual assault. First complaint is used typically where the facts of the assault are disputed, or where consent is an issue in the case. Only one witness, the first witness told of the assault, is permitted to testify. Substitute first complaint witnesses are allowed in specific circumstances when a judge, in his or her discretion, allows a substitution.

The first complaint witness may be a civilian, dispatcher, law enforcement official, investigator, victim-witness advocate, medical personnel or any person that was the first person the victim told about the sexual assault.

It may be that, as an advocate, you are the first person that the victim goes to, particularly if there is a pre-existing relationship. The first complaint witness should document the exact words spoken by the victim – even inconsequential information may be crucial to provide a full and accurate picture.

## **Harassment Prevention Orders, Chapter 258E**

Chapter 258E is new legislation that was enacted to provide criminally enforceable protective orders to victims of harassment and sexual abuse, regardless of whether the victim and the attacker have a relationship. This new law became effective on May 10, 2010. Prior to this law, a victim of abuse could petition for a restraining order only if the abuse was a family member, someone living in the victim’s home, or someone with whom the victim had a “substantial dating relationship.”<sup>7</sup> The harassment prevention order law allows a victim to obtain a civil restraining order against a menacing stranger or acquaintance.

---

<sup>7</sup> See the 209A Restraining Order Process in the Domestic Violence section of this manual.

Chapter 258E defines “Harassment” as:

1. Three or more acts of willful and malicious<sup>8</sup> conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property; or
2. An act that:
  - a. By force, threat or duress causes another to involuntarily engage in sexual relations; or
  - b. Constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 or 43A of chapter 265 or section 3 of chapter 272.<sup>9</sup>

A violation of a civil harassment order is a criminal offense. The process for obtaining an order is similar to the 209A process discussed in the Domestic Violence section of this manual.

### **Sexual Assault Involving Male Victims**

The effects of sexual assault can vary according to the victim assaulted. *Male* sexual assault victims tend to experience profound shame along with difficulty in resolving their inability to resist the assault and confusion about their role. While historically, males have avoided medical or legal assistance unless seriously injured, public education has prompted more victims to come forward. Some male victims experience an involuntary physiological response to the assault such as stimulation or ejaculation, which causes additional confusion. Like female victims, male survivors must be reassured they were victims of a violent crime that was not their fault.

---

<sup>8</sup> Chapter 258E defines “malicious” as “characterized by cruelty, hostility or revenge.”

<sup>9</sup> All of these violations listed are sex offenses.

## **Characteristics Observed In Male Sexual Abuse Victims, by Ken Singer, LCSW:**

- Denial of Vulnerability
- Confusion Regarding Sexual Orientation
- Confusion of Emotional Needs with Sex
- Gender Shame
- Multiple Compulsive Behaviors
- Physical and Emotional Symptoms
- Pattern of Victimizing Self and Others
- Boundary Transparency
- Chaotic Relationships
- Poorly Defined Sense of Self

## **Sexual Assault Involving Gay/Lesbian/Bisexual/Transgender (GLBT) Victims**

There are few support services that specialize in GLBT victim issues. It may be harder for these victims to turn to family and friends for support. These victims often fear hostile reactions from law enforcement and the community. The advocate must not make presumptions and assumptions regarding the victim, his/her sexuality, or gender identity. While the dynamics of the case are often similar to other sexual assault cases, the advocate may want to reach out to the few service providers that do specialize in GLBT cases, and certainly provide the victim with such referrals.

## **Victim Rights Law Center**

The Victim Rights Law Center (VRLC) is dedicated to advocating for the *civil* legal needs of rape and sexual assault victims. The VRLC also assists attorneys and advocates in providing legal services to these victims. The VRLC's philosophy is that sexual assault impacts every aspect of the victim's life, and through civil legal remedies, the VRLC assists the victim in reclaiming her life to become a "survivor." The VRLC often coordinates with rape crisis centers to ensure that comprehensive services are provided.

*The VRLC provides free and confidential legal services for problems involving safety, privacy, immigration, employment, education, housing and finances.*

The VRLC can be reached at (617) 399-6720, or toll-free at (877) 758-8132.

## The Address Confidentiality Program

The Secretary of the Commonwealth administers the “Address Confidentiality Program,” which was established by law to assist survivors of **domestic violence, sexual assault and stalking**.<sup>10</sup>

## Rape Crisis Centers

Rape crisis centers provide free counseling and advocacy services, as well as legal assistance and referrals for services, to rape and sexual assault victims. Many centers also provide education, prevention and outreach services in the community. Services are usually provided to any female or male who is thirteen years of age or older.

Rape crisis centers are not normally focused on advocacy in the criminal justice process – they are focused more on counseling the victim than on prosecution. Do not view this as an impediment to criminal prosecution. Often the best and most appropriate referral you can make is to a rape crisis center, where the counselors are focused on empowering the victim and trying to resolve her fears. The support of a rape crisis counselor may be vital to some victims maintaining the strength to proceed with a criminal case.

In addition to advocate and police referrals, the victim may come into contact with a rape crisis center if a Sexual Assault Nurse Examiner (SANE) is notified to conduct a rape exam. Many hospitals that are not SANE sites have a policy of contacting a rape crisis center when a patient discloses (or appears) to be a victim of sexual assault.

*Rape crisis center counselors provide confidential support to victims, and unlike advocates in the criminal justice system, they enjoy a legal privilege to keep communication confidential (unless the victim provides written consent to the counselor granting permission to disclose information).*

---

<sup>10</sup> The Address Confidentiality Program is explained in the Domestic Violence section of this manual.

## Child Victims and Witnesses

Child abuse does not discriminate – it spans gender, racial, socio-economic and demographic boundaries. Like domestic violence, child abuse rarely occurs as a single incident, and it often manifests as a pattern of events. Sadly, abused children often do not realize that there is anything wrong, or that their family situation is different and not “normal.” Child abuse crimes raise special considerations, both within the criminal justice system and within the context of families.

Specialize skills are necessary to interview and to interact with child victims and witnesses. A team approach is critical to any investigation and case involving children. The advocate must work closely with the prosecutor and other professionals trained to handle child abuse cases – teamwork hopefully will mitigate the trauma of participating in the criminal justice process.

Children come to the court’s attention through many doors. Child abuse can be categorized in four ways: physical abuse, emotional abuse, physical/emotional neglect and sexual abuse. Children may also witness a crime and be expected to provide testimony, or they may be bystanders to events that affect them profoundly (although they need not testify), or they may be dependents of an adult victim. **In every situation involving a child victim or witness, the advocate should take time and consult with experts to determine the best individualized approach for each child.** Advocates must make extra effort to learn how to communicate effectively and sensitively with young children.

### The Sexual Assault Intervention Network (SAIN) Team

The SAIN Team is a collaboration of local agencies (public, private and community partners) who work together to intervene in and to investigate cases of suspected sexual and serious physical abuse of children. SAIN Teams also provide services to victims and to non-offending family members. The SAIN Team goals are to keep children safe, to prevent further harm, and to hold abusers accountable; SAIN Teams promote safety, healing and justice for child victims and their families.

The SAIN Team typically includes well-trained staff from the Department of Children and Families, state and local police, the District Attorney’s office, medical and mental health consultants, the Children’s Advocacy Center, and the Massachusetts Pediatric Sexual Assault Nurse Examiner Program<sup>11</sup>.

The SAIN Team reduces the number of interviews that a child victim must undergo. Interviewing the child victim is a very specialized procedure that requires skill and experience. Children are interviewed in a non-leading manner by a trained forensic

---

<sup>11</sup> The pediatric SANE program works with young sexual assault victims age 11 and under. The pediatric SANE program is similar to the adult SANE protocol discussed in the “sexual assault” section of this manual.

interview in a child-friendly environment. New advocates are unlikely to be involved in the SAIN process, but it is useful to have some knowledge of the SAIN Team and protocol.

The non-offending parent or guardian of the victim must consent to the SAIN Team approach. The interview is scheduled within ten days at the SAIN Team site — usually a Children's Advocacy Center or the District Attorney's office. A specially trained SAIN interviewer interviews the child using a two-way mirror or closed-circuit television that allows the team members to watch the interview. During the interview, the team members can propose questions for the interviewer to ask the child, thus eliminating the need for multiple interviews.

### **Children's Advocacy Centers (CAC)**

Children's Advocacy Centers (CACs) offer a multidisciplinary, team-oriented and child-friendly model of responding to child sexual and physical abuse investigations. Each county in the Commonwealth has a CAC. By coordinating investigations in one location, the CAC can evaluate abuse allegations with regard to particular protective concerns, mental health and medical needs, domestic violence risks, and prosecution needs. The collaboration improves communication among child-serving agencies and provides a more sensitive response to child victims.

*Multidisciplinary investigative team interviews* are the core of the CAC's operations. Based on the SAIN protocol, cases referred to the CAC are investigated by representatives from the Department of Children and Families, local police department, District Attorney's Office, medical and mental health professionals, and others as appropriate. The interviews include a pre-interview meeting, the child's interview by a specialist, a post-interview meeting among the team to discuss how each agency will proceed, and a parent meeting.

The CAC may provide *mental health evaluations* conducted on-site by on-loan professionals primarily from agencies contracted by DCF. Children in need of ongoing treatment are referred to community-based services. Specialized *medical evaluations* take place on-site conducted by physicians with specialized training. These professionals participate in multidisciplinary team investigations and case reviews whenever possible, and peer reviews may occur on a regular basis. The training of physicians and other medical professionals is an integral part of the medical component.

### **Mandatory Reporting of Child Abuse**

Certain individuals such as doctors, nurses, police, social workers, child care workers, most school personnel and firefighters are required by law (M.G.L. c. 119 § 51A) to report suspected abuse or neglect of children. The report and the subsequent state investigation are often referred to as the "51A and the 51B." Mandated reporters who

suspect that a child is suffering from serious physical or emotional injury due to abuse or neglect must make an oral report to the Department of Children and Families, and follow up with a written report in 48 hours. Once reported, DCF conducts an investigation that either “substantiates” the allegation of abuse or does not. *Each office has a policy regarding mandated reporting, and the advocate should discuss each suspected abuse situation immediately with a supervisor (prior to reporting the abuse to the appropriate agency).*

The law requires DCF to notify the District Attorney's Office in writing regarding situations in which:

- A child has died;
- Has been sexually assaulted;
- Has been sexually exploited;
- Has suffered brain damage, loss or substantial impairment of a bodily function or organ, or substantial disfigurement; or
- Has been repeatedly abused by a family member.

The advocate and prosecutor should read the 51A and B reports, which often contain information vital to the prosecution of the case. Most prosecutors' offices have streamlined this process. If the advocate personally suspects abuse, she should discuss the matter immediately with a supervisor.

Abuse reports may be made to the local DCF office during office hours, or to the toll-free **Child-At-Risk Hotline at 1-800-792-5200**. Remember the written report is due within 48 hours. The report to DCF will ask for the following information:

- Name, address, current whereabouts, sex, and date of birth or estimated age of the reported child or children and of any other children in the household.
- Names, addresses and telephone numbers of the child's parents or other persons responsible for the child.
- Principal language spoken by the child and the child's caretaker.
- The reporter's name, address, telephone number, profession and relationship to the child. (Non-mandated reporters may request anonymity.)
- The full nature and extent of the child's injuries, abuse or neglect.
- Any indication of prior injuries, abuse or neglect.
- An assessment of the risk of further harm to the child and, if a risk exists, whether it is imminent.
- If the above information was given by a third party, the identity of that person, unless anonymity is requested.
- The circumstances under which the reporter first become aware of the child's alleged injuries, abuse or neglect.
- The action taken, if any, to treat, shelter or assist the child.



## **Physical Indicators of Abuse:**

- Difficulty walking or sitting
- Torn, stained or bloody underwear and/or clothing
- Genital/anal itching, pain, swelling, bleeding or burning
- Frequent urinary tract or yeast infections
- Venereal disease
- Pregnancy
- Frequent psychosomatic illnesses
- Bruises and welts
  - Bruises on any infant, especially facial bruises.
  - Bruises on the posterior side of a child's body.
  - Bruises in unusual patterns that might reflect the pattern of the instrument used, or human bite marks.
  - Clustered bruises indicating repeated contact with a hand or instrument.
  - Bruises in various stages of healing.
- Burns
  - Immersion burns indicating dunking in a hot liquid ("sock" or "glove" burns on the arms or legs or "doughnut" shaped burns of the buttocks and genitalia).
  - Cigarette burns.
  - Rope burns that indicate confinement.
  - Dry burns indicating that a child has been forced to sit upon a hot surface or has had a hot implement applied to the skin.
- Lacerations and abrasions
  - Lacerations of the lip, eye, or any portion of an infant's face.
  - Any laceration or abrasion to external genitalia.
- Skeletal injuries
  - Rib fractures.
  - Fractures of the mandible, sternum or scapulae.
  - Skull trauma.
  - Spinal shaft fracture or spinal trauma.
  - Recurrent injury to same site.
  - Injuries caused by twisting or pulling.
  - Fractures of long bones.

- Head injuries
  - Absence of hair and/or hemorrhaging beneath the scalp due to vigorous hair pulling.
  - Loosened or missing teeth.

Physical abuse indicators need to be considered along with the explanations provided and the child's medical history and developmental abilities.

### **Behavioral Indicators of Abuse:**

- Extreme fear for no apparent reason.
- Inability to trust.
- Anger and hostility.
- Inappropriate sexual behavior.
- Depression.
- Guilt or shame.
- Sudden drop in school performance.
- Somatic complaints.
- Sleep disturbances.
- Eating disorders.
- Behavior that is:
  - Phobic or avoidant
  - Regressive
  - Self-destructive
- Suicidal gestures or statements.
- Running away.
- Fire setting, fascination with fire

### **Indicators of Child Neglect:**

#### Lack of Supervision

- Very young children left unattended.
- Children left in the care of other children too young to protect them.
- Children inadequately supervised for long periods of time or when engaged in dangerous activities.

#### Lack of Adequate Clothing or Good Hygiene

- Children dressed inadequately for the weather.
- Persistent skin disorders resulting from improper hygiene. Children chronically dirty and not bathed.
- Lack of medical or dental care.
- Children whose needs for medical or dental care are unmet.

### Lack of Adequate Nutrition

- Children lacking sufficient quantity or quality of food.
- Children consistently complaining of hunger or rummaging for food.
- Children suffering severe developmental lags.
- Constant fatigue.

### Lack of Adequate Shelter

- Structurally unsafe housing or exposed wiring.
- Inadequate heating.
- Unsanitary housing conditions.

A cautionary note: In identifying neglect, observers should be sensitive to the fact that some acts may not represent abuse but are simply practices within certain cultural traditions and values. Because child-rearing behavior varies widely across families and cultural groups, appearances of abuse are sometimes only appearances. Similarly, poverty and neglect do not go hand-in-hand, despite the fact that the stresses of poverty create many additional burdens on child rearing.

## **Disclosure of Abuse**

Often child abuse is not apparent until a child discloses it. Disclosure of child abuse, particularly sexual abuse, can take many forms and tends to be a process, not a single event. Generally the child takes many steps forward and back as the facts emerge. A child's response to being sexually assaulted may include recanting (denying) the disclosure of abuse, repressing recall of the abuse, delayed reporting, abnormal composure or continued apparent voluntary contact with the perpetrator — all reactions that would seem exculpatory in an adult case. Often, prosecutors use expert testimony to explain the child's reaction, which is further complicated when the accused is a family member. A child is usually acutely conscious of the reverberating effects of disclosing abuse and will feel responsible — and often be blamed — for the ejection of the perpetrator from the home and the anguish displayed by other family members who frequently hold the child victim responsible for the abuse.

Disclosure of abuse can result in a total upheaval of the child's life. Caregivers and parents often initially disbelieve the child, minimize the acts or withdraw affection. The suspected abuser may be arrested, causing havoc and recriminations. The child may be removed from home and placed in foster care. Social service and legal system responses may feel like punishment, prompting recanting of the disclosure. When reporting has been delayed, find out why. A child victim may have tried to report previously but the report was not documented. The child may have been threatened with personal harm, harm to a loved one or public embarrassment.

## **Children of an Adult Victim**

Advocates sometimes come into contact with abused children during a criminal case because they are the children of an adult victim. While they may feel conflicted between their desire to support the victim and the need to protect the children, any suspected abuse or neglect must be reported immediately to a supervisor. Children may be at risk due to the circumstances of the underlying case, or due to the behavior of the victim. Since reporting the children to DCF may further traumatize the victim, and cause the victim to refuse to cooperate with the state, the advocate should seek the advice of a supervisor in these circumstances. Each office has a policy regarding mandated reporting situations, and it is best always to check with a supervisor in every case.

Barring concerns about the children's safety, advocates should understand that children are usually a primary focus for the victim. She may need help in arranging for childcare in order to cooperate with the prosecution. While the advocate cannot fill the role of a babysitter, she can assist the victim with arranging for child-care, possibly at court.

## **Competency**

The trial judge, in his or her discretion, almost always determines competency. The child's age is not a determining factor: very young children have been found to have the capacity to testify. Any person of "sufficient understanding" is competent to testify, regardless of age. An advocate's observations and interactions with the child may be able to assist with a competency determination.

Establishing competency for a child means that that the witness<sup>12</sup>:

- 1) has the general ability or capacity to "observe, remember, and give expression to that which she has seen, heard, or experienced;" and
- 2) has "understanding sufficient to comprehend the difference between truth and falsehood...the obligation and duty to tell the truth, and in a general way, belief that failure to perform the obligation will result in punishment."

## **Children as Witnesses**

While a team of seasoned advocates and prosecutors generally handle cases involving child abuse, a new advocate may encounter less serious crimes that involve a child witness.

---

<sup>12</sup> Commonwealth v. Tatsios, 238 Mass. 322, 325 (1921).

### **Considerations for working with a child witness in a District Court case:**

- Consider the child's age and developmental level before speaking to them. Asking a preschooler to estimate exactly when an event took place is generally unproductive because estimating time is beyond their capabilities. If timing is crucial, advocates can ask questions which connect the issues to significant events in the child's life, such as holidays or birthdays. Use age-appropriate language. To determine the child's capabilities, the advocate can ask questions of the caregiver or seek expert advice. Remember that the prosecutor is responsible for any questioning concerning the subject matter of the criminal case.
- Build a rapport with the child. Do not overwhelm the child. Make the child feel comfortable with you and the setting. Try talking about a neutral topic to get the child talking. Talk to a caretaker in advance about topics that are "good" and "bad."
- Explain the advocate's role in understandable language. Find out why the child thinks he or she is there and try to clarify misunderstandings. Remember that most beliefs about the criminal justice system come from television or the movies, so the child may have either absurdly heroic or grossly negative perceptions of the roles of judges, police and prosecutors.
- Bring children to the courtroom, show them where they will sit while waiting to testify, where they will sit when testifying, where the judge sits, and where their loved ones will sit.
- Introduce children to the court officers, and if possible, the judge.
- Make them practice speaking loud enough.
- Try to ensure that a child's testimony is scheduled in keeping with the child's age and routine.
- Go over the oath with them.
- Explain the need to say "yes" and "no" rather than shaking the head.
- Give children permission to tell the truth and to use bad words.
- Try to use words the child uses to explain body parts whenever possible.
- When meeting with the child, let him or her set the pace.
- Try to learn about the child's interests, strengths, weaknesses and fears.

- Try to find common ground to discuss that will put the child at ease.
- Be honest with the child about what to expect.
- Ask whether it is helpful for the child to carry a small toy or item of comfort when testifying.

## **Homicide/Motor Vehicle Homicide Survivors**

It is not likely that a new advocate will work on a homicide case. *More likely, however, a less-experienced advocate may be assigned to a motor vehicle homicide.* The homicide of a loved one is one of the most traumatic experiences a person can encounter. When an advocate first connects with a family, it is often at a time when funeral arrangements are being made and members are going through the early stages of grief. Advocates must make every effort to accommodate the survivors, and to ensure that their needs are met. While it may be a small gesture, offering to have the initial meeting at a place where survivors feel comfortable, such as their home, may make things easier for them. At the initial meeting, often it is best to let the survivors lead the conversation – what they are ready to hear and discuss will be different in every case.

Most importantly, try to ensure that the death of their loved one is not just “another case.” In a motor vehicle homicide, avoid using the term “accident.” Always refer to the incident as a “collision” or “crash.”

*Allow the survivors to talk, to tell stories and to show pictures so that you get to know their loved one.* By demonstrating an interest in their loved one’s life, you will convey that you care. Your interest, empathy and support will allow the survivors to better utilize the assistance and services you offer. Also, be mindful that each survivor, even within the same family, will have his or her own feelings, impressions and needs. It may be helpful for you to acknowledge that it is acceptable and normal for people to feel differently.

Prior to the first meeting, the advocate should try to gather as much information as possible from the investigators and the prosecutor. What do investigators know about relationship between the deceased and survivors? What are the facts and circumstances surrounding the death? How was the family informed of the death and their initial reaction? If the advocate does not know the answer, she should admit it, but assure the family that she will attempt to find the answer and let them know.

Advocates should talk to the prosecutor to learn the provisions of the law surrounding the charges brought against the defendant. The family may want to know the maximum/minimum penalties that the defendant can receive. Make sure that the information provided is correct. Misinformation can lead to false hopes that are devastating to the family when the actual sentence is imposed. *In particular, with motor*

*vehicle homicide cases, the family often is concerned about whether the defendant will get his license back.* Enlist the prosecutor's aid in dealing with the Registry of Motor Vehicles to determine license revocation procedures.

It is imperative to maintain consistent contact with the family. Families generally will let you know how much information and detail they want, as well as when they are ready to hear it. Sometimes families want very little detail, while others want to know every last detail. Be sure to keep the family informed of all court proceedings through written and telephone contact. Explain each court proceeding thoroughly, which may mean explaining it several times. Keep in mind that it is difficult for people in crisis to assimilate information, so be patient with multiple explanations. If there is a continuance or postponement of a court date, give the family as much advance notice as possible.

Often family members request to see pictures of the scene, which should be accommodated whenever possible. Since family members likely will be at trial, it may be easier for them to see pictures beforehand in a more private environment.

Court proceedings and the advocate's function should be described as clearly as possible. Follow up the initial contact with a letter reiterating the information about court proceedings, and including how and when they can reach the victim-witness advocate office; don't assume they know the office hours. If there is a 24-hour number such as a crisis line or support group number, include that information. Referrals to support are, in fact, critical for this population; seek out assistance from fellow advocates or a supervisor in gathering useful referrals.

For motor vehicle homicides, you can refer the family members to Mothers Against Drunk Driving (MADD), which has a 24-hour helpline: (877) 623-3435; <http://www.madd.org>.

For funeral arrangements, a list of funeral directors is available at [www.us-funeralhomes.com](http://www.us-funeralhomes.com).

**Advocates should familiarize themselves with the grieving process** that survivors of homicide often go through. Family members and significant others are likely to express a range of emotions. Advocates must be prepared to listen and to empathize. The family may want to talk about the deceased with the advocate, to show photographs, tell stories, and show some of the deceased's personal effects. It is important to take the time to look at the pictures and listen to the stories. After a death, roles within the family may change. Life can become "before" and "after," for survivors, meaning that all aspects of their life may be defined by the timing of the death. It is important that the family know that there is someone in the criminal justice system that is comfortable with their pain and love for the deceased. When speaking for the deceased with the family, the prosecutor or court personnel should refer to him or her by name.

**Grief is the continuing process of mourning through which one learns to live with loss.**

**Possible Grief Reactions:**

- *Denial*
- *Anger*
- *Guilt*
- *Feeling of powerlessness*
- *Numbness*
- *Hypersensitivity*
- *Hypervigilance (jumpiness)*
- *Overwhelming sense of loss and sorrow*
- *Disruptive sleep patterns*
- *Inability to concentrate*
- *Lethargy*
- *Fear and vulnerability*
- *Confusion*
- *Social withdrawal*
- *Change in eating habits*
- *Restricted affect (reduced ability to express emotion)*
- *Questioning of faith*
- *Physical and financial problems*
- *Constant thoughts about the circumstances of the death.*

*The National Center for Victims of Crimes*

The advocate should realize that the **family members' feelings may change throughout the court proceedings.** Initial shock may give way to anger; initial acceptance may turn into hostility; and anger may be directed at the advocate. **Make sure that the family has the opportunity to meet with the prosecutor** handling the case. The prosecutor may not consider this as important since the family members may not be actual witnesses on the case, but it is important to the family. Arrange the meeting at a time and place that is convenient for the family, and accompany the prosecutor to all meetings. Discuss the case with the prosecutor prior to this meeting. Make sure he is prepared to answer any questions the family may have, and feels comfortable in doing so. Note that questions may be specific regarding cause of death, duration of suffering, number and severity of wounds as well as global, such as "why."

Often the **Office of the Chief Medical Examiner (OCME)** will have jurisdiction in a homicide. The OCME determines the cause and manner of death through autopsies and laboratory studies. It is helpful for the advocate to become familiar with the OCME information below, and to share it with family members when appropriate.



Contact information:       Office of the Chief Medical Examiner  
720 Albany Street  
Boston, MA 02118  
Phone: (617) 267-6767  
Fax: (617) 266-6763

The OCME investigates the circumstances surrounding deaths due to unnatural means or natural means requiring further investigation. An autopsy may be required to determine the cause and manner of death. In other cases, an external examination may be all that is necessary. The legal next of kin may request that an autopsy not be performed, but the decision rests with the medical examiner. The OCME may examine biological samples such as blood, tissue, organs and other materials, and toxicology testing may be performed. These tests do not delay the release of the body to the next of kin. The test results, however, may take several weeks.

*Copies of Death Certificates:* A death certificate is generated for every death. In some cases, the cause and manner of death may be listed as pending until the OCME completes its work. Death certificates generated by the OCME must be filed with the city or town clerk where the death occurred. The funeral director can assist the family in obtaining copies of death certificates. Death certificates are public records.

*Copies of Autopsy/Toxicology Reports:* To request autopsy and/or toxicology reports, the legal next of kin and those with written permission from the next of kin should send a written request to the OCME. Autopsy and toxicology reports may be issued to a treating physician who has an association with the death, district attorneys and other agencies who need the report to investigate the death, and lawyers who are involved in criminal or civil litigation involving the death and insurance companies.

The deceased's personal property is inventoried at the OCME and it is given to the funeral director when the decedent is taken to a funeral home. In some instances, the hospital or police will secure the personal property. If a crime is involved in the individual's death, it may be necessary for the police to take possession of some or all of the personal items. Once the investigation is complete, the personal property will be returned to the funeral home or the next of kin.

## Elderly Victims and Witnesses

The elderly victim presents special issues in the criminal justice system. Advocates can benefit from becoming familiar with the protection laws governing the reporting of elderly abuse, neglect, and financial exploitation.

### Elder Abuse Mandated Reporting

Additional special laws protect persons who are 60 years or older. Social workers and police officers, doctors, nurses, and other health care professionals who work with the elderly are required to report suspected abuse against the elderly to the Executive Office of Elder Affairs Protective Services Program, and the program, in turn refers serious cases of abuse to the District Attorney's Office. In order to understand the background of the cases that they may encounter, and to work collaboratively with elder protective services caseworkers, advocates need to be familiar with the elder abuse reporting laws.

Separate agencies are responsible for receiving reports and investigating allegations of abuse depending on where the victim resides and the relationship of the perpetrator to the victim:

If the abuse occurred in a *long-term care facility* such as a nursing or rest home, then the Department of Public Health (DPH) investigates. To report suspected abuse, neglect, or mistreatment of a nursing home resident or misappropriation of a resident's property, reporters should call the DPH 24-hour hotline at 1-800-462-5540. Questions or concerns about the rights of nursing home residents should be directed to Elder Affairs at 1-800-243-4636, ask for the Long Term Care Ombudsman Program.

If the reporter suspects or becomes aware of *allegations of Medicaid fraud*, contact the Attorney General's Office, Medicaid Fraud Division at 617-727-2200.

*Oral reports of abuse of elders living in the community* should be given to the Executive Office of Elder Affairs, which has a 24-hour hotline at 1-800-922-2275. These cases are investigated and when necessary, services are provided through 24 local designated protective service agencies based at Aging Services Access Points. These agencies can be directly contacted. Check community listings for the number of the designated protective service agency.

Once the oral report is filed, a written report must be filed within 48 hours with the local protective service agency. If the abuse occurred in a long-term care facility such as a nursing or rest home, the Department of Public Health investigates along with the Medicaid Fraud Division of the Attorney General's Office. If the abuse occurred in a private home or apartment, then local protective service agencies take responsibility for investigating.

## **Reportable Conduct or Conditions**

Mandated reporters are responsible for reporting five kinds of abuse, conduct or conditions that occur to elderly individuals: physical, sexual, and emotional abuse, neglect, or financial exploitation. Persons who are not mandated reporters may also report elder abuse and are encouraged to do so.

### **Physical, Sexual and Emotional Abuse**

Abuse is an act or omission (the failure to act) by another person that results in serious physical or emotional injury to an elderly person. Threats of serious physical injury are considered to be physical abuse if the individual has the intention of and capacity to carry out the threat.

**Physical Abuse** is determined by considering the following factors:

- The elder's physical condition;
- The type, size, shape, number and location of the injury, whether internal or external;
- The circumstances under which the injury occurred including the potential for serious injury in the actual incident;
- The emotional impact on the elderly person;
- The potential for escalation of abuse.

**Sexual Abuse** is defined as any form of sexual contact or assault that occurs without the elder's consent or with an elder incapable of giving consent. Like physical abuse, threats to sexually abuse are considered sexual abuse if the individual has the intention of and capacity to carry out the threat.

**Emotional Abuse** occurs when there is an intentional infliction of mental or emotional anguish by threat, humiliation, or other verbal or non-verbal conduct. Emotional injury is evidenced by anxiety, fear, depression or withdrawal. Threats to harm the elder or place the elder in a nursing home can be emotional abuse.

### **Elder Indicators/Signs of Abuse/Neglect**

- Exhibits sense of heightened anxiety or fear when alleged perpetrator is present.
- Visibly withdraws when alleged perpetrator is present.
- Makes excuses for alleged perpetrator, minimizing conditions.
- Complains of having been pushed, shoved, punched, threatened, etc.
- Denies problem despite evidence.
- Verbalizes unrealistic expectations that problem will go away.
- Provides conflicting accounts of incident.
- Expresses feelings of not wanting or having a reason to live.
- Exaggerated, startled response to sudden movement.

- Asks to be separated from alleged perpetrator.

### **Risk Factors for Abusive/Neglectful Behavior**

- Decreased health and mobility of the elder, especially if the elder has serious or acute medical problems that inhibit ability to care for personal needs such as toileting, bathing, etc.;
- History of family violence for elder or caregiver;
- Substance abuse problem of elder or caregiver;
- History of mental illness of elder or caregiver;
- Social isolation of elder;
- Caregiver financial dependence on elder;
- Caregiver showing signs of stress due to care of elder;
- Caregiver exhibits unrealistic expectations of elder;
- Caregiver exhibits poor impulse control or is often hostile, agitated, or volatile;
- Caregiver expresses fear of “losing control” or of having a “nervous breakdown.”

### **Neglect**

Reportable neglect occurs when a caretaker fails or refuses to provide the necessities essential for the physical, intellectual and emotional well-being of an elder. This includes food, clothing, shelter, social contact, personal care and medical care, the deprivation of which results in serious physical or emotional injury to that elderly person.

“Caretakers/Caregivers” usually have substantial responsibility for the care of an elder and are defined as follows:

- A relative who is living with the elder on a regular basis or providing substantial assistance that would indicate that he or she has assumed a caregiver or caretaker role.
- A person with fiduciary relationship to the elder imposed by law—e.g., guardians or conservators.
- A person with a contractual relationship in which monetary or personal gain is provided in exchange for acting as a caregiver—e.g., a private home health aide who is not an employee of a certified agency.
- A person who voluntarily assumes the caregiver role by meeting one or more of the following criteria: (1) is living in the elder's household; (2) is related to the elder and providing substantial care on which the elder depends for meeting essential needs; and (3) is maintaining a regular presence in the elder's household.

## **Caregiver Indicators of Abusive/Neglectful Behavior**

### The Caregiver:

- Is rough in handling elder.
- Admits to having hit, slapped, punched, pushed, or threatened elder.
- Gives verbal rationalization about abusive behavior.
- Assumes defensive stance in discussion of issues.
- Consistently speaks for elder or refuses to allow elder to be interviewed alone.
- Isolates elder.
- Provides conflicting accounts of incident.
- Ignores elder, does not speak to elder, and emotionally isolates the elder.
- Admits to abuse while minimizing extent of it.
- Appears overly concerned with the cost of medical care and services.
- Does not bring elder to medical appointments.
- Consistently refuses outside help/intervention.

## **Self-Neglect**

Self-neglect occurs when elders who live alone neglect their essential needs such as food, shelter, clothing, personal or medical needs. Advocates are not required by the elder abuse statute to report instances of self-neglect but should report these situations to protective services so help can be offered. Protective services have the ability to access the Elder At Risk Program, often a local unit within the agency that responds to serious self-neglect. Under its mandate, the Elder at Risk program serves persons at least 60 years of age, who because of mental or physical impairments, substance abuse or cultural or linguistic barriers, are unable to meet their essential needs and are at risk of not being able to safely remain in the community.

## **Financial Exploitation**

Financial exploitation is an act or failure to act by another person that causes a substantial monetary or property loss to an elder, or causes a substantial monetary or property gain to the other person, thus benefiting the other person. This occurs without the elder's consent, or when the elder is tricked, intimidated or forced into giving consent. Since elders are often vulnerable to this type of exploitation, advocates should be alert for exploitative situations in which individuals appear to benefit in a substantial monetary way from their relationship with the elderly person.

### **Indicators of Financial Exploitation**

- Unusual or inappropriate activity in elder's bank accounts.
- Bank statements and cancelled checks no longer come to elder's home.

- Documents are drawn up for elder's signature but elder cannot understand what they mean.
- Care of elder is not commensurate with size of elder's estate.
- Personal belongings are missing.
- Family member or acquaintance expresses unusual interest in the amount of money being expended on elder's care.
- Recent acquaintances express gushy, undying affection for wealthy elder.
- Elder isolated from family or friends.
- Signatures on checks or other documents appear suspicious.
- Lack of solid documentation or formal arrangements for financial management of the elder.
- Implausible explanations about the finances of the elder.
- Elder is unaware of or does not understand arrangements that have been made.

## **Sexual Assault of the Elderly**

*Elderly* victims are generally more physically frail and may experience more life-threatening injuries as the result of the sexual assault. Older victims are often at more risk for pelvic injury, other tissue or skeletal damage, or exacerbation of existing illnesses. The recovery process for elderly victims is often longer than younger victims.

## **Indicators of Sexual Abuse of the Elderly**

- Statements made suggesting sexual abuse (may be clear, or may hint at possible abuse).
- Eyewitness observations of sexually abusive behavior toward an individual.
- Trauma to genitals, rectum, mouth, breasts.
- Sexually transmitted disease.
- Evidence of forcible restraint.
- Evidence of physical abuse.
- Shame or guarded response displayed when asked about physical signs of abuse.
- Display of fear or strong ambivalent feelings toward caregiver, family member, or other person.
- Extreme upset displayed during provision of personal care.
- Inappropriate boundaries between individual and staff member.
- Staff member/care provider overly intrusive re: provision of personal care.

## **The Elderly as Witnesses**

Accommodations should be made to meet any special requirements that elderly witnesses may need. Sympathetic relatives or caretakers who are not the subject of the prosecution may be a good source of information on the status of the elderly person.

Involved protective services workers can be excellent sources of information regarding an elder victim's situation and status.

Be aware that elderly victims and witnesses may tire more easily than other witnesses, or may be on a medication or treatment regimen that causes reactions such as fatigue. Try to work with the prosecutor to schedule meetings and testimony when the elderly person is most alert and strong and does not interfere with ongoing treatment. If the elderly person is failing medically, you need to alert the prosecutor as soon as possible so that arrangements, if appropriate, can be made to videotape the victim's testimony. This entails keeping in close contact with the victim and caregivers.

Be aware that elderly victims can be more prone to depression in the aftermath of a crime. Depression and the trauma of a crime can lead some victims into a downward spiral. Advocates should be alert for signs of depression by maintaining contact with caregivers and providing referrals for counseling or support from the local protective service agency.

## Persons with Disabilities

The Disabled Persons Protection Commission (DPPC) is responsible for investigating reported abuse of persons with disabilities. The DPPC has jurisdiction over persons between the ages of 18 and 59 who are mentally or physically disabled and, as a result, are wholly or partially dependent on others for living needs.

Mandated reporters who suspect that a person with a disability has suffered serious physical or emotional injury resulting from abuse (including unwanted sexual activity) must file an oral report with the DPPC by calling 1-800-426-9009, a 24-hour hotline. The report should be followed up with a written report within 48 hours.

In order for DPPC to be involved in a case, the statutory criteria require that the victim of the alleged abuse must:

- Be between the ages of 18 and 59 years,
- Be disabled by means of mental illness, mental retardation or physical impairment, and
- Require the assistance of a caregiver to accomplish daily living needs as a result of the disability.

To establish jurisdiction, the Hotline staff must also examine the nature of the incident. DPPC's enabling statute and regulations **require that the incident must:**

- Include an act or omission by a caregiver, AND
- Result in a serious physical or emotional injury.

If the caregiver is not implicated in the crime, he or she can be helpful in identifying limitations caused by the disability, especially in the way the person communicates. The victim, for example, may be hearing impaired but can read lips, requiring the speaker to face the victim at all times. If the caregiver is the accused, other family members or service provider agencies may be able to provide helpful information.

Consider any accommodations necessary to enable the victim to participate in the criminal justice process. The advocate must plan ahead on how to handle such details as getting to the courthouse and hearings, as well as access to bathrooms and other necessities. It is important to remember that persons with mental disabilities are not presumed to be incompetent to testify.



**Some characteristics of victims with cognitive disabilities include:**

A person who may not communicate at his or her biological age level. The person may have:

- a limited vocabulary or a speech defect;
- difficulty understanding or answering questions;
- inability to read or write;
- a tendency to mimic questions or responses or answers.

A person who may not behave at his or her biological age level. The person may:

- prefer much younger people or children for friends;
- be easily influenced by other people;
- try to please other people and disregard the legality of actions.

**Tips to communicate with a victim or a witness who has cognitive disabilities:**

- Use simple language and speak slowly and clearly;
- Use concrete terms and ideas;
- Avoid using questions that suggest the expected answer;
- Avoid questions that have a yes or no answer;
- Avoid questions that involve complex sequences or time sequences.

Behavioral indicators of abuse and neglect are often more pronounced in disabled persons, and such indicators include:

- Screaming, shouting, yelling
- Exhibit distrust of others
- Exhibit emotional outbursts
- Obsess, worry or appear anxious about her/his own performance
- Have low self-esteem or confidence
- Have a sudden loss of appetite
- Criticize caretaker constantly
- Curse, hit, scratch caregiver
- Request separation from caregiver
- Exhibit fear of the caregiver
- Exhibit fear of the dark, being alone, people, places or going home
- Cry easily, frequently
- Express feelings of hopelessness
- Want to die
- Exhibit stress-related illness
- Exhibit self-injurious behaviors
- Have nightmares or difficulty sleeping
- Be isolated from others

- Be emotionally withdrawn, detached
- Have startled response to movement
- Be incontinent, malodorous, unpleasant
- Be resistant to taking medication, being bathed, eating or allowing caregiver to provide care
- Abuse alcohol or other substances
- Have rapid physical deterioration
- Refuse offers of assistance
- Be fearful of intimacy and touch
- Be sexually promiscuous
- Exhibit aggressive, disruptive or delinquent behavior
- Express self-hate, self-blame, guilt or shame
- Be fearful of abandonment, rejection or retaliation
- Experience stunted growth and developmental delays
- Have attention and learning disorders
- Engage in destructive activities
- Learn passive/aggressive behaviors
- Adopt same behaviors as the abuser

## **Victims of Violent Crime Compensation Act: Financial Assistance for Victims**

Under the Victim of Violent Crime Compensation Act, victims of violent crime and family members of homicide victims may receive up to a maximum of \$25,000 in reimbursement for crime-related expenses. It can be a lifesaver. *The advocate should always encourage victims to apply, even if the complete financial impact of the crime is unclear, because in most circumstances victims have only up to three years from the date of the crime to apply. Juvenile victims may apply up to age 21, or within three years of the issuance of a criminal complaint or indictment, whichever occurs later. If the victim later discovers an act that constitutes a crime, and a criminal complaint or indictment follows, the filing period may be extended.*

Applications for compensation must be sent to:

The Office of the Attorney General  
Victim Compensation and Assistance Division  
One Ashburton Place  
Boston, MA 02108  
Phone: (617) 727-2200

Victims must notify the division of any changes of address.

## Eligibility Requirements

*First, the Attorney General's Victim Compensation and Assistance Division must ascertain a qualifying crime has occurred.* The advocate can expedite the application process by sending a copy of the police report or attaching it to the application, a copy of a restraining order issued under M.G.L. c. 209A with the affidavit, a substantiated report of abuse to the Department of Children and Families under M.G.L. c.119, § 51A, or a copy of a crime report filed with the Department of Elder Affairs or Disabled Persons Protection Commission. It is not necessary that the crime<sup>13</sup> result in a conviction, a complaint, or even an arrest or indictment. The crime must be reported within five days of its occurrence unless there is good cause for delay. A finding of good cause does not excuse the reporting requirement. The victim must also cooperate in the investigation and prosecution of the crime unless she has a reasonable justification for not doing so.

Eligible individuals include those who suffer personal, physical, or psychological injury as a direct result of a crime committed against them, their efforts to prevent a crime from occurring or help another victim, or apprehending the offender. The dependents and family members of homicide victims are eligible, along with any person, regardless of relationship, who incurs the expense of a victim's funeral. Funeral expenses can be compensated up to \$4,000. If the victim was killed, a family member who ceases work or reduces their work hours to assume homemaker responsibilities may be eligible for reimbursement of wages. Children who observe the commission of the crime against a family member may join in the victim's claim for mental health counseling services.

## Covered Expenses

Compensation from the fund covers:

- Replacement homemaker expenses including housekeeping, laundry, meal preparation, and childcare costs for victims disabled as a result of the crime, who performed the duties of a homemaker for the year prior to the crime;
- Medical, dental, and mental health counseling expenses and other medically necessary expenses incurred as a direct result of the crime;
- Loss of earnings due to physical or emotional disability;
- Loss of support for dependents or family members who are wholly or partially dependent on the victim for financial support.

---

<sup>13</sup> The term "crime" includes any criminal act involving the application of force, intimidation or violence, or threat of same by the offender on the victim; violations of the impaired driving laws as well as many other motor vehicle offenses, and any conduct that would constitute a violation of the restraining order statute under M.G.L. c. 209A., 940 C.M.R. 1403.

## **Limitations of Coverage**

The statute specifies that the victim compensation fund is a fund of last resort, making it necessary for eligible recipients to exhaust all other sources of payment including insurance, restitution, proceeds from a civil law suit, or public funds such as welfare or social security. Property damage or theft is not compensated. Eligibility may also be denied or the award reduced if the victim's acts or conduct provoked or contributed to his own injuries or death. Applications are reviewed on a case-by-case basis. Compensation claims can be reopened for future expenses.

## **Civil Justice for Victims**

Victims may wish to consider and must be informed of their right to bring a civil case against the defendant (or third parties) regardless of the outcome of the criminal case. Advocates are prohibited from referring victims to particular lawyers. A good resource for victims is the National Crime Victim Bar Association at [www.victimbar.org](http://www.victimbar.org) or 1-800-FYI-CALL.

If a civil case is filed prior to conclusion of the criminal case, the advocate should immediately notify the prosecutor, since the victim is likely to be questioned — “deposed” — under oath about the criminal matter. Many prosecutors will want to prevent or postpone a deposition until after the criminal case is settled. Timing can, however, be an issue because civil cases have statutes of limitation restricting the period a plaintiff may sue for damages. In a civil suit, defendants sometimes can be “punished” monetarily, even if found innocent in a criminal court.



# Overview of the Massachusetts Criminal Justice Process

The Commonwealth's court system has two divisions that hear criminal cases – the **DISTRICT COURT** and the **SUPERIOR COURT**. Almost all cases begin in the District Court, and most of them continue and end in the District Court. A marginal number of cases proceed to the Superior Court.

**JURISDICTION:** the power that a court has to adjudicate the cases that come before it.

The **DISTRICT COURT'S** limited jurisdiction covers:

- All “misdemeanors,” crimes whose penalty can only be a House of Correction i.e., a county jail, not a state prison.
- Certain “felonies,” crimes that include the possibility of a state prison term as punishment. The District Court's jurisdiction covers felonies having a maximum sentence of two and one-half years at a House of Correction and a potential state prison sentence of up to five years.

The **SUPERIOR COURT'S** jurisdiction covers:

- Exclusive jurisdiction in first degree murder cases.
- All felonies (concurrent “shared” jurisdiction with other court departments)

## The District Court Process

A **COMPLAINT** is the formal legal document charging the defendant with a specific crime(s). A criminal complaint is obtained at the District Court Clerk's Office by the police or a private citizen.

A **SHOW CAUSE HEARING** may take place at the Clerk's Office before a complaint is issued.

Once a complaint is issued, the defendant is brought into court either under arrest or in response to the summons for appearance. At the **ARRAIGNMENT**, the criminal charges are read to the defendant, who is entitled to be represented by an attorney, and a plea of guilty or not guilty is entered. As a matter of procedure, the clerk always enters a plea of “not guilty” until the defendant willingly changes it at a later date or he is found guilty after trial. The victim or witness generally is not required to be present at the arraignment. If the defendant is under arrest at this time, he has the right to be heard by the District Court on the matter of bail.

**BAIL** is used to ensure that a defendant will return to court. *Bail is not used as a means of punishing the defendant.* A judge is required to release a defendant unless he or she thinks the defendant will not return.

Bail requires that the prosecutor persuade the judge that the defendant might not return because of the:

- seriousness of the offense and the potential penalty;
- defendant's previous criminal history, including a record of "defaults" (failure to appear in court when ordered); or
- defendant's ties or lack of ties to the community.

The issue of whether a defendant is held on bail may be the determinant of a victim's willingness to cooperate with prosecution, given that a defendant released into the community and living among victims and witnesses often represents too great a danger to risk testifying.

The advocate should:

- Inform the victim and family that bail is intended only to ensure the defendant's return to court;
- Inquire about safety concerns of the victim and family;
- Inform the prosecutor of any facts about the crime that indicate its severity, including type of injuries, threats, property damage, or any information that underscores the seriousness of the crime and the dangerousness of the defendant.

*Advocates need to be especially alert to the victim's safety concerns at this stage, keeping the prosecutor informed of any concerns, and informing the victim of ongoing legal proceedings. The judge may impose conditions on the defendant's release, including an order prohibiting the defendant from having contact with the victim or witnesses.*

*When a defendant is released on bail, it is imperative that a victim be notified immediately. If the advocate fails to reach the victim, request that a police officer be sent to the victim's address, and if necessary, leave written information that the defendant has made bail. Include information on how the victim can contact the advocate. The advocate should be prepared to offer crisis intervention, discuss safety planning, provide shelter referrals, request additional police patrols around the victim's address, or take any other appropriate steps to ensure the victim's safety.*

Advocates often are responsible for completing a "bail release notification form," if the defendant is held on bail. This form is used by incarcerating facilities to notify victims if the defendant makes bail, moves to another facility, or escapes from custody. Because the defendant can be bailed at the court through the Clerk's office, the advocate must also inform the Clerk of the bail notification request process. Office policy determines the exact process for handling victim notification.

The defendant can appeal the bail order to the Superior Court, but most choose not to do this since the Superior Court judge can raise the bail as well as lower it.

Defendants can also be released on “**personal recognizance**” without paying bail on a promise to return to court.

A “**DANGEROUSNESS HEARING**” can occur in felony cases that involve use or threatened use of force, or felonies that, by their nature, involve substantial risk that force may be used. The dangerousness hearing allows prosecutors to move immediately for an order of pretrial detention or to order that a defendant's release be based on specified conditions because of his dangerousness to victims or the community. The hearing can involve testimony of victims and witnesses, and the defendant can question them at this hearing. The standard for holding a defendant is high: “clear and convincing proof” that no conditions of release would “reasonably assure the safety of other persons or the community.”

After the arraignment, a **PRE-TRIAL CONFERENCE** is scheduled. *The advocate needs to discuss with the prosecutor whether victims and witnesses are required to be present so that they can be notified in advance.* The defendant is present at the pre-trial conference while the prosecutor and defense counsel discuss how the case will proceed, including the possibility that the case may be resolved without a trial. The defendant may plead guilty and be sentenced by a judge, or the defendant can continue to plead not guilty, and trial date will be set.

A **PLEA NEGOTIATION** occurs when the defendant agrees to forego his right to a trial and plead guilty, usually in the belief that the court will give him a lesser sentence if he does so, or because the prosecutor agrees to recommend a lesser sentence. Pleas can also occur when victims are too vulnerable to testify, or when the Commonwealth does not have a strong case. A prosecutor might also enter into a plea negotiation if the victim wants a speedy conclusion to the case.

*If the opportunity arises to resolve the case prior to trial, the advocate must consult with the victim. The victim's input about the sentence is very important, and it must be solicited by the advocate prior to the acceptance of a plea. The advocate is required by law to seek the victim's recommendation regarding sentencing, and to offer the victim the opportunity to make a Victim Impact Statement.*

Discuss the Commonwealth's sentencing recommendation with the victim, and include the prosecutor in the conversation when possible. The Victim Impact Statement does not have to be completed until the actual plea date. Since proceedings may move quickly, it is best to obtain a Victim Impact Statement as soon as the victim seems ready to provide one, keeping in mind that the statement can be amended as time goes on. It is important to have something in the file as early as possible.



There are a number of ways cases can be disposed of prior to trial:

- **Pretrial probation.** The defendant is placed on probation without pleading guilty and, if he successfully completes the term, the case is dismissed. The Commonwealth can appeal this procedure and get the case reinstated for trial but this greatly prolongs the length of the case.
- **"Defendant-capped plea."** The defendant pleads guilty with a request for a specific disposition. If the judge sentences him to a higher sentence than requested, the defendant has the right to withdraw the guilty plea and go to trial.
- **Admission to sufficient facts that leads to a Continuance Without a Finding.** While not technically a guilty plea, the defendant agrees that the Commonwealth has enough facts that a judge or jury could find the defendant guilty after a trial. In a continuance without a finding (CWOFF), the judge continues the case for a period with no finding after hearing the recitation of the facts. If, at the close of that period, the defendant has committed no new crime and has complied with probation terms, such as paying restitution, the case may be dismissed. If not, the case is reinstated for trial.
- **Motion to dismiss.** With the defendant's agreement, the court can order dismissal "with prejudice" i.e., the case may not be brought again or "dismissal without prejudice" (DWOP) i.e., the case may be brought again.
- **Nolle prosequi.** The formal legal power of the prosecutor to withdraw prosecution of any case.

If a case goes to **TRIAL** in the District Court, the defendant must elect whether to have the case heard by a judge or a jury. "**Bench Sessions**" are presided over by a judge, and if the defendant is found guilty, he is sentenced. "**Jury of Six Sessions**" are presided over by a judge and jury of six people who are chosen to hear the evidence and to decide the case.

Victims and witnesses must be notified of the trial, and they may receive subpoenas. At a bench trial, the prosecutor presents evidence first – witnesses are questioned by the prosecutor and then cross-examined by the defense attorney. The defendant may or may not testify or present evidence at the trial, but if evidence is presented, the prosecutor can cross-examine the witnesses (and the defendant, if he or she testified). After the evidence is presented and the defendant is found guilty, or has decided to plead guilty, the judge issues the sentence after considering the facts and circumstances of the crime, the defendant's criminal history, recommendations by the prosecutor and defense attorney, and reviewing any Victim Impact Statements. This process is the same at a trial before a jury, except that the prosecutor presents an opening statement that outlines the evidence expected to be presented at trial. The defense attorney may make an opening statement, but he or she is not required to do so.

## The Superior Court Process

Many felony cases begin in the District Court but end in the Superior Court. A **PROBABLE CAUSE HEARING** may be scheduled to determine whether the case should be “bound over” from District Court to Superior Court. This hearing is similar to a trial in that witnesses testify and are cross-examined in the presence of the defendant. The presiding judge hears the information presented and determines whether there is probable cause to believe that a crime was committed and that the defendant committed the crime. If probable cause is found, the case then is presented to the Grand Jury and proceeds to Superior Court.

The **GRAND JURY** is a private proceeding comprised of 23 citizens selected to serve jury duty. The Grand Jury is closed to the public and to the defendant. The Grand Jury hears the evidence presented by the prosecutor through witness testimony, and decides whether there is enough evidence to indict the defendant. An **INDICTMENT** charges the defendant with a felony in the Superior Court.

Once an indictment is issued, the defendant is **ARRAIGNED** in Superior Court. After the arraignment, the procedures are similar to those explained in the District Court process –bail, dangerousness hearings, plea negotiations, trial, verdict and sentencing.

*If the opportunity arises to resolve the case prior to trial, the advocate must consult with the victim. The victim’s input about the sentence is very important, and it must be solicited by the advocate prior to the acceptance of a plea. The advocate is required by law to seek the victim’s recommendation regarding sentencing, and to offer the victim the opportunity to make a Victim Impact Statement.*

Discuss the Commonwealth’s sentencing recommendation with the victim, and include the prosecutor in the conversation when possible. The Victim Impact Statement does not have to be completed until the actual plea date. Since proceedings may move quickly, it is best to obtain a Victim Impact Statement as soon as the victim seems ready to provide one, keeping in mind that the statement can be amended as time goes on. It is important to have something in the file as early as possible.

If the case goes to **TRIAL**, the defendant may choose whether to have the case heard by a judge alone, or by judge and a jury of 12 citizens. The prosecutor must prove the case **BEYOND A REASONABLE DOUBT**. If the judge or jury determines that this burden is not met, the defendant must be found not guilty. In a jury trial, the judge gives jury instructions. A unanimous decision of the jurors is required to convict the defendant. If the defendant is found guilty, the judge will impose a **SENTENCE**. Judges in Superior Court may impose sentences to State Prison or the House of Correction for any period of time up to life, suspended sentences, probation (sometimes with special conditions, based on the type of crime), fine, restitution or court costs.

If the defendant has been found guilty after a trial, or has decided to plead guilty, the judge will consider sentencing recommendations made by the prosecutor and the defense attorney, as well as any Victim Impact Statements prepared by the victim and/or family members.

The defendant has several options after being sentenced. An **APPEAL** only reviews issues of law – the procedures or interpretations of law made by the lower court. Appeals are not new trials – no additional evidence is presented and no one testifies. Victims and witnesses may attend these hearings, but they may not testify. Appeals must be filed within 30 days. There is an automatic right of appeal for defendants convicted of murder in the first degree.

If an appeal is filed, the advocate should discuss the following with the prosecutor: the date, time and location of the hearing, whether there will be oral arguments, or whether the parties merely will submit briefs. Let the victim know the results of this discussion.

If an adverse outcome is expected, make sure the prosecutor explains why so this can be relayed to the victim. After the decision arrives, find out if either party will file further pleadings or motions. Victims should be notified of results, sent a copy of the judges' decision, and called later to see if they have any questions. Advocates should determine whether safety planning or other services and referrals are needed.

## **Motions**

During discovery the defense and prosecution attorneys exchange information about a case and file motions — requests to the judge to settle some legal issue before trial. The advocate should inform victims and witnesses about all motion hearing dates, the purposes and implications of each motion, and results.

Typical motions include:

- **Motions *in Limine*.** Filed by either side, these seek to limit the evidence produced at trial. For example, the defense may try to introduce testimony about a victim's drug abuse history, which the prosecutor may try to prevent. The motion *in limine* forces the issue into the open for a ruling prior to trial.
- **Motion to Dismiss.** Usually filed by the defendant, this motion asks the court to dismiss the case prior to trial. In Superior Court, the advocate will hear references to a “*McCarthy Motion*” urging dismissal of a case because the grand jury was not presented with enough evidence. Motions to dismiss may involve witnesses and testimony.
- **Motion to Suppress.** Filed by the defense, this motion seeks to prevent the Commonwealth from introducing certain evidence at trial, such as items found when the police searched the defendant's home after obtaining a search warrant.

These motions usually involve testimony from the police officers involved and sometimes the defendant. If this motion is granted, the Commonwealth may appeal the judge's decision to a higher court.

- **Motion to Sever or Join.** Filed by either side, this motion occurs when there are co-defendants and the defense or prosecution wants to have the cases joined for trial before the same judge or jury, or severed so different judges or juries will hear separate cases. Motions to join are also used when a defendant has multiple criminal cases that could be tried together or separately. The outcome of these types of motions affects the number of times a victim or witness has to appear in court.

Some motions are filed after the trial:

- **Motions to Revise and Revoke.** A defendant's motion to revise or revoke a sentence is made to the trial judge and must be filed within 60 days of conviction. This motion asks the judge to reconsider the sentence based on facts known at the time (although these facts may not have been known to the judge at the time of sentencing).
- **Motion for a New Trial.** A defendant's motion for a new trial typically involves allegations of errors during the trial, newly discovered evidence, ineffective assistance of counsel, or to withdraw a guilty plea.

## **Advocate Responsibilities in the Criminal Justice Process**

### **Communication**

Advocates usually are in a better position to communicate with the victims, and often serve as a "go between" for the prosecutor and the victim. Victims typically feel more relaxed and comfortable speaking to the advocate, often without the prosecutor being present. Make an effort to ensure the victim that you have a good working relationship with the prosecutor, and be sure to keep the lines of communication open with the victim and the prosecutor.

**Communication is important particularly regarding:**

- **Preparation for Direct and Cross Examination.** This may include preparation for the defense attorney's particular style. Handling this process jointly along with the victim allows the victim to raise questions directly to the prosecutor and voice concerns that may otherwise go unspoken. Witnesses can also be helped to understand legal terminology.

- **The Order of Witnesses.** This should be provided by the prosecutor so that the advocate can confirm whether a witness is available.
- **Sequestration of Witnesses.** This may be necessary, but if witnesses are to be allowed in the courtroom after testifying, the advocate and prosecutor must notify court officers so they do not prevent witnesses from entering the courtroom.
- **Whether a Witness Can Leave After Testifying.**
- **Presence of Family Members During Testimony.** This may cause concern for the victim. Agree on a time that the advocate can let family members know it is time to leave the courtroom.
- **Ensuring Room for the Victim and Family.** This may require asking a court officer to reserve or clear a bench for these individuals, including key support people, in high-profile cases.
- **Disturbing Evidence, Testimony or Photographs.** This may warrant letting the victim, witnesses and family members leave the courtroom when they are presented. The advocate must discuss the witness's wishes before trial and arrange for the prosecutor to signal when it is time for them to leave, if that is their preference.
- **Status of the Trial while in Progress.** This ensures updates from the prosecutor to the advocate during court recesses, during which the order of witnesses can be revisited and any problems can be addressed. The advocates can then appropriately apprise witnesses.
- **Preparing for Closing Arguments.** This meeting, in advance of closing arguments, allows victims to hear directly from the prosecutor about potentially upsetting arguments likely to be made by the defense attorney.
- **Potential Outbursts.** This alerts the prosecutor and/or the court officers about highly emotional witnesses or family members who could create disruption issues in the courtroom or trial.
- **Charging the Jury.** This reminds the prosecutor of the need for the victim to be present for closing arguments and charging the jury, because once the judge starts to charge the jury, no one may enter or leave the courtroom.

## **Preparing a Victim or Witness to Testify**

Testifying provokes anxiety and fear in most victims and witnesses. Victims and witnesses dread revisiting and recounting the painful circumstances of the crime. In addition, they have to wait for lawyers to ask questions, and they are expected only to

answer the question asked, rather than simply telling their story at their pace. Questions from the defense attorney can cause particular anxiety and concern. In addition to the specifics of testifying, many people dislike public speaking, and the thought of facing “an audience” scares them. Advocates must be mindful of the victim or witnesses’ state of mind, and try to prepare them to the best of their ability.

In most District Court cases, the advocate meets the witness or victim for the first time in the hallways of the courthouse. Extensive trial preparation is not possible.

When preparation is feasible, the advocate can:

- Show the victim the courtroom, indicating where she will enter and sit, where you will sit, where she will sit during testimony, where the jury will be (it is better practice NOT to identify where the defendant will sit, in case identification is an issue in a case);
- Indicate where the court officers are located, explain their role, and the safety protocols and procedures;
- Show her the location of the restrooms, waiting areas, vending machines;
- Tell her the roles of the judge, clerk, and jury;
- Review general courtroom procedures and rules (the prosecutor will do this, but anything you can explain in layman’s terms will be helpful);
- Focus on helping the victim anticipate what will happen that day, including the rigors of waiting, and a need to bring reading material and snacks and to eat and drink;
- Emphasize the importance of neat and proper attire – some may need specific recommendations on what to wear;
- Emphasize “think before you speak” – take time to understand the question asked, then give an accurate answer to the question;
- Convey that it is okay to: not know the answer, not remember the answer, or not understand the question asked;
- Remind the victim that, once a lawyer says “objection,” he or she should stop speaking immediately and wait for the Judge to give the ruling;
- Emphasize the importance of the task ahead and offer support;
- Remind the victim or witness that the most important thing is to tell the truth;

Witness testimony preparation should always take place with the prosecutor. Preparation focuses on the content of the testimony, for which the prosecutor is solely responsible, and helping the victim and witness anticipate their reactions.

Include the following suggestions<sup>14</sup> in a letter or handout that the victim or witness can have at home to review prior to coming to court.

**Demeanor:**

Avoid distracting mannerisms such as chewing gum while testifying. While taking the oath, stand upright, pay attention and say "I do" clearly. Review the oath and process beforehand.

Be serious in the courtroom and avoid laughing and talking about the case in the hallways, restrooms or elevators of the courthouse since jurors or defense attorneys and defense witnesses may see or overhear you.

Don't discuss the case in the hallways where a defense attorney or a juror might hear you; you could be cross-examined about it if the defense attorney hears you, and there could be a mistrial if a juror hears you.

Always be courteous even if the defense attorney appears discourteous. Being argumentative or hostile will cause you to lose the respect of the judge and jury.

It is normal to be nervous but try to avoid mannerisms that will make the judge or jury think that you are not telling the truth or not telling all that you know.

Speak clearly and loudly enough so that the farthest juror can hear you easily. Remember to talk to the members of the jury, to look at the jurors, and to talk to them frankly and openly.

If the case is a jury-waived trial, speak to the judge, since he will be deciding the facts.

**DON'T LOSE YOUR TEMPER!** Remember that some defense attorneys will try to make you lose your temper or get confused.

---

<sup>14</sup> Adapted from material by the Suffolk and Northwestern District Attorney's Office

### **Form of the Testimony:**

Don't say "That's all of the conversation" or "Nothing else happened." Instead, say "That's all I recall" or "That's all I remember happening." Sometimes after more thought or another question you might remember something important.

If the question is long and involved and ends with the words, "Isn't that true," then all parts of the question have to be true before your answer should rightfully be yes.

Give positive, definite answers when possible. Avoid saying "I think," "I believe," or "In my opinion." If you don't know the answer to a question, say "I don't know" or "I don't recall." Don't try to make up an answer.

Sometimes, a defense attorney may ask a trick question like, "Have you talked to anyone about this case?" Since it is perfectly appropriate to have discussed testimony with the prosecutor and advocate, the best thing to do is to say that you have spoken with the Assistant District Attorney and advocate, that you were asked what the facts were, and that you told them the truth.

On cross-examination many witnesses are asked questions that start with "Isn't it a fact that," "Isn't it fair to say," or "Wouldn't you agree that..." Just because the defense attorney phrases the question that way doesn't mean you have to agree with the answer. If you do not agree with the question say that you do not agree.

The judge and the jury are interested only in the facts. Therefore, do not give your conclusions or opinions.

Wait for a question to be asked, and then answer only that question. Do not offer more information than the question calls for. Do not launch into a detailed explanation.

If a question cannot be answered with yes or no, you have a right say so and explain your answer.

Ask that the question be repeated, if necessary. If you do not understand the question, say so.

Take your time, and if you need a moment to regain composure, just say so.

The most important thing to remember is to tell the truth!



## **The Reluctant Witness**

As the trial gets closer or successive trial dates occur, even formerly cooperative witnesses can lose their desire to appear in court. It may not be necessary for the witness to appear for every scheduled court date. If the victim's presence is not required, inform him in advance and give him the option of appearing. Let him know the advocate will keep him informed about what occurred in court. If the prosecutor determines that the witness is necessary, help him understand the importance of his testimony to successful prosecution of the case. The witness should be allowed to vent his frustrations and have them validated by the advocate: e.g. "I agree, Mr. Williams, it really is a major inconvenience for you to appear in court."

The key to working with reluctant witnesses is careful listening!

Listen to why the witness feels it is so inconvenient to appear in court. Ask whether there is something that the advocate can do to alleviate those problems in terms of shifting court times or dates.

Listen for clues that the witness is responding to threats and intimidation. Explain the messages that are sent to the defendant by testifying and not testifying, explore his likely behavior toward the witness in either case, and refer the witness to the police for "intimidation of a witness" charges if necessary. Assure the witness that the advocate will immediately notify the prosecutor of intimidation. Make safety arrangements for the witness' court appearance and conduct safety planning.

Listen for clues that the witness believes that testifying will be like it is on television. Educate the witness by explaining that actual testimony is usually less dramatic. If the witness is still anxious, arrange a meeting with the prosecutor to review testimony and concerns in person.

## **The Victim Impact Statement<sup>15</sup>**

For most District Court cases, sentencing occurs immediately following the verdict. In Superior Court, the judge may postpone sentencing until a "pre-sentence" report can be completed by the Probation Department. In both situations, the sentencing phase triggers an important right guaranteed under the Massachusetts Victim Bill of Rights: the Victim Impact Statement.

Victims must also be provided with "actual" notice of the date, time and place of the sentencing under M.G.L. c. 279 § 4b if their whereabouts are known. This notice usually is provided by letter or speaking directly to the victim. Confirmation of contact should be recorded in the file.

---

<sup>15</sup> A sample Victim Impact Statement form is included in the Appendix.

The law also guarantees the defendant an opportunity to rebut the Victim Impact Statement at sentencing if the court decides to rely on it in whole or in part for sentencing. Victims should be warned of the defendant's right of rebuttal. Though rarely exercised, it can be shocking if unexpected.

The advocate should mail or give the victim a statement form with an explanatory letter for filling it out, followed by a phone call to discuss progress in preparing the statement. Victims can also write their statement in the form of a letter, which is a less confining approach for some. If the victim turns to the advocate for help, assistance should be provided without influencing how the victim describes the impact of the crime on them.

***In general, it is better to obtain a victim impact statement sooner, rather than later.*** Naturally, you do not want to ask a victim to write a statement immediately upon meeting him or her. However, since plea negotiations and sentencing can happen with little notice, it is best to have something in the file as soon as it is appropriate. A victim can make changes to a victim impact statement as time goes on and as the trial proceeds, but it is better to have a preliminary document as early as possible.

#### **Victim Impact Statement Guidelines:**

- Explain the importance of this right to victims and the need to take full advantage of the rights guaranteed to them under the law.
- Inform victims that they need to prepare a full description of the effects of the crime in all its aspects, including the impact upon personal welfare and the emotional, psychological, financial, and physical impact (which can include the impact upon the victim's family relationships, etc.). Victims also need to carefully consider their recommendation for the defendant's sentence.
- Notify victims that the written Victim Impact Statement will be provided to the defendant in advance of the disposition and it will be part of the defendant's probation file. A copy will also be forwarded to the Parole Board, if the defendant is sentenced to state prison.
- Tell victims that whether the statement is written or oral, they must address their comments to the court, not to the defendant. Victims will be tempted to express themselves directly to the defendant, particularly because the law states that oral statements must be read in the presence of the defendant.
- Explain that the purpose is to let the court know what the impact of the crime has been upon the victim, and not to provide a vehicle for venting rage at the defendant. Victims opting for oral statements should be reminded of court decorum.
- Remind victims they can have the prosecutor read the statement to the court on their behalf if they fear becoming embarrassed or overly emotional.

- Determine very tactfully whether the victim is capable of providing a written statement, if that is the selected option. The advocate may have to write the statement for an illiterate victim, making sure that their feelings are recorded accurately. The victim should sign the statement, indicating that it is their own by making an "X" or other mark for their signature. In this circumstance, the advocate must initial the statement and notify the prosecutor.
- Arrange for an interpreter to assist with the oral and written statement if the victim does not speak or write English. The advocate may be required to type the statement, after which the victim should review and initial it as his own.

## **Jury Deliberation**

The waiting period for a jury to decide on the defendant's guilt or innocence is very difficult for all concerned. Typically, victims wait in the corridors of the courthouse, a safe waiting area or sometimes in the prosecutor's office. If they live close by, they can sometimes be encouraged to go home to wait so long as they can return quickly if needed. Some offices allow victims or families to carry an office beeper during this waiting period.

If jury deliberations continue for several days, the victim or victim's family will see jurors as they go to lunch and arrive at or leave the courthouse. Instruct victims not to speak to jurors in any circumstance or to do anything to influence their decision-making. Any such contact could be grounds for a mistrial or jeopardize the case altogether.

The jury may send a question to the judge during this process. Speculation about the significance of the question should be avoided. If a victim asks the advocate to guess what the question could mean, the advocate might respond that it probably means the jury is working hard to deal seriously with the issues.

If a jury cannot reach a unanimous decision, then the case may be declared a mistrial and have to be tried again with a new jury. Victims are likely to react to this news with great disappointment, and may want to withdraw cooperation. The advocate and prosecutor must work closely to maintain the victim's willingness to go forward, to persuade him that retrying the defendant quickly is the best course of action, and that a mistrial serves no one but the defendant. In some cases, a plea negotiation is still possible.

## **The Verdict**

Before the verdict is read, the advocate should caution victims against disruptive demonstrations of their feelings. Serious outbursts will cause them to be removed from the courtroom. Prepare the victim for the possibility of a not-guilty verdict — for the fact that juries make unpredictable decisions despite the prosecution's best efforts and

overwhelming evidence — and do not underestimate the impact of a “not guilty” verdict. Determine whether a victim has support at home to deal with the aftermath of the trial, and be prepared with referrals to counselors. In rare cases, victims are suicidal, and in some cases, the impact of a guilty verdict can be equally intense.

## **The Pre-Sentence Report**

In Superior Court, the judge usually orders a Pre-Sentence Report to be prepared by the probation department for use as an aid in determining the sentence. The Victim Bill of Rights mandates consulting with the victim during the report’s preparation as well as reviewing the Victim Impact Statement. The probation officer submits a report to the court concluding with a sentencing recommendation and supporting reasons. The court then sets a sentencing hearing date.

Advocates should make sure victims submit a copy of their statement to the probation department, provide the victim with phone numbers for the probation officer, and make follow-up calls to confirm receipt. Victims should be told they do not have to speak to the probation officer if they choose not to.

## **The Sentencing Hearing**

At the sentencing hearing, all sides are allowed to present their recommendation for the defendant’s sentence. In felony cases this usually involves the prosecutor, defendant, victim and probation officer. Victims must be prepared for the fact that they may not agree with some of the recommendations, including those of the prosecutor.

To prevent surprises, the advocate can review the range of possible sentences that judges can impose for adults:

- Jail in either a state prison or house of correction;
- A split sentence including jail time and a period of probation;
- “From and after” incarceration, a sentence that starts after another sentence;
- Concurrent time, a sentence that runs concurrently with another sentence, resulting in no additional time served.
- Suspended jail time with probation;
- Time served with or without probation;
- Electronic monitoring restricting the defendant to home;
- Probation with or without conditions;
- Restitution;
- Treatment in secure or non-secure settings;
- Community service; or
- Fines.

Victim-Witness Assessment Fees: By statute, these assessment fees have first priority among all fines, assessments or other payments imposed. These fees are supposed to be mandatory upon conviction or finding of sufficient facts. There is no limit on cumulative assessments for multiple criminal charges.

- Felonies, not less than \$90;
- Misdemeanors = \$50;
- Juveniles over the age of 14 = \$45.

A fee waiver requires written findings of fact that indicate that payment would cause “severe financial hardship.” The fee is supposed to be imposed even if the defendant is incarcerated and money goes into the state fund supporting victim-witness assistance and criminal justice programs. It is not made available directly to victims.

### **The Restitution Hearing**

If the victim suffered out-of-pocket expenses as a result of the victimization, the judge may, in appropriate circumstances, order the defendant to reimburse the victim as part of the sentence imposed. If the defendant disputes the restitution order, a restitution hearing is held to determine how much restitution is owed the victim. The Commonwealth bears the burden of proving the amount owed by a “preponderance of the evidence.”

To prepare for the hearing, victims must collect all their receipts or estimates of damage. Typically, only “out-of-pocket” expenses can be recovered, such as repair or replacement of stolen goods, hospital expenses, other medical expenses, lost wages, etc. If insurance covers some expenses, the deductible amount only may be recovered.

The defendant and defense counsel have the right to cross-examine the victim regarding the amount, and the witness may have to testify. Victims have a strong interest in restitution, but they may need the advocate’s help in preparing documentation.

When the amount of restitution is uncontested, a restitution form is usually provided to the victim and the completed form sent to the Probation Department along with a court order for payment. The Probation Department is responsible for attempting to collect restitution, but it has no control when the defendant is financially unable to make payments. Victim concerns about slow payment should be directed to the Probation Department.

In addition to restitution, victims of violent crime, a crime related to impaired driving, or a violation of a 209A order may also apply to a special fund administered by the Attorney General, the Victim Compensation and Assistance Fund, which is discussed as a separate section in this manual.

# **Post-Conviction Proceedings and Victim Service Agencies**

## **Probation Violation and Revocation Hearings: Surrender Hearings**

"Surrender" refers to the procedure in which a probation officer requires a probationer to appear before the court for a judicial hearing regarding an allegation of probation violation. The process involves a hearing to determine if the defendant has violated probation, and a judicial determination on sentencing, which could revoke the defendant's probation. The defendant and the District Attorney must be notified of the hearing, and the District Attorney can attend and seek the defendant's revocation of parole or other remedies such as treatment. The prosecutor may also attempt to persuade the court by calling witnesses or presenting the victim's written statement. Because the probation violation and revocation proceeding is less formal than a trial, witnesses can testify to "hearsay"—i.e., statements someone said to the witness or they heard. The hearing itself is conducted by a probation officer who presents testimony and calls witnesses, if desired. The defendant may represent himself and call witnesses, since he is not entitled to an attorney at these hearings unless he faces the possibility of incarceration. Witnesses called to a probation violation hearing can expect to be cross-examined by the defendant or his lawyer, if present.

If a defendant's probation is revoked, he is generally incarcerated for the remainder of his jail sentence. A defendant may move for a "Reconsideration of a Violation of Probation" and can seek reconsideration of any new sentence imposed by the judge. If the judge decides to reconsider the sentence and release the defendant, the court does not have to notify the District Attorney's Office or victim.

## **Parole Hearings and the Parole Board Victim Services Unit**

Parole is the discretionary release of an inmate from confinement after he has served a portion of a prison sentence. The seven-member Parole Board determines whether to grant an inmate parole after considering the offender's risk to re-offend and the public's safety. An inmate released on parole is supervised by parole officers to ensure that he re-enters the community with monitoring, support and services to prevent his return to crime. There are basic supervision conditions established for all parolees, and special conditions are added based on the inmate's criminal history, mental health, substance abuse and other risk factors.

Basic conditions include: notifying the parole office in advance of any changes in residence and employment, and paying a monthly supervision fee.

Special conditions include: GPS or other electronic monitoring, curfews, substance abuse treatment, drug testing, sex offender treatment, and polygraph testing

The Parole Board has a Victim Services Unit so that victims and the agencies that work with victims are provided with a fast and personal response. The Victim Services Unit assists victims in the process of obtaining CORI certification to ensure that the victim and/or family member can receive information regarding an offender's status. A Victim Service Coordinator is assigned to each parole office, and they accompany victims and their families to parole hearings when victim attendance and participation are allowed.

The Parole Board Victim Services Unit has can be reached toll-free at 1-888-298-6272.

Most parole hearings are closed to the public. The only parole hearings open to the public are those for inmates serving a life sentence. Moreover, hearings deemed "victim access" are open to the victim(s) and their family members. *However, victims must be certified to receive notice of the offender's release by the Criminal History Systems Board.* Once certified, victims have the right to be notified of the defendant's parole eligibility and status. *Attending family members of the victim must also be certified by the Criminal History Systems Board.* Family members can choose to view a videotape of the hearing instead of attending in person, and may offer comments to Parole Board members before a decision is reached.

"Victim access" hearings are allowed for: surviving family members of a crime resulting in death, victims (and the parents and guardians of minor aged victims) of sex offenses and violent crimes,

Victim participation in a parole hearing includes in-person testimony and written testimony.

Inmates who are serving non-life sentences are granted a parole review hearing once per year. Inmates serving a life sentence must, by law, be reconsidered for parole at regular intervals not to exceed five years.

The impact of a crime on a victim and the victim's concern for his or her safety are major considerations in parole board decisions. In addition to denying parole, the Board has other restrictive options that consider the victim, such as adding special conditions to protect the victim (prohibiting entry into certain geographical areas), or requiring the parolee to pay restitution to the victim.

## **Sexually Dangerous Persons**

Upon completing his criminal sentence, in rare circumstances a sexual predator may be civilly committed "from a day to life" as a sexually dangerous person (SDP) to the Massachusetts Treatment Center at Bridgewater. The decision to file for a SDP petition does not rest solely on the offender's conviction(s) for a sex offense. Instead, the nature of the crime(s), offender's mental abnormality, and the likelihood of further sexual offenses are considered along with other factors and expert opinions.

The advocate may encounter the victim questioning why her attacker is not a SDP. The SDP process is an extraordinary process reserved for particular defendants when numerous factors are present – only 1% of SDP referrals were found to be SDP in FY 2009. By way of example, in FY 2009, 1,570 SDP referrals were received, with 7% (111) of the referrals resulting in the filing of a SDP petition – by the time the process was complete only 16 defendants were found to be SDP in that year.

Victims usually are notified when a prosecutor's office decides to move forward with a SDP petition — notification helped by obtaining extensive contact information at the beginning of the case. Victims may attend the public SDP hearings, but they have no right to provide input in the process. The advocate can remind distressed victims that the facts are no longer in dispute, and that a SDP hearing concerns the defendant's current mental state. Any information about other possible victims obtained during the original criminal case (and that was recorded in the file), will be helpful to the prosecutor in the SDP process.

## **DNA Evidence in Unsolved and Post-Conviction Cases**

Technology advancements may provide conclusive DNA testing results in some cases that previously were inconclusive. DNA advancements sometimes exonerate wrongfully convicted individuals, or lead to the identification of suspects in unsolved crimes.

When a motion is filed to re-open a case due to a request for DNA testing, it is very important to notify victims as soon as possible. An advocate should be assigned to the case as soon as the motion is filed. Finding a victim in an “old case” can be daunting. Victims certified with the Criminal History Systems Board have a much higher chance of being located. Early notification allows victims more time to come to terms with their emotions and to consider options depending on the test results.

An advocate should take the time to read the facts of the case, go over the police report, and talk to those involved in the original case. An advocate has to be prepared for the victim's reaction. A newer advocate (and an experience advocate that has not reached out to a victim in an old case) should go over her planned approach with a supervisor.

When a case is resurrected and the victim is notified, the advocate should be prepared to answer the following questions:

- How did you find me?
- Since you found me, will the perpetrator be able to find me, too?
- Where is the perpetrator now?
- Who knows about this new development?
- Do I need an attorney? Who represents me?
- What are the next steps in this process?
- Will there be a new trial?
- Will I have to testify?



- Do I have to participate?
- Will my therapy records be reviewed?
- When will this be resolved?

Advocates should make every effort to convey that they are available to the victim, provide contact information, and encourage communication. Advocates need to get a “frame of reference” by learning what has been going on with the victim since the crime. Advocates need to be in tune with the victim’s life circumstances, and be prepared to offer counseling referrals and assistance.

If the test clears the defendant, victims will need help and possible counseling referrals from the advocate in facing the difficult reality that:

- An innocent person was convicted and sentenced to jail;
- The crime may now be time-barred from further prosecution;
- The crime may now be impossible to prosecute because of lack of evidence;
- The media will most likely highlight the release of the defendant;
- The real perpetrator is still free;
- Re-awakened feelings of the crime’s pain and trauma.

## **The Criminal History Systems Board: The Criminal Offender Record Information (CORI) Act & Victim Certification**

### **Notification**

After the defendant is sentenced to a term of incarceration, responsibility for notifying the victim of the defendant's status shifts from advocates in prosecutors' offices to custodial agencies, including the Massachusetts Parole Board, the Massachusetts Department of Correction, the Massachusetts Department of Youth Services, and county sheriff's departments.

**The Criminal History Systems Board (CHSB) is the agency responsible for certifying victims, witnesses, family members and, in certain cases, other members of the public for notification of a defendant's custodial status.**

Becoming certified for notification permits a custodial agency to notify individuals directly when an inmate has been transferred to a less secure facility, obtains a final release, or has escaped.

While an individual may apply independently, advocates in prosecutors' offices usually assist victims in applying for certification for notification. A separate, similar application process called JONI (Juvenile Offender Notification Information) applies to juvenile defendants. In this process, applications are sent to the Department of Youth Services (DYS).

Victims, witnesses and family members of victims in homicide cases, in addition to parents/guardians of minor or incompetent victims may be certified for notification. Also, an individual who has "an articulable fear of physical harm" from a specific inmate may separately file a citizen initiated petition (CIP) to obtain offender release information.

### **When a Certified Individual is Notified**

**The certified individual will receive a 14-day advance notice, including descriptions of activities and level of supervision, when the inmate:**

- Transfers to a less secure status including minimum status, pre-release status, electronic monitoring and day reporting;
- Transfers to out-of-state facility if the victim resides in that state;
- Is allowed temporary release including work release, program-related activities, furloughs, speaking engagements and educational releases;
- Is paroled, pardoned, or has a commutation hearing;
- Receives a projected parole release date; or
- Is released upon sentence completion.

The certified individual is entitled to know *as soon as possible* about an inmate's:

- Death;
- Return to higher custody;
- Transfer from one county to another county;
- Transfer from a county facility to a state facility; or
- Court-ordered release including appeals or revised and revoked sentences.

The certified individual is entitled to *emergency notification* if:

- The defendant escapes;
- The defendant is allowed an emergency release under escort;
- The certification was generated within a 14-day period;
- The receipt of court-ordered pre-trial credits prohibits a 14-day advance notification; or
- A breach of confidentiality occurs.

## **Notification Issues**

### Contact Information

**It is crucial that CHSB have the most up-to-date contact information for all certified individuals who are responsible for informing CHSB or DYS, respectively, of any changes to their contact information, including name, address and telephone number. CHSB maintains this information for notification purposes for the Parole Board, Department of Correction and the appropriate sheriff's department.** All notifications are conducted by telephone and mail. *If a victim fails to notify CHSB of changes to his or her contact information, the custodial agency may not be able to notify the certified individual.*

### Pre-Sentencing Notification Differs from Post-Conviction Certified Notification

The advocate should know the custodial authorities' notification schedule in order to explain it to concerned victims. Remember the distinction between *pre-sentence* notifications from jails concerning defendants awaiting trial while being held on bail (possibly involving a bail notification form) and *post-sentence* notification procedures. An individual cannot be certified for *post-sentence* notification until the defendant actually receives a sentence of incarceration.

### Notification Information is Confidential

Victims should be reassured that the offender is not notified of the certification status of the victim. Disclosure of the existence of certification information is prohibited and access to certification information is limited to staff persons responsible for providing notification.

## CORI/178A Access

**In addition to notification of a defendant's status, pursuant to MGL c. 178A, a victim may also obtain criminal offender record information (CORI) about the defendant.** CORI information is defined in M.G.L. c. 6, §167 as "any records or data in any communicable form compiled by a criminal justice agency that (a) concerns an identifiable individual, and (b) relates to the nature or disposition of a criminal charge, arrest, any judicial proceeding, sentencing, incarceration, rehabilitation or release." CORI is confidential and, pursuant MGL c. 6, s. 172, its dissemination is limited.

*To receive CORI, victims must apply to and be certified by the Criminal History Systems Board (CHSB). Advocates in prosecutors' offices help victims apply for certification for notification. Victims may also apply for CORI access independently, but if applying without an advocate's assistance, must provide documentation relating to the criminal case such as a letter from a prosecutor's office or a police report.*

The application processes for notification and CORI access certification are separate and distinct. Unlike applying for notification, only victims may apply for and be certified to receive CORI regarding an offender. Further, a victim's access to CORI is based upon a determination that it is reasonably necessary for his or her security and well-being. Individuals applying under 178A must have a statement or letter from the advocate verifying their involvement in a criminal matter or other documentation such as a police report.

Once certified, a victim is entitled to receive CORI information relating to the charged offense. A victim may also receive the offender's adult criminal history from the Criminal History Systems Board. Once certified for CORI access, a victim may also receive further information concerning the offender such as: other crimes committed, mental health status, and evaluative or investigative information from other criminal justice agencies.

By explicit provision, CORI does not include "intelligence information" and "evaluative information" unless deemed necessary for the security of a certified person. Evaluative information includes records, data, or reports that appraise the defendant's mental or physical condition, social adjustment, rehabilitative progress, etc. Intelligence information includes records compiled by a criminal justice agency for the purpose of investigation, such as investigator's reports or surveillance reports or informant's reports.

This additional information is released to victims at the discretion of criminal justice agencies such as police departments, District Attorneys' Offices, the Attorney General's Office, probation offices, Clerk of the Court offices, sheriffs' departments, and other agencies. Each of these agencies has its own policies regarding what information it will release to a 178A certified victim.

The application process for 178A CORI access and notification are separate and distinct as follows:

- Step 1:** The prosecuting office initiates prosecution of the case and the advocate makes contact with the victim.
- Step 2:** The advocate informs the victim of the right to access to CORI under 178A and/or notice of release.
- Step 3:** The advocate helps the victim complete the 178A application and forwards the completed 178A application to CHSB.
- Step 4:** Within approximately one week, CHSB certifies the applicant for CORI access.
- Step 5:** The victim is notified of his or her approved 178A certification.
- Step 6:** If certified for access to CORI under 178A, the victim receives the offender's CORI from CHSB. The victim may also request additional CORI information regarding the offender from other criminal justice agencies.
- Step 7:** The defendant receives a sentence of incarceration.
- Step 8:** The advocate helps the applicant complete the notification application and forwards the completed notification application to CHSB.
- Step 9:** CHSB certifies the applicant to receive notice of the defendant's release or change in custody.
- Step 10:** The certified applicant is notified of his or her approved certification of notification.
- Step 11:** The victim receives notice of the defendant's release or change in custody status from the custodial agency involved.

### **Dissemination of CORI to the Public by Criminal Justice Agencies**

CORI is confidential information. While advocates come in contact with CORI daily during the course of a criminal case, when victims seek to lawfully obtain CORI information or when discussing the case with a prosecutor, the dissemination of CORI to the public is statutorily restricted. Despite these restrictions, criminal justice agencies may release CORI to the public in certain circumstances:

- A criminal justice agency with official responsibility for a pending criminal investigation or prosecution may publicly disseminate CORI specifically related to and contemporaneous with an investigation or prosecution.
- A criminal justice agency may publicly disseminate CORI that is specifically related to and contemporaneous with the search for and apprehension of any person, or with a disturbance at a penal institution.
- Under the provisions of M.G.L. c. 209A, victims of abuse may obtain copies of police reports without certification by CHSB.

## **The Sex Offender Registry Board: Victim Services Unit**

The Sex Offender Registry Board (SORB) is a public safety agency responsible for determining if persons convicted or adjudicated of sex offenses that are living, working, or attending an institution of higher learning in Massachusetts have a duty to register. If so, the SORB is responsible for assessing the risk of reoffense and the degree of dangerousness sex offenders pose to the public. The primary goal of the SORB is to enhance public safety by providing the public with accurate information about sex offenders so they can make better decisions to protect themselves and their families.

### Victim Inclusion

The SORB has a Victim Services Unit (VSU) to provide victims with assistance, information and notification as the offender progresses through the registration and classification processes. The VSU assists victims with writing impact statements and also provides support, safety planning, crisis intervention, and resource referrals, as needed.

Victim Services Unit Contact Info:	Sex Offender Registry Board P.O. Box 4547 Salem, MA 01970 Phone: 978.740.6440 or 1.800.936.4326 Fax: 978.740.6464
------------------------------------	---

### How to Refer Victims to the SORB

In order for a victim or a parent/guardian of a child victim to participate in the SORB process, there must be a conviction for a sex offense committed against the victim or child victim. A list of registerable sex offenses is included in the Appendix.

To enroll a victim or a parent/guardian with the SORB's VSU, please use the referral form entitled, "Victim Participation and Notification" in the Appendix. The form is also accessible on the SORB's website at [www.mass.gov/sorb](http://www.mass.gov/sorb). A victim or a parent/guardian must enroll with the SORB in order to be included in the classification process of a convicted sex offender.

In addition to the victim referral form, please forward police reports, child interview reports, sentencing impact statements and any other documents that may be helpful to the Board when weighing the offender's risk to reoffend.

### When to Refer Victims to the SORB

Refer victims or parent/guardians of child victims immediately upon:

- (1) the offender's sentencing for a sex offense conviction or adjudication, and
- (2) upon consideration of a sex offender's status for a Sexually Dangerous Person (SDP) Petition.

At times, the SORB may be classifying an offender at the same time a District Attorney's Office is assessing the appropriateness of an SDP Petition.

Please be aware that expedient referrals to the SORB are particularly necessary for sex offenders who:

- (1) are sentenced *only* to probation, or
- (2) receive "time served" pre-trial jail credits and subsequently begin serving probation.

### Victim Impact Statements (VIS)

The Sex Offender Registry Law requires the Board to consider a VIS as a factor in determining an offender's level of dangerousness and risk to reoffend. Through the written statement, the victim is given the opportunity to describe the harm the offender has caused. Understanding the devastating, often long-term impact of sex offenses on victims is critical to assessing the consequences of the offender's criminal behavior. If a sentencing VIS is received as part of the victim referral process, the SORB includes it in the classification process. *For safety reasons, the SORB asks victims not to put any identifying contact information on VIS submissions.*

### Victim Notification

If enrolled with the SORB, victims or parent/guardians of a child victim are notified of the right to submit a VIS for Board consideration. SORB's VSU will notify victims or a parent/guardian of a child victim when:

- the preliminary classification of the offender has begun,
- an offender requests a hearing to challenge his preliminary classification level,
- the final registration and classification level determination is issued by the Board,
- a court issues an order changing the offender's final registration and classification level status,
- the SORB initiates a reclassification review of the offender's level, if new information suggests the risk level has increased,

- the offender requests reclassification to a lower level, and
- the offender is no longer subject to Massachusetts registration requirements.

## **Victim Services Units at the Department of Correction & the Houses of Correction**

The Department of Correction (state prison system) and many of the Houses of Correction (county-based jails) have Victim Service Units. These Victim Service Units specialize in assisting victims with:

- The process of becoming certified by the Criminal History Systems Board to receive information regarding an incarcerated offender.
- Crisis intervention.
- Safety planning.
- Referrals to counseling and service agencies.
- Questions regarding the criminal justice system.
- Questions related to sentencing and the incarceration process.
- Protective orders.

## **The Department of Homeland Security's Immigration and Customs Enforcement Victim-Witness Notification Program**

The Immigration and Customs Enforcement (ICE) Victim-Witness Notification program provides post-incarceration information to eligible victims and witnesses who register to be notified of "release-related activities" of an alien offender. To register for notification, the victim/witness must submit a request form to the ICE program. ICE notifies victims/witnesses of bond releases, parole, waivers, removals, or the death of an inmate. ICE may remove an alien to another country immediately following his release from a correctional facility, but ICE cannot ensure that the offender may not reenter the US illegally. A copy of the ICE application is in the Appendix.





## Juvenile Cases

The Juvenile Court Department of the Trial Court and the District Court have “concurrent jurisdiction” over juvenile matters. Although both courts can hear these cases, complaints are brought to the Juvenile Court when there is one in the area, rather than to the District Court. Murder cases are the exception. Murder charges against juveniles over the age of 14 are brought in the Superior Court through indictment, identical to adult cases. The Juvenile Court retains jurisdiction of juveniles younger than 14 who are charged with first and second degree murder. Usual court procedures include provisions for bail and dangerousness hearings. Juveniles found to be delinquent after trial or plea can be committed to the Department of Youth Services (DYS) until their eighteenth birthday.

Traditionally, juveniles charged with offenses (that would be “crimes” if they were over the age of 17) are charged with being a “delinquent child,” which allows findings of “delinquency” rather than guilt. In addition to the right of police officers to bring a complaint charging children between the ages of 7 and 17 years-old with being a delinquent child, any person may apply for a complaint to issue if the offense to be charged is a misdemeanor. Juvenile cases are closed to the public and completely confidential, but advocates are allowed to be present.

Juveniles may be ordered by the court after trial to have their cases "continued without a finding" (CWOFF). Here, the juvenile admits to sufficient facts to warrant an adjudication of delinquency, but the court places the case "on hold" for a period of probation, subject to such conditions as no further criminal involvement, curfew, proper school attendance, etc. If the juvenile successfully completes such conditions, the case is then dismissed. Detention and conditions of release for juveniles include:

**Agency-Only Bail.** If a juvenile in the custody of the Department of Children and Families (DCF) is charged with a criminal offense and bail of “\$1- DCF only” is placed on him, the juvenile in effect is held without bail, since DCF regulations prohibit posting bail. Judges and defense attorneys have sharply criticized this practice, arguing that it perverts the intent of the bail statute.

**Parent-Only Bail.** In some circumstances, a judge will designate a “parent-only bail” to prevent the juvenile's friends from posting bail and ensure the juvenile is released to the custody of his/her parents. Although still controversial, this is less so than “agency-only” bail. Typically, juveniles held on bail remain in the custody of DYS, which cannot continue beyond 15 days.

Another unique procedure involving juveniles is the "72A" hearing. If a juvenile commits a crime before his seventeenth birthday but is not apprehended until after he is 18, then the Juvenile Court must hold a hearing to decide whether to discharge the delinquency complaint and issue an adult criminal complaint or dismiss the case altogether if dismissal is in the best public interest.

## Youthful Offenders

Charging a young person as a "youthful offender" allows the court a wider range of punishments for more serious offenses, such as imposing an adult sentence. If the defendant is sentenced as a youthful offender, he must be separated from the adult general population in a youthful offender unit, and cannot be sent to the maximum security prison at Cedar Junction before his seventeenth birthday. The court may also render a "combination sentence" in which the juvenile is adjudged a youthful offender and committed to the Department of Youth Services (DYS) until age 21, but receives a suspended adult sentence and probation period covering the entire DYS commitment period and possible additional time. Violation of probation can result in a suspended adult sentence.

Certain conditions must be met for the Commonwealth to proceed with an indictment against a youthful offender. The juvenile must be between 14 and 17; have committed an offense that would be punishable by a state prison sentence if he were an adult; and satisfies one of the following elements:

- Previous commitment to the Department of Youth Services (DYS);
- Offense alleged involves infliction or the threat of serious bodily harm;
- Charged with illegally carrying a firearm or sawed-off shotgun or selling these items.

The prosecutor's office has the sole discretion to make the decision regarding the youthful offender designation at the charging stage.

## Victim Services at the Department of Youth Services<sup>16</sup>

The mission of the DYS Victim Services Unit "is to provide information, support, and notification to victims of juvenile crime whose offenders are in the custody of the Department of Youth Services.

### Services Provided:

- Assistance in obtaining certification to receive notice of offender's release;
- Victim notifications, including changes in offender's status or placement;
- Advocacy and support in response to the needs, concerns and rights of crime victims;
- Outreach, education and training;
- Interagency collaboration with other post-conviction victim service agencies

---

<sup>16</sup> DYS Victim Services Presentation, "DYS 101: Everything You Need to Know," April 14, 2009.

### Victim Notification for Committed Juveniles:

If the offender is committed to DYS as a juvenile delinquent, the victim of juvenile crime, the parents or guardians of minor age victims and family members of homicide victims may receive notifications by completing a Juvenile Offender Notification and Information (JONI) application form. The DYS Victim Services Unit approves JONI applications, sends a letter to the certified person, and provides verbal and written notification of changes in the offender's status and placement.

### Victim Notification for Youthful Offenders:

If the offender is committed to an adult facility as a youthful offender, the certification application is handled by the Criminal History Systems Board (CHSB). The CHSB approves the certification application and provides notice to the DYS Victim Services Unit, which then sends a letter to the certified person and provides verbal and written notification of changes in the offender's status and placement.

- Notifications of Changes in Status and Placement Include:
- Transfer to a lower security status;
- Temporary release;
- Provisional release;
- Final release/discharge from custody;
- Parole violation – whereabouts unknown;
- Escape
- Other notifications:
  - Return to custody;
  - Transfer to higher security status;
  - Revise and revoke



## Index

<b>2</b>		<b>H</b>	
209A	37, 39, 40, 41, 57, 58, 82, 100, 109	Harassment Prevention Order	37, 57
258E	57, 58	Homicide	69
		Houses of Correction	111
<b>A</b>		<b>I</b>	
Address Confidentiality Program	50, 60	Immigration	30, 111
Agency-Only Bail	113		
<b>B</b>		<b>J</b>	
Bail	86	Jury of Six Sessions	88
Bench Sessions	88	Juvenile	81, 105, 113, 115
<b>C</b>		<b>L</b>	
Child Abuse	62	Lethality and Risk Assessments	45
Child Victims	61		
Competency	67	<b>M</b>	
Complaint	41	Male Victims	58
Criminal History Systems Board	102, 103, 105, 107, 111, 115	Mandated Reporters	22
Crisis Intervention	5	Media	17, 19
Cultural Competency	20	Motions	90, 91
<b>D</b>		<b>N</b>	
Death Certificates	72	Neglect	65, 74, 75, 76
Department of Children and Families	22, 61, 62, 63, 82, 113		
Department of Correction	105, 106, 111	<b>O</b>	
Department of Public Health	22, 24, 73	Office of the Chief Medical Examiner	71, 72
Department of Youth Services	105, 113, 114		
Depression	12, 65, 78	<b>P</b>	
Disabled Persons Protection Commission	22, 44, 79, 82	Parent-Only Bail	113
DNA	103	Parole Board	97, 101, 102, 105, 106
Domestic Violence	23, 29, 30, 31, 50, 57, 58, 60	Persons with Disabilities	79
Dwyer Protocol	56	Physical Abuse	74
<b>E</b>		Post-Traumatic Stress Disorder	11
Elderly Victims	73	Power and Control Wheel	24
Emotional Abuse	74	Pre-Sentence Report	99
Executive Office of Elder Affairs	22, 44, 73	Prior False Accusations	56
<b>F</b>		<b>R</b>	
Financial Exploitation	76	Rape Crisis Centers	60
First Complaint Witness	57	Rape Shield Law	55
<b>G</b>		Record Keeping	17
Grand Jury	89	Restitution	99, 100
Grief	71	Restraining Orders	37, 45

<b>S</b>		The Cycle of Violence	25
		Trauma	8, 9, 21, 77
SafeLink	49	<b>U</b>	
SAFEPLAN	42, 43		
Safety Plan	46, 48		
SANE Response Team	55	U Visa	29, 30
Secondary Injuries	13	<b>V</b>	
Secondary Victims	13		
Self-Care	21		
Sentencing Hearing	99	Verdict	98
Sex Offender Registry Board	109	Victim Bill of Rights	1, 96, 99
Sexual Assault	37, 53, 54, 55, 58, 59, 60, 61, 77	Victim Certification	105
Sexual Assault Evidence Collection Kit	55	Victim Compensation	2, 81, 82, 100
Sexual Assault Nurse Examiners	55	Victim Impact Statement	2, 87, 88, 89, 90, 96, 97, 99, 110
Sexually Dangerous Persons	102	Victim Rights Law Center	56, 59
Statute of Limitations	56	Victim-Witness Assessment Fee	100
Surrender Hearings	101	<b>Y</b>	
Survivors	69		
<b>T</b>		Youthful Offenders	114, 115
Testimony	92		

## **Appendix Contents**

### **Statutes and Related Material**

- Victim Bill of Rights, Chapter 258B
- Abuse Prevention Statute, Chapter 209A
- Harassment Prevention Order Statute, Chapter 258E
- 258E v. 209A Chart

### **The Courts – Charts**

- Overview of the Massachusetts Court System
- Trial Court Process
- State Court Appellate Process

### **Contact Information**

- Statewide Victim Assistance Contacts
- Child Advocacy Center Contacts

### **Forms**

- Bail Notification
- Restitution
- Victim Compensation
- Victim Impact Statement
- CHSB Application for Access to CORI
- CHSB Application for Notice of Offender's Release
- CHSB Change of Address Notification
- CHSB Certification Cancellation
- Sex Offender Registry Board Victim Participation and Notification
- Sex Offender Registry Board List of "Sex Offenses"
- Department of Youth Services Notification and Information Application
- Department of Youth Services Notification and Information Process
- U Visa Certification
- Immigration and Customs Enforcement Victim Notification Application

### **Domestic Violence Information**

- Equality Wheel
- Anger Management v. Certified Batterer Intervention Programs

### **Additional Information**

- Crisis Intervention Reading Material
- Common File Abbreviations
- Common Dispositions
- Glossary of Legal Terms



# GENERAL LAWS OF MASSACHUSETTS

## CHAPTER 258B. RIGHTS OF VICTIMS AND WITNESSES OF CRIME.

Chapter 258B, [Section 1. Definitions.](#)

Chapter 258B, [Section 2. Eligibility of crime victim for services.](#)

Chapter 258B, [Section 3. Rights afforded victims, witnesses or family members.](#)

Chapter 258B, [Section 4. Victim and witness assistance board.](#)

Chapter 258B, [Section 5. Programs created and maintained by district attorneys; services.](#)

Chapter 258B, [Section 6. Program plan.](#)

Chapter 258B, [Section 7. Interagency cooperation.](#)

Chapter 258B, [Section 8. Assessments imposed by court or motor vehicles registrar.](#)

Chapter 258B, [Section 9. Deposit of assessments; victim and witness assistance fund.](#)

Chapter 258B, [Section 10. Construction.](#)

Chapter 258B, [Section 11. Duration of rights and duties.](#)

Chapter 258B, [Section 12. Provision of rights established in this chapter.](#)

Chapter 258B, [Section 13. Standing of person convicted; effect of failure to comply on conviction or sentence.](#)

## **PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES**

### **TITLE IV. CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES**

#### **CHAPTER 258B. RIGHTS OF VICTIMS AND WITNESSES OF CRIME**

##### **Chapter 258B: Section 1. Definitions**

Section 1. As used in this chapter, the following words shall have the following meanings, unless the context otherwise requires:—

“Board”, the victim and witness assistance board as established in section four.

“Court”, a forum established under the General Laws for the adjudication of criminal and delinquency complaints, indictments and civil motor vehicle infractions.

“Crime”, an act committed in the commonwealth which would constitute a crime if committed by a competent adult including any act which may result in an adjudication of delinquency.

“Disposition”, the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.

“Family member”, a spouse, child, stepchild, sibling, parent, stepparent, dependent, as defined in section one of chapter two hundred and fifty-eight C, or legal guardian of a victim, unless such family member has been charged in relation to the crime against the victim.

“Prosecutor”, the attorney general, assistant attorneys general, district attorney, assistant district attorneys, police prosecutors, other attorneys specially appointed to aid in the prosecution of a case, law students approved for practice pursuant to and acting as authorized by the rules of the supreme judicial court, or any other person acting on behalf of the commonwealth, including victim-witness advocates.

“Restitution”, money or services which a court orders a defendant to pay or render to a victim as part of the disposition.

“Victim”, any natural person who suffers direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of a crime or delinquency offense, as demonstrated by the issuance of a complaint or indictment, the family members of such person if the person is a minor, incompetent or deceased, and, for relevant provisions of this chapter, a person who is the subject of a case reported to a prosecutor pursuant to section eighteen of chapter nineteen A, sections five and nine of chapter nineteen C, and section fifty-one B of chapter one hundred and nineteen, and the family members of such person if the person is a minor, incompetent or deceased.

“Victim-witness advocate”, an individual employed by a prosecutor, the board, or other criminal justice agency to provide necessary and essential services in carrying out policies and procedures under this chapter.

“Witness”, any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

## **Chapter 258B: Section 2. Eligibility of victim for services**

Section 2. Prosecutors shall not be precluded from providing, subject to appropriation, services under this chapter to any natural person or family member of such natural person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime or delinquency offense in which complaints or indictments have not been issued.

## **Chapter 258B: Section 3. Rights afforded victims, witnesses or family members**

Section 3. To provide victims a meaningful role in the criminal justice system, victims and witnesses of crime, or in the event the victim is deceased, the family members of the victim, shall be afforded the following basic and fundamental rights, to the greatest extent possible and subject to appropriation and to available resources, with priority for services to be provided to victims of crimes against the person and crimes where physical injury to a person results:

(a) for victims, to be informed by the prosecutor about the victim’s rights in the criminal process, including but not limited to the rights provided under this chapter. At the beginning of the criminal justice process, the prosecutor shall provide an explanation to the victim of how a case progresses through the criminal justice system, what the victim’s role is in the process, what the system may expect from the victim, why the system requires this, and, if the victim requests, the prosecutor shall periodically apprise the victim of significant developments in the case;

(b) for victims and family members, to be present at all court proceedings related to the offense committed against the victim, unless the victim or family member is to testify and the court determines that the person’s testimony would be materially affected by hearing other testimony at trial and orders the person to be excluded from the courtroom during certain other testimony;

(c) for victims and witnesses, to be notified by the prosecutor, in a timely manner, when a court proceeding to which they have been summoned will not go on as scheduled, provided that such changes are known in advance. In order to notify victims and witnesses, a form shall be provided to them by the prosecutor for the purpose of maintaining a current telephone number and address. The victim or witness shall thereafter maintain with the prosecutor a current telephone number and address;

(d) for victims and witnesses, to be provided with information by the prosecutor as to the level of protection available and to receive protection from the local law enforcement agencies from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;

(e) for victims, to be informed by the prosecutor of financial assistance and other social services available to victims, including information relative to applying for such assistance or services;

(f) for victims and witnesses, to a prompt disposition of the case in which they are involved as a victim or a witness;

(g) for victims, to confer with the prosecutor before the commencement of the trial, before any hearing on motions by the defense to obtain psychiatric or other confidential records, and before the filing of a nolle prosequi or other act by the commonwealth terminating the prosecution or before the submission of the commonwealth's proposed sentence recommendation to the court. The prosecutor shall inform the court of the victim's position, if known, regarding the prosecutor's sentence recommendation. The right of the victim to confer with the prosecutor does not include the authority to direct the prosecution of the case;

(h) for victims and witnesses, to be informed of the right to request confidentiality in the criminal justice system. Upon the court's approval of such request, no law enforcement agency, prosecutor, defense counsel, or parole, probation or corrections official may disclose or state in open court, except among themselves, the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses;

(i) for victims, family members and witnesses, to be provided, subject to appropriation and to available resources, by the prosecutor with a secure waiting area or room which is separate from the waiting area of the defendant or the defendant's family, friends, attorneys or witnesses, during court proceedings. The court shall, subject to appropriation and to available resources, designate a waiting area at each courthouse and develop any reasonable safeguards to minimize contact between victims and the defendant, or the defendant's family, friends, attorneys or witnesses;

(j) for victims and witnesses, to be informed by the court and the prosecutor of procedures to be followed in order to apply for and receive any witness fee to which they are entitled;

(k) for victims and witnesses, to be provided, where appropriate, with employer and creditor intercession services by the prosecutor to seek employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process, and to seek consideration from creditors if the victim is unable, temporarily, to continue payments;

(l) for victims or witnesses who have received a subpoena to testify, to be free from discharge or penalty or threat of discharge or penalty by his employer by reason of his attendance as a witness at a criminal proceeding. A victim or witness who notifies his employer of his subpoena to appear as a witness prior to his attendance, shall not on account of his absence from employment by reason of such witness service be subject to discharge or penalty by his employer. Any employer or agent of said employer who discharges or disciplines or continues to threaten to discharge or discipline a victim or witness because that victim or witness is subpoenaed to attend court for the purpose of giving testimony may be subject to the sanctions stated in section fourteen A of chapter two hundred and sixty-eight;

(m) for victims and witnesses, to be informed of the right to submit to or decline an interview by defense counsel or anyone acting on the defendant's behalf, except when responding to lawful process, and, if the victim or witness decides to submit to an interview, the right to impose reasonable conditions on the conduct of the interview;

(n) for victims, to confer with the probation officer prior to the filing of the full presentence report. If the victim is not available or declines to confer, the probation officer shall record that information in the report. If the probation officer is not able to confer with the victim or the victim declines to confer, the probation officer shall note in the full presentence report the reason why the probation officer did not make contact with the victim;

(o) for victims, to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim's losses. If restitution is ordered as part of a case disposition, the victim has the right to receive from the probation department a copy of the schedule of restitution payments and the name and telephone number of the probation officer or other official who is responsible for supervising the defendant's payments. If the offender seeks to modify the restitution order, the offender's supervising probation officer shall provide notice to the victim and the victim shall have the right to be heard at any hearing relative to the proposed modification.

(p) for victims, to be heard through an oral and written victim impact statement at sentencing or the disposition of the case against the defendant about the effects of the crime on the victim and as to a recommended sentence, pursuant to section four B of chapter two hundred and seventy-nine, and to be heard at any other time deemed appropriate by the court. The victim also has a right to submit the victim impact statement to the parole board for inclusion in its records regarding the perpetrator of the crime;

(q) for victims, to be informed by the prosecutor of the final disposition of the case, including, where applicable, an explanation of the type of sentence imposed by the court and a copy of the court order setting forth the conditions of probation or other supervised or unsupervised release within thirty days of establishing the conditions, with the name and telephone number of the probation officer, if any, assigned to the defendant;

(r) for victims, to have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, the prosecutor or law enforcement agencies within ten days of

its taking or recovery if it is not needed for law enforcement or prosecution purposes or as expeditiously as possible when said property is no longer needed for law enforcement or prosecution purposes;

(s) for victims, to be informed by the parole board of information regarding the defendant's parole eligibility and status in the criminal justice system;

(t) for victims, to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody, whenever a defendant is moved from a secure facility to a less-secure facility, and whenever the defendant escapes from custody. The victim shall be informed by the prosecutor about notification rights and the certification process required to access the criminal offender record information files. Persons requesting such notice must provide the appropriate authority with current information as to their address and telephone number;

(u) for victims, to be informed that the victim may have a right to pursue a civil action for damages relating to the crime, regardless of whether the court has ordered the defendant to make restitution to the victim.

(v) for one family member of a victim of a homicide, which the matter before the court is related, to possess in the courtroom a photograph, that is not of itself of an inflammatory nature, of the deceased victim that is not larger than eight by ten inches; provided, however, that at no time may the photograph be exposed or in anyway displayed in the presence of any member of the jury, or the jury pool from which a jury is to be selected in a particular matter; provided, further, that nothing in this section shall preclude the admission into evidence of a photograph that the court deems relevant and material.

#### **Chapter 258B: Section 4. Victim and witness assistance board**

Section 4. There is hereby established a victim and witness assistance board, to consist of five members who shall serve without compensation. Notwithstanding any provision of section six of chapter two hundred and sixty-eight A to the contrary, the board shall consist of the attorney general or his designee who shall be chairman, two district attorneys who shall be appointed by the governor, and two members of the public who shall be appointed by the governor, of whom one shall be a victim. The members of the board first appointed shall serve as follows: of the district attorneys appointed by the governor, one shall serve for three years, and one shall serve for one year, of the members of the public appointed by the governor, one shall serve for three years and one shall serve for two years. The successor of each such member shall serve for a term of three years and until his successor is duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the board shall be eligible for reappointment.

The board shall by majority vote of its members, appoint an executive director who shall serve, subject to appropriation, at such rate of compensation as the board directs for a term of three

years unless removed for cause by a vote of four members of the board. The executive director, subject to appropriation, shall have the power to hire such staff, subject to the approval of the board, as is needed to fulfill the powers and duties of the board. The executive director shall have such other powers and duties as the board may delegate to him.

The provisions of chapter thirty-one shall not apply to the executive director or any employee of the board.

The board shall review program plans, annual reports, and the implementation and operation of programs as described in this chapter. The board shall promulgate rules for the preparation and review of such program plans and annual reports.

In addition to the foregoing, the board shall:

(a) have printed and shall make available to social service agencies, medical facilities, and law enforcement agencies, cards, posters, brochures or other materials explaining the victim and witness rights and services established under this chapter;

(b) assist hospitals, clinics and other medical facilities, whether public or private, in disseminating information giving notice of the rights established under this chapter. This assistance may include providing informational materials including posters suitable to be displayed in emergency and waiting rooms;

(c) assist law enforcement agencies in familiarizing all of their officers and employees with the crime victims' rights as provided under this chapter. This assistance may include supplying informational literature on this subject to be utilized as part of the training curriculum for all trainee officers; and

(d) assist all local law enforcement agencies in establishing procedures whereby expedient notification is given to victims and witnesses, as defined under this chapter, of the rights provided under this chapter. In municipalities which do not have a local law enforcement agency, the board shall establish procedures whereby it, in cooperation with the state police, shall give notice to victims of crimes as provided in this section.

#### **Chapter 258B: Section 5. Programs created and maintained by district attorneys; services**

Section 5. Each district attorney shall create and maintain, to the extent reasonably possible and subject to the available resources, a program to afford victims and witnesses of crimes the rights and services described in this chapter. Those services shall include but not be limited to the following:

(a) court appearance notification services, including cancellations of appearances;

- (b) informational services relative to the availability and collection of witness fees, victim compensation and restitution;
- (c) escort and other transportation services related to the investigation or prosecution of the case, if necessary;
- (d) case process notification services;
- (e) employer intercession services;
- (f) expedited return of property services;
- (g) protection services;
- (h) family support services including child and other dependent care services;
- (i) waiting facilities; and
- (j) social service referrals.

#### **Chapter 258B: Section 6. Program plan**

Section 6. Each district attorney shall submit annually on January fifteenth to the board, the secretary of administration and finance and the house and senate committees on ways and means, a program plan to be implemented within the district attorney's jurisdiction. The program plan shall include, but not be limited to: a description of the services to be provided to victims and witnesses in each judicial district within the district attorney's jurisdiction; the personnel or agencies responsible for providing individual services and related administrative programs; proposed staffing for the program; proposed education, training and experience requirements for program staff and, where appropriate, the staff of agencies providing individual services and related administrative services; and a proposed budget for implementing the program. The district attorney shall include in the annual program plan a detailed report on the operation of the program, as well as a detailed report of deposits and expenditures of all funds made available to said district attorney for the preceding fiscal year and the current fiscal year, and proposed for the upcoming fiscal year, pursuant to section nine.

#### **Chapter 258B: Section 7. Interagency cooperation**

Section 7. The district attorney, local law enforcement agencies, local social service agencies, and court shall cooperate to afford victims and witnesses of crimes, the rights and services described in this chapter.



## **Chapter 258B: Section 8. Assessments imposed by court**

Section 8. The court shall impose an assessment of no less than \$90 against any person who has attained the age of seventeen years and who is convicted of a felony or against whom a finding of sufficient facts for a conviction is made on a complaint charging a felony. The court shall impose an assessment of \$50 against any person who has attained the age of seventeen and who is convicted of a misdemeanor or against whom a finding of sufficient facts for a conviction is made on a complaint charging a misdemeanor. The court shall impose an assessment of \$45 against any person who has attained the age of fourteen years and who is adjudicated a delinquent child or against whom a finding of sufficient facts for a finding of delinquency is made. The court, including the clerk-magistrate, or the registrar of motor vehicles shall impose an assessment of \$45 against any violator who fails to pay the scheduled civil assessment for a civil motor vehicle infraction or to request a noncriminal hearing within the twenty day period provided for in subsection (A) of section three of chapter ninety C, except where the person is required by law to exercise the right to pay before a justice. When multiple civil motor vehicle infractions arising from a single incident are charged, the total assessment shall not exceed \$75; provided, however, that the total assessment against a person who has not attained seventeen years shall not exceed thirty dollars. In the discretion of the court or the clerk magistrate in the case of a civil motor vehicle infraction that has not been heard by or brought before a justice, a civil motor vehicle assessment imposed pursuant to this section which would cause the person against whom the assessment is imposed severe financial hardship, may be reduced or waived. An assessment other than for a civil motor vehicle infraction imposed pursuant to this section may be reduced or waived only upon a written finding of fact that such payment would cause the person against whom the assessment is imposed severe financial hardship. Such a finding shall be made independently of a finding of indigency for purposes of appointing counsel. If the person is sentenced to a correctional facility in the commonwealth and the assessment has not been paid, the court shall note the assessment on the mittimus.

All such assessments made shall be collected by the court or by the registrar, as the case may be, and shall be transmitted monthly to the state treasurer. If the person convicted is sentenced to a correctional facility in the commonwealth, the superintendent or sheriff of the facility shall deduct any part or all of the monies earned or received by any inmate and held by the correctional facility, to satisfy the victim and witness assessment, and shall transmit such monies to the court monthly. The assessment from any conviction or adjudication of delinquency which is subsequently overturned on appeal shall be refunded by the court to the person whose conviction or adjudication of delinquency is overturned. Said court shall deduct such funds from the assessments transmitted to the state treasurer. Assessments pursuant to this section shall be in addition to any other fines or restitution imposed in any disposition.

When a determination of the order of priority for payments required of a defendant must be made by the court or other criminal justice system personnel required to assess and collect such fines, assessments or other payments, the victim and witness assessment mandated by this section shall be the defendant's first obligation.

## **Chapter 258B: Section 9. Deposit of assessments**

Section 9. Any assessment imposed pursuant to section eight shall be deposited in the Victim and Witness Assistance Fund, established by section forty-nine of chapter ten. In addition, the board may also apply for and accept on behalf of the commonwealth any private grants, bequests, gifts or contributions to further aid in financing programs or policies of the division. Such funds shall be received by the state treasurer on behalf of the commonwealth and deposited into said fund; provided, that said board shall submit to the house and senate committees on ways and means, as necessary, a report detailing all such amounts as deposited into said fund. All monies deposited into said fund that are unexpended at the end of the year shall not revert to the General Fund. The proceeds of the fund shall be made available, subject to appropriation, to the district attorney victim and witness programs, to the attorney general and the parole board for programs serving crime victims and witnesses.

## **Chapter 258B: Section 10. Construction**

Section 10. Nothing in this chapter shall be construed as creating an entitlement or a cause of action on behalf of any person against any public employee, public agency, the commonwealth or any agency responsible for the enforcement of rights and provision of services set forth in this chapter.

## **Chapter 258B: Section 11. Duration of rights and duties**

Section 11. The rights and duties established under this chapter shall continue to be enforceable until the final disposition of the charges, including acquittal or dismissal of charges, all post-conviction release proceedings, post-conviction relief proceedings, all appellate proceedings, and the discharge of all criminal proceedings relating to restitution. If a defendant's conviction or adjudication of delinquency is reversed and the case is returned to the trial court for further proceedings, the victim shall have the same rights that applied to the criminal or delinquency proceedings that led to the appeal or other post-conviction relief proceeding

## **Chapter 258B: Section 12. Assurance of rights; assistance by criminal justice agencies**

Section 12. Law enforcement agencies, prosecutors, judges, probation officers, clerks and corrections officials shall assure that victims of crime are afforded the rights established in this chapter.

Unless specifically stated otherwise, the requirements to provide information to the victim may be satisfied by either written or oral communication with the victim. The person responsible for providing such information shall do so in a timely manner and shall advise the victim of any significant changes in such information.

The board shall assist the prosecutors in providing the rights set forth in this chapter by preparing for distribution to victims written materials explaining the rights and services to which they are entitled.

A victim or family member may request assistance from the board in obtaining the rights provided under this chapter by the court or by any criminal justice agency responsible for implementing such rights. In order to address the victim's concerns, the board may seek assistance from the district attorney governing the jurisdiction in which the crime against the victim is alleged to have been committed or from the attorney general.

A victim or family member may request assistance from the district attorney or the attorney general in obtaining the rights provided under this chapter by the court or by any criminal justice agency responsible for implementing such rights.

### **Chapter 258B: Section 13. Failure to provide rights, privileges, or notice to victim; no grounds for appeal of or objection to conviction**

Section 13. A defendant or person convicted of a criminal or delinquency offense against the victim shall have no standing to object to any failure to comply with this chapter, and the failure to provide a right, privilege or notice to a victim under this chapter shall not be grounds for the defendant or person convicted of a criminal or delinquency offense to seek to have the conviction or sentence set aside.

## **PART II. REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS**

### **TITLE III. DOMESTIC RELATIONS**

#### **CHAPTER 209A. ABUSE PREVENTION**

##### **Chapter 209A: Section 1. Definitions**

Section 1. As used in this chapter the following words shall have the following meanings:

“Abuse”, the occurrence of one or more of the following acts between family 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.

“Court”, the superior, probate and family, district or Boston municipal court departments of the trial court, except when the petitioner is in a dating relationship when “Court” shall mean district, probate, or Boston municipal courts.

“Family or household members”, persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:
  - (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

“Law officer”, any officer authorized to serve criminal process.

“Protection order issued by another jurisdiction”, any injunction or other order issued by a court of another state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or tribal court that is issued for the purpose of preventing violent or

threatening acts or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person seeking protection.

“Vacate order”, court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff’s belongings or those of any other occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff’s right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple family dwelling and the plaintiff’s workplace. When issuing an order to vacate the plaintiff’s workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

## **Chapter 209A: Section 2. Venue**

Section 2. Proceedings under this chapter shall be filed, heard and determined in the superior court department or the Boston municipal court department or respective divisions of the probate and family or district court departments having venue over the plaintiff’s residence. If the plaintiff has left a residence or household to avoid abuse, such plaintiff shall have the option of commencing an action in the court having venue over such prior residence or household, or in the court having venue over the present residence or household.

## **Chapter 209A: Section 3. Remedies; period of relief**

Section 3. A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:

- (a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;
- (b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- (c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to

exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it deems necessary to protect the plaintiff from abuse;

(d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an “abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child’s best interests and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent, the court shall provide for the safety and well-being of the child and the safety of the abused parent. The court may consider:

- (a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;
- (b) ordering visitation supervised by an appropriate third party, visitation center or agency;
- (c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer’s treatment program as a condition of visitation;
- (d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;
- (e) ordering the abusive parent to pay the costs of supervised visitation;
- (f) prohibiting overnight visitation;

- (g) requiring a bond from the abusive parent for the return and safety of the child;
- (h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and
- (i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearing.

(e) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines. Each judgment or order of support which is issued, reviewed or modified pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of section 12 of chapter 119A;

(f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

(g) ordering information in the case record to be impounded in accordance with court rule;

(h) ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;

(i) the judge may recommend to the defendant that the defendant attend a batterer's intervention program that is certified by the department of public health.

No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

Any relief granted by the court shall be for a fixed period of time not to exceed one year. Every order shall on its face state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the

plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order.

The court may modify its order at any subsequent time upon motion by either party. When the plaintiff's address is inaccessible to the defendant as provided in section 8 of this chapter and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any such inaccessible address.

No order under this chapter shall in any manner affect title to real property.

No court shall compel parties to mediate any aspect of their case. Although the court may refer the case to the family service office of the probation department or victim/witness advocates for information gathering purposes, the court shall not compel the parties to meet together in such information gathering sessions.

A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse.

A court may issue a mutual restraining order or mutual no-contact order pursuant to any abuse prevention action only if the court has made specific written findings of fact. The court shall then provide a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention.

If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter except orders for custody or support.

If the parties to a proceeding under this chapter are parties in a subsequent proceeding in the probate and family court department for divorce, annulment, paternity, custody or support, guardianship or separate support, any custody or support order or judgment issued in the subsequent proceeding shall supersede any prior custody or support order under this chapter.



## **Chapter 209A: Section 3A. Nature of proceedings and availability of other criminal proceedings; information required to be given to complainant upon filing**

Section 3A. Upon the filing of a complaint under this chapter, a complainant shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such complainant shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

## **Chapter 209A: Section 3B. Order for suspension and surrender of firearms license; surrender of firearms; petition for review; hearing**

Section 3B. Upon issuance of a temporary or emergency order under section four or five of this chapter, the court shall, if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, order the immediate suspension and surrender of any license to carry firearms and or firearms identification card which the defendant may hold and order the defendant to surrender all firearms, rifles, shotguns, machine guns and ammunition which he then controls, owns or possesses in accordance with the provisions of this chapter and any license to carry firearms or firearms identification cards which the defendant may hold shall be surrendered to the appropriate law enforcement officials in accordance with the provisions of this chapter and, said law enforcement official may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Notice of such suspension and ordered surrender shall be appended to the copy of abuse prevention order served on the defendant pursuant to section seven. Law enforcement officials, upon the service of said orders, shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, any license to carry firearms and any firearms identification cards in the control, ownership, or possession of said defendant. Any violation of such orders shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment.

Any defendant aggrieved by an order of surrender or suspension as described in the first sentence of this section may petition the court which issued such suspension or surrender order for a review of such action and such petition shall be heard no later than ten court business days after the receipt of the notice of the petition by the court. If said license to carry firearms or firearms identification card has been suspended upon the issuance of an order issued pursuant to section four or five, said petition may be heard contemporaneously with the hearing specified in the second sentence of the second paragraph of section four. Upon the filing of an affidavit by the

defendant that a firearm, rifle, shotgun, machine gun or ammunition is required in the performance of the defendant's employment, and upon a request for an expedited hearing, the court shall order said hearing within two business days of receipt of such affidavit and request but only on the issue of surrender and suspension pursuant to this section.

#### **Chapter 209A: Section 3C. Continuation or modification of order for surrender or suspension**

Section 3C. Upon the continuation or modification of an order issued pursuant to section 4 or upon petition for review as described in section 3B, the court shall also order or continue to order the immediate suspension and surrender of a defendant's license to carry firearms, including a Class A or Class B license, and firearms identification card and the surrender of all firearms, rifles, shotguns, machine guns or ammunition which such defendant then controls, owns or possesses if the court makes a determination that the return of such license to carry firearms, including a Class A or Class B license, and firearm identification card or firearms, rifles, shotguns, machine guns or ammunition presents a likelihood of abuse to the plaintiff. A suspension and surrender order issued pursuant to this section shall continue so long as the restraining order to which it relates is in effect; and, any law enforcement official to whom such weapon is surrendered may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided, however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Any violation of such order shall be punishable by a fine of not more than \$5,000 or by imprisonment for not more than two and one-half years in a house of correction or by both such fine and imprisonment.

#### **Chapter 209A: Section 4. Temporary orders; notice; hearing**

Section 4. Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section three. Such relief shall not be contingent upon the filing of a complaint for divorce, separate support, or paternity action.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from abuse and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than ten court business days after such orders are entered.

Notice shall be made by the appropriate law enforcement agency as provided in section seven.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.

#### **Chapter 209A: Section 5. Granting of relief when court closed; certification**

Section 5. When the court is closed for business or the plaintiff is unable to appear in court because of severe hardship due to the plaintiff's physical condition, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file said complaint. If the plaintiff in such a case is unable to appear in court without severe hardship due to the plaintiff's physical condition, then a representative may appear in court on the plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from appearing personally. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section four.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk-magistrate or register of the court issuing such order to the court having venue and jurisdiction over the matter. Such certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed necessary for an emergency order issued under this section to take effect.

#### **Chapter 209A: Section 5A. Protection order issued by another jurisdiction; enforcement; filing; presumption of validity**

Section 5A. Any protection order issued by another jurisdiction, as defined in section one, shall be given full faith and credit throughout the commonwealth and enforced as if it were issued in the commonwealth for as long as the order is in effect in the issuing jurisdiction.

A person entitled to protection under a protection order issued by another jurisdiction may file such order in the superior court department or the Boston municipal court department or any division of the probate and family or district court departments by filing with the court a certified copy of such order which shall be entered into the statewide domestic violence record keeping

system established pursuant to the provisions of section seven of chapter one hundred and eighty-eight of the acts of nineteen hundred and ninety-two and maintained by the office of the commissioner of probation. Such person shall swear under oath in an affidavit, to the best of such person's knowledge, that such order is presently in effect as written. Upon request by a law enforcement agency, the register or clerk of such court shall provide a certified copy of the protection order issued by the other jurisdiction.

A law enforcement officer may presume the validity of, and enforce in accordance with section six, a copy of a protection order issued by another jurisdiction which has been provided to the law enforcement officer by any source; provided, however, that the officer is also provided with a statement by the person protected by the order that such order remains in effect. Law enforcement officers may rely on such statement by the person protected by such order.

## **Chapter 209A: Section 6. Powers of police**

Section 6. Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to the following action:

(1) remain on the scene of where said abuse occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to remaining in the dwelling for a reasonable period of time;

(2) assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;

(3) assist the abused person in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement which follows below and reading the same to said person. Where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

"You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; and (e) an order

directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorney's fees and other out-of-pocket losses for injuries and property damage sustained.

For an emergency on weekends, holidays, or weeknights the police will refer you to a justice of the superior, probate and family, district, or Boston municipal court departments.

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

The officer shall leave a copy of the foregoing statement with such person before leaving the scene or premises.

(5) assist such person by activating the emergency judicial system when the court is closed for business;

(6) inform the victim that the abuser will be eligible for bail and may be promptly released; and

(7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, three B, three C, four or five of this chapter, or sections fifteen or twenty of chapter two hundred and nine C or similar protection order issued by another jurisdiction. When there are no vacate, restraining, or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

(a) has committed a felony;

(b) has committed a misdemeanor involving abuse as defined in section one of this chapter;

(c) has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.

The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties must submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest.

No law officer investigating an incident of domestic violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

No law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter and the statewide policy as established by the secretary of public safety.

Whenever any law officer investigates an incident of domestic violence, the officer shall immediately file a written incident report in accordance with the standards of the officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime reporting unit of the criminal history systems board.

The victim shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

When a judge or other person authorized to take bail bails any person arrested under the provisions of this chapter, he shall make reasonable efforts to inform the victim of such release prior to or at the time of said release.

When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the court or the emergency response judge shall issue, upon the request of the victim, a written no-contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no-contact order.

#### **Chapter 209A: Section 7. Abuse prevention orders; domestic violence record search; service of order; enforcement; violations**

Section 7. When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded

to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons and notice of any suspension or surrender ordered pursuant to section three B of this chapter. The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by

imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served sixty days of such sentence.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.

In each instance where there is a violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston



municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

#### **Chapter 209A: Section 8. Confidentiality of records**

Section 8. The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.

The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, contained within the court records of cases arising out of an action brought by a plaintiff under the provisions of this chapter, shall be confidential and withheld from public inspection, except by order of the court, except that the plaintiff's residential address and workplace address shall appear on the court order and accessible to the defendant and the defendant's attorney unless the plaintiff specifically requests that this information be withheld from the order. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the plaintiff to obtain such information, and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, domestic violence victim's counselors as defined in section 20K of chapter 233, sexual assault counselors as defined in section 20J of chapter 233, and law enforcement officers, if such access is necessary in the performance of their duties. The provisions of this paragraph shall apply to any protection order issued by another jurisdiction, as defined in section 1, that is filed with a court of the commonwealth pursuant to section 5A. Such confidential portions of the court records shall not be deemed to be public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

#### **Chapter 209A: Section 9. Form of complaint; promulgation**

Section 9. The administrative justices of the superior court, probate and family court, district court, and the Boston municipal court departments shall jointly promulgate a form of complaint for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and file such complaint *pro se*.

**Chapter 209A: Section 10. Assessments against persons referred to certified batterers' treatment program as condition of probation**

Section 10. The court shall impose an assessment of three hundred and fifty dollars against any person who has been referred to a certified batterers' treatment program as a condition of probation. Said assessment shall be in addition to the cost of the treatment program. In the discretion of the court, said assessment may be reduced or waived when the court finds that the person is indigent or that payment of the assessment would cause the person, or the dependents of such person, severe financial hardship. Assessments made pursuant to this section shall be in addition to any other fines, assessments, or restitution imposed in any disposition. All funds collected by the court pursuant to this section shall be transmitted monthly to the state treasurer, who shall deposit said funds in the General Fund.

## **AN ACT RELATIVE TO HARASSMENT PREVENTION ORDERS.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

The General Laws are hereby amended by inserting after chapter 258D the following chapter:-

### **CHAPTER 258E HARASSMENT PREVENTION ORDERS**

**SECTION 1.** As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Abuse”, attempting to cause or causing physical harm to another or placing another in fear of imminent serious physical harm.

“Harassment”, (i) 3 or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property; or (ii) an act that: (A) by force, threat or duress causes another to involuntarily engage in sexual relations; or (B) constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 or 43A of chapter 265 or section 3 of chapter 272.

“Court”, the district or Boston municipal court, the superior court or the juvenile court departments of the trial court.

“Law officer”, any officer authorized to serve criminal process.

“Malicious”, characterized by cruelty, hostility or revenge.

“Protection order issued by another jurisdiction”, an injunction or other order issued by a court of another state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or a tribal court that is issued for the purpose of preventing violent or threatening acts, abuse or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person seeking protection.

**SECTION 2.** Proceedings under this chapter shall be filed, heard and determined in the superior court department or the Boston municipal court department or the respective divisions of the juvenile or district court departments having venue over the plaintiff’s residence. The juvenile court shall have jurisdiction over all proceedings under this chapter in which both the plaintiff and the defendant are under the age of 17.

**SECTION 3.** (a) A person suffering from harassment may file a complaint in the appropriate court requesting protection from such harassment. A person may petition the court under this chapter for an order that the defendant:

(i) refrain from abusing or harassing the plaintiff, whether the defendant is an adult or minor;  
(ii) refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;  
(iii) remain away from the plaintiff's household or workplace, whether the defendant is an adult or minor; and  
(iv) pay the plaintiff monetary compensation for the losses suffered as a direct result of the harassment; provided, however, that compensatory damages shall include, but shall not be limited to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged, cost of replacement of locks, medical expenses, cost for obtaining an unlisted phone number and reasonable attorney's fees.

(b) The court may order that information in the case record be impounded in accordance with court rule.

(c) No filing fee shall be charged for the filing of the complaint. The plaintiff shall not be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

(d) Any relief granted by the court shall not extend for a period exceeding 1 year. Every order shall, on its face, state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from harassment. The fact that harassment has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, or allowing an order to expire or be vacated or for refusing to issue a new order.

(e) The court may modify its order at any subsequent time upon motion by either party; provided, however, that the non-moving party shall receive sufficient notice and opportunity to be heard on said modification. When the plaintiff's address is inaccessible to the defendant as provided in section 10 and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any such inaccessible address.

(f) The court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of harassment.

(g) An action commenced under this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties.

**SECTION 4.** Upon the filing of a complaint under this chapter, a complainant shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such complainant shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 and 43A of chapter 265 or section 3 of chapter 272. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

**SECTION 5.** Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from harassment, including relief as provided in section 3.

If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from harassment and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff not later than 10 court business days after such orders are entered.

Notice shall be made by the appropriate law enforcement agency as provided in section 9.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.

**SECTION 6.** When the court is closed for business or the plaintiff is unable to appear in court because of severe hardship due to the plaintiff's physical condition, the court may grant relief to the plaintiff as provided under section 5 if the plaintiff demonstrates a substantial likelihood of immediate danger of harassment. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief justice for administration and management and shall deliver a copy of such order on the next court day to the clerk or clerk-magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section, the plaintiff shall appear in court on the next available business day to file a complaint. If the plaintiff in such a case is unable to appear in court without severe hardship due to the plaintiff's physical condition, a representative may appear in court, on the plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from appearing personally. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section 5.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk or clerk-magistrate of the court issuing such order to the court having venue and jurisdiction over the matter. Such certification to the court shall have the effect

of commencing proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed necessary for an emergency order issued under this section to take effect.

**SECTION 7.** Any protection order issued by another jurisdiction shall be given full faith and credit throughout the commonwealth and enforced as if it were issued in the commonwealth for as long as the order is in effect in the issuing jurisdiction.

A person entitled to protection under a protection order issued by another jurisdiction may file such order with the appropriate court by filing with the court a certified copy of such order. Such person shall swear under oath in an affidavit, to the best of such person's knowledge, that such order is presently in effect as written. Upon request by a law enforcement agency, the clerk or clerk-magistrate of such court shall provide a certified copy of the protection order issued by the other jurisdiction.

A law officer may presume the validity of, and enforce in accordance with section 8, a copy of a protection order issued by another jurisdiction which has been provided to the law officer by any source; provided, however, that the officer is also provided with a statement by the person protected by the order that such order remains in effect. Law officers may rely on such statement by the person protected by such order.

**SECTION 8.** Whenever a law officer has reason to believe that a person has been abused or harassed or is in danger of being abused or harassed, such officer shall use all reasonable means to prevent further abuse or harassment. Law officers shall make every reasonable effort to do the following as part of the emergency response:

- (1) assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;
- (2) if there is observable injury to the victim or if the victim is complaining of injury, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (3) if a sexual assault has occurred, notify the victim that there are time-sensitive medical or forensic options that may be available, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (4) provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place;
- (5) provide adequate notice to the victim of the victim's rights including, but not limited to, obtaining a harassment prevention order; provided, however, that the notice shall consist of providing the victim with a copy of the following statement before the officer leaves the scene or premises and after reading the statement to the victim; provided further, that if the victim's native language is not English, the statement shall be then provided in the victim's native language whenever possible:

“You have the right to appear at the Superior, Juvenile (only if the attacker is under 17), District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (i) an order restraining your attacker from harassing or abusing you; (ii) an order directing your attacker to refrain from contacting you; (iii) an order directing your attacker to stay away from your home and your workplace; (iv) an order directing your attacker to pay you for losses suffered as a result of the harassment or abuse, including loss of earnings, out-of-pocket losses for injuries sustained or property damaged, costs of replacement of locks, medical expenses, cost for obtaining an unlisted phone number, and reasonable attorneys’ fees.

For an emergency on weekends, holidays or weeknights, the police will assist you in activating the emergency response system so that you may file a complaint and request a harassment prevention order.

You have the right to go to the appropriate court and apply for a criminal complaint for sexual assault, threats, criminal stalking, criminal harassment, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place including, but not limited to, a designated meeting place for a shelter or a family member's or a friend's residence or a similar place of safety.

You may request and obtain a copy of the police incident report at no cost from the police department.”;

(6) assist the victim by activating the emergency judicial system when the court is closed for business;

(7) inform the victim that the abuser will be eligible for bail and may be promptly released; and

(8) arrest any person that a law officer witnessed or has probable cause to believe violated a temporary or permanent vacate, restraining, stay-away or no-contact order or judgment issued under this chapter or similar protection order issued by another jurisdiction; provided, however, that if there are no vacate, restraining, stay-away or no-contact orders or judgments in effect, arresting the person shall be the preferred response if the law officer witnessed or has probable cause to believe that a person: (i) has committed a felony; (ii) has committed a misdemeanor involving harassment or abuse as defined in section 1; or (iii) has committed an assault and battery in violation of section 13A of chapter 265; provided further, that the safety of the victim shall be paramount in any decision to arrest; and provided further, that if a law officer arrests both parties, the law officer shall submit a detailed, written report in addition to an incident report, setting forth the grounds for arresting both parties.

No law officer shall be held liable in a civil action for personal injury or property damage brought by a party to an incident of abuse or for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter.

Whenever a law officer investigates an incident of harassment, the officer shall immediately file a written incident report in accordance with the standards of the law officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime reporting unit of the state police crime reporting unit established in section 32 of chapter 22C.

The victim shall be provided with a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

**SECTION 9.** When considering a complaint filed under this chapter, the court shall order a review of the records contained within the court activity record information system and the statewide domestic violence recordkeeping system, as provided in chapter 188 of the acts of 1992 and maintained by the commissioner of probation, and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving violent crimes or abuse. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances in which an outstanding warrant exists, the court shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances in which such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

Whenever the court orders that the defendant refrain from harassing the plaintiff or have no contact with the plaintiff under section 3, 5 or 6, the clerk or clerk-magistrate shall transmit: (i) to the office of the commissioner of probation information for filing in the court activity record information system or the statewide domestic violence recordkeeping system as provided in said chapter 188 of the acts of 1992 or in a recordkeeping system created by the commissioner of probation to record the issuance of, or violation of, prevention orders issued pursuant to this chapter; and (ii) 2 certified copies of each such order and 1 copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve 1 copy of each order upon the defendant, together with a copy of the complaint and order and summons. The law enforcement agency shall promptly make its return of service to the court. The commissioner of probation may develop and implement a statewide harassment prevention order recordkeeping system.

Law officers shall use every reasonable means to enforce such harassment prevention orders. Law enforcement agencies shall establish procedures adequate to ensure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such



order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each harassment prevention order issued shall contain the following statement:

**VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2½ years in a house of correction, or both. In addition to, but not in lieu of, the foregoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a violation of such an order to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, the court may order the defendant to complete an appropriate treatment program based on the offense.

In each instance in which there is a violation of a harassment prevention order or a protection order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged, cost of replacement locks, medical expenses, cost for obtaining an unlisted telephone number and reasonable attorney's fees.

Any such violation may be enforced by the court. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The court may enforce by civil contempt procedure a violation of its own court order.

Section 8 of chapter 136 shall not apply to any order, complaint or summons issued pursuant to this section.

**SECTION 10.** The records of cases arising out of an action brought under this chapter in which the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, however, that such records shall be open, at all reasonable times, to the inspection of the minor, such minor's parent, guardian and attorney and to the plaintiff and the plaintiff's attorney.

The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, contained within the court records of cases arising out of an action brought by a plaintiff under this chapter, shall be confidential and withheld from public inspection, except by order of the court; provided, however, that the plaintiff's residential address and workplace address shall appear on the court order and be accessible to the defendant and the defendant's attorney unless the plaintiff specifically requests that this information be withheld from the order. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the plaintiff to obtain such information and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, sexual assault counselors as defined in section 20J of chapter 233 and

law officers, if such access is necessary in the performance of their duties. This paragraph shall apply to any protection order issued by another jurisdiction filed with a court of the commonwealth pursuant to section 7. Such confidential portions of the court records shall not be deemed to be public records under clause Twenty-sixth of section 7 of chapter 4.

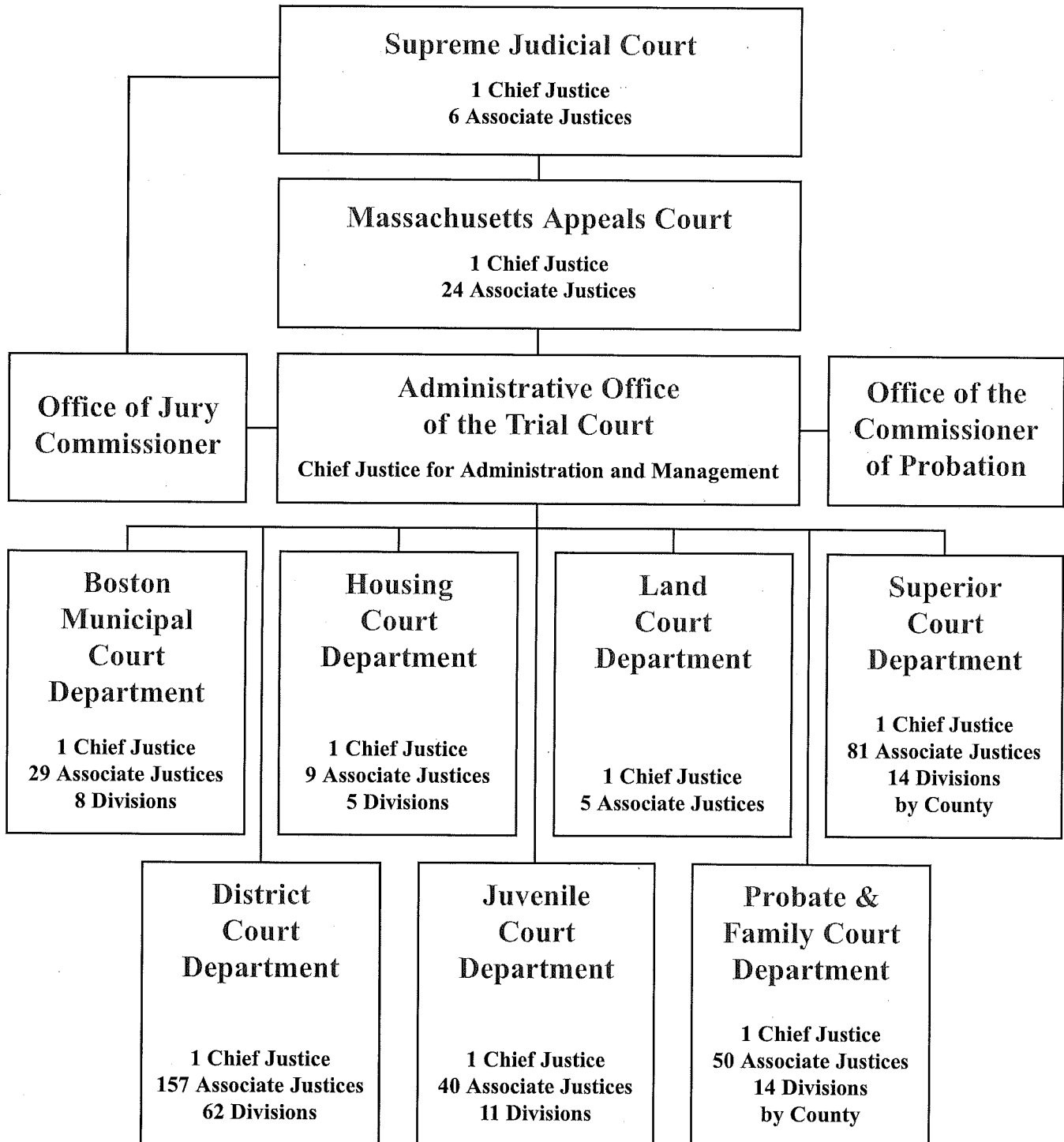
**SECTION 11.** The chief justice for administration and management shall adopt a form of complaint for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and file such complaint pro se.

**SECTION 12.** The court shall impose an assessment of \$350 against any person who has been referred to a treatment program as a condition of probation. Such assessment shall be in addition to the cost of the treatment program. In the discretion of the court, such assessment may be reduced or waived if the court finds that such person is indigent or that payment of the assessment would cause the person, or the dependents of such person, severe financial hardship. Assessments made pursuant to this section shall be in addition to any other fines, assessments or restitution imposed in any disposition. All funds collected by the court pursuant to this section shall be transmitted monthly to the state treasurer, who shall deposit such funds into the General Fund.

## SUBSTANTIVE DIFFERENCES BETWEEN G.L. c. 209A and G.L. c. 258E

	<i>Abuse Prevention Orders (G.L. c. 209A)</i>	<i>Harassment Prevention Orders (G.L. c. 258E)</i>
<i>Jurisdiction</i>	<ul style="list-style-type: none"> <li>District Court &amp; BMC</li> <li>Probate &amp; Family Court</li> <li>Superior Court <i>(except for dating relationships)</i></li> </ul>	<ul style="list-style-type: none"> <li>District Court &amp; BMC</li> <li>Juvenile Court <i>(if both parties under 17)</i></li> <li>Superior Court</li> </ul>
<i>Venue</i>	<ul style="list-style-type: none"> <li>Plaintiff's residence</li> <li>Plaintiff's former residence left to avoid abuse</li> </ul>	<ul style="list-style-type: none"> <li>Plaintiff's residence</li> </ul>
<i>Eligibility for relief</i>	<p>"Suffering abuse"</p> <p><b>"Abuse"</b> is any of the following acts between family or household members:</p> <ul style="list-style-type: none"> <li>attempting to cause or causing physical harm</li> <li><i>or</i> placing another in fear of imminent serious physical harm</li> <li><i>or</i> causing another to engage involuntarily in sexual relations by force, threat or duress.</li> </ul> <p><b>"Family or Household Members"</b></p> <ul style="list-style-type: none"> <li>are or were married to one another</li> <li><i>or</i> are or were residing together in the same household</li> <li><i>or</i> are or were related by blood or marriage</li> <li><i>or</i> have a child in common regardless of whether they have ever married or lived together</li> <li><i>or</i> are or have been in a substantive dating or engagement relationship.</li> </ul>	<p>"Suffering harassment"</p> <p><b>"Harassment"</b> is defined as:</p> <ul style="list-style-type: none"> <li>3 or more acts— <ul style="list-style-type: none"> <li>Each aimed at a specific person</li> <li>Each was willful and malicious</li> <li>Each was done with intent to cause fear, intimidation, abuse or property damage</li> <li>Each did in fact cause fear, intimidation, abuse or property damage</li> </ul> </li> <li><i>or</i> one act that "by force, threat or duress causes another to involuntarily engage in sexual relations"</li> <li><i>or</i> one act that constitutes one of the following: <ul style="list-style-type: none"> <li>Indecent A&amp;B on a child (G.L. c.265, §13B)</li> <li>Indecent A&amp;B on a mentally retarded person (§13F)</li> <li>Indecent A&amp;B (§13H)</li> <li>Rape (§22) or Statutory rape (§23)</li> <li>Forcible rape of a child (§22A)</li> <li>Assault with intent to rape (§24)</li> <li>Assault with intent to rape a child (§24B)</li> <li>Enticement of a child (§26C)</li> <li>Criminal stalking (§43)</li> <li>Criminal harassment (§43A)</li> <li>Drugging for sexual intercourse (c. 272, §3)</li> </ul> </li> </ul> <p><b>"Abuse"</b> is:</p> <ul style="list-style-type: none"> <li>attempting to cause or causing physical harm to another</li> <li><i>or</i> placing another in fear of imminent serious physical harm.</li> </ul> <p><b>"Malicious"</b> is "characterized by cruelty, hostility or revenge."</p>
<i>Eligibility for ex parte relief</i>	Substantial likelihood of immediate danger of abuse	Substantial likelihood of immediate danger of harassment
<i>Available relief</i>	<p>Relief may include, but is not limited to:</p> <ul style="list-style-type: none"> <li>Do not abuse the plaintiff</li> <li>Do not contact the plaintiff</li> <li>Vacate and remain away from the plaintiff's household, multiple family dwelling, and workplace</li> <li>Pay restitution for directly-resulting losses</li> <li>Impounding information pursuant to court rules</li> <li>Pay temporary support for the plaintiff and/or child</li> <li>Temporary custody of a minor child</li> <li>Surrender firearms, gun licenses and FID cards</li> </ul>	<p>Relief is limited to:</p> <ul style="list-style-type: none"> <li>Do not abuse or harass the plaintiff</li> <li>Do not contact the plaintiff</li> <li>Remain away from the plaintiff's household or workplace</li> <li>Pay restitution for directly-resulting losses</li> <li>Impounding information pursuant to court rules</li> </ul>

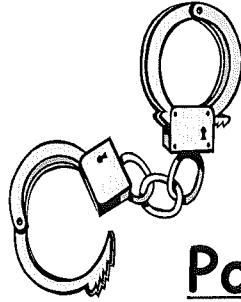
# THE MASSACHUSETTS COURT SYSTEM



The number of justices for all Courts is the maximum authorized by statute; the actual number of judges varies depending on vacancies.

# THE COURT PROCESS

**Crime  
Occurs**



## Police Arrest

Police get Warrant for Arrest  
or obtain Criminal Complaint

## District Court

## Superior Court

OR Police file an  
Application for  
Criminal Complaint in  
District Court Clerks  
Office

## GRAND JURY

Investigation  
Seeking Direct  
Indictment

True Bill  
(Indictment)

No Bill

From D.C. to  
S.C. through  
direct  
Indictment OR  
P.C. hearing

No Arrest

Show Cause  
Hearing  
before Clerk  
Magistrate

Criminal  
Complaint  
Issues

**Arraignment**  
*Bail/Detention*  
**Superior Court**

No Criminal  
Complaint  
Issues

**Arraignment**  
*Bail/Detention*  
**District Court**

Appeal to  
Judge

Bail  
Review  
S.C.

Probable  
Cause  
Hearing

P.C.  
Found

**Pre- Trial Hearing(s)**  
Discovery  
Non / Evidentiary Motions  
Plea/ Disposition

**Pre- Trial Hearing(s)**  
Discovery, Election  
Non / Evidentiary Motions  
Plea/ Disposition

Motions  
Jury or Jury Waived  
**TRIAL**

Guilty

NOT  
Guilty

**Sentencing**

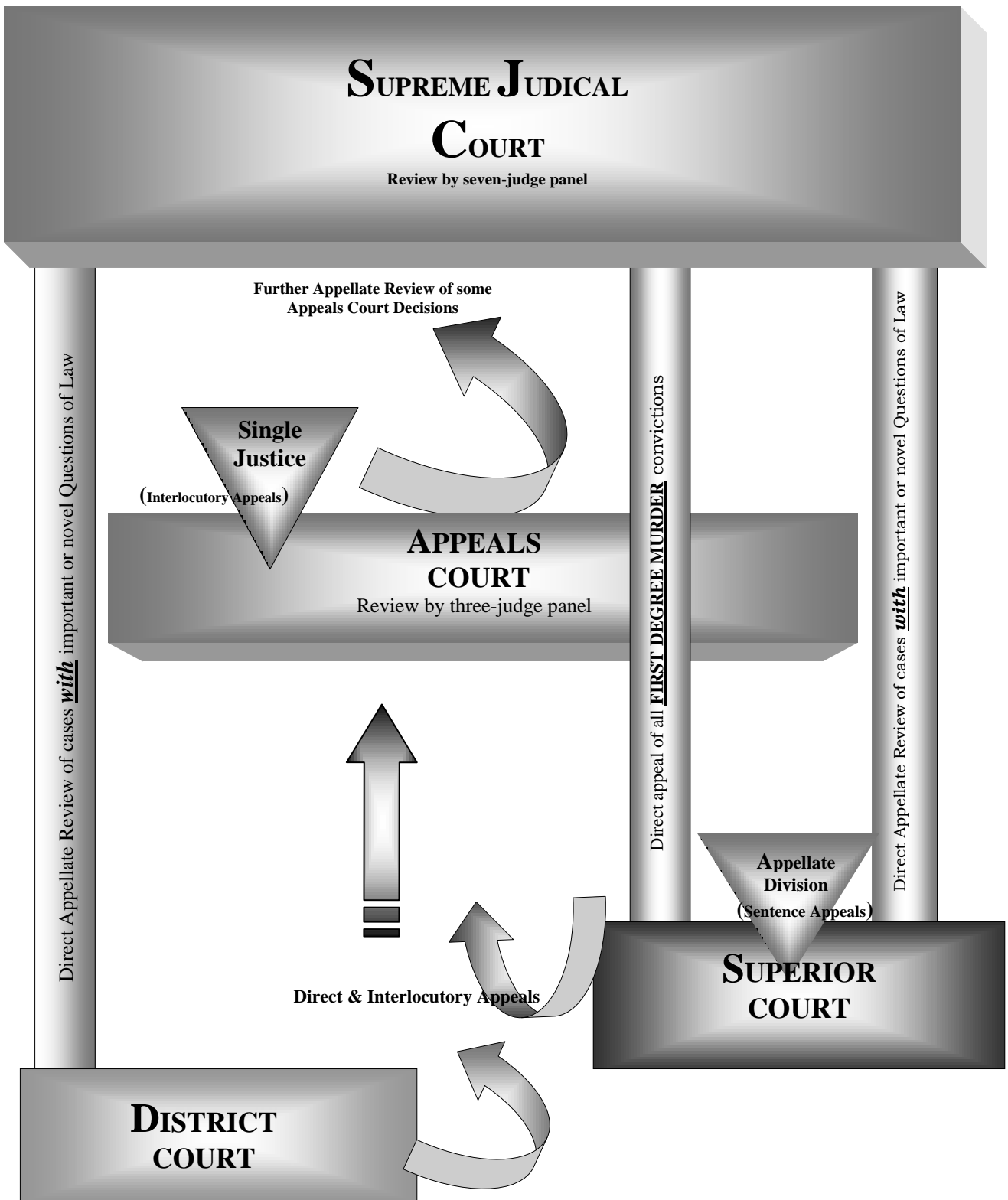
Motions  
Jury or Jury Waived  
**TRIAL**

Guilty

NOT  
Guilty

**Sentencing**

# THE STATE COURT APPELLATE PROCESS



# Directory of State and County Victim Assistance Programs

## Statewide Victim Assistance Programs

---

Sandy Clark, Director  
Victim Compensation Division  
**Office of the Attorney General**  
One Ashburton Place  
Boston, MA 02108  
Ph: 617-727-2200  
Fax: 617-367-3906

Liam Lowney, Chief  
Victim Witness Assistance Division  
**Office of the Attorney General**  
One Ashburton Place  
Boston, MA 02108  
Ph: 617-727-2200  
Fax: 617-727-5755

Jennifer DeCoursey, Director  
Victim Services Unit  
**Criminal History Systems Board**  
200 Arlington Street, Suite 2200  
Chelsea, MA 02150  
Ph: 617-660-4690  
Fax: 617-660-5973

Erin Gaffney, Director  
Victim Service Unit  
**Massachusetts Department of Correction**  
999 Barretts Mill Road  
West Concord, MA 01742  
Ph: 978-369-3618  
Fax: 617-727-8607

Diane Coffey  
Victim Service Unit  
**Massachusetts Parole Board**  
45 Hospital Road, Bldg. B-3  
Medfield, MA 02052  
Ph: 508-242-8227  
Fax: 508-242-8100

Maria-Elena Edwards  
Victim Service Unit  
**Massachusetts Department of Youth Services**  
27-43 Wormwood Place, Suite 400  
Boston, MA 02210  
Ph: 617-727-7575  
Fax: 617-727-0696

Judy Norton  
Director, Victim Services  
**Sex Offender Registry Board**  
P.O. Box 4547  
Salem, MA 01970  
Ph: 978-740-6400  
Direct: 978-740-6441

Kathleen Griffin, Manager  
Victim Witness Assistance  
**United States Attorney's Office**  
United States Courthouse, Suite 9200  
1 Courthouse Way  
Boston, MA 02210  
Ph: 617-748-3140  
Fax: 617-748-3372

## **District Attorneys' Offices**

---

### ***Barnstable, Dukes & Nantucket Counties***

#### ***District Attorney Michael O'Keefe:***

Susan O'Leary, Director  
Victim/Witness Assistance Program  
Cape & Islands District Attorney's Office  
Barnstable County Courthouse Complex, Route 6A  
Barnstable, MA 02630  
Ph: 508-362-8103  
Fax: 508-3628103

### ***Berkshire County***

#### ***District Attorney David Capeless:***

Elizabeth A. Keegan, Director  
Victim/Witness Assistance Program  
Berkshire County District Attorney's Office  
7 North Street, P.O. Box 1969  
Pittsfield, MA 01201  
Ph: 413-443-3500  
Fax: 413-499-6349

### ***Bristol County***

#### ***District Attorney Paul F. Walsh, Jr.:***

Daphne Crowell, Director  
Victim/Witness Assistance Program  
Bristol County District Attorney's Office  
888 Purchase Street, 5<sup>th</sup> Floor  
New Bedford, MA 02740  
Ph: 508-997-0711 OR 800-879-0110  
Fax: 508-997-0396

### ***Essex County***

#### ***District Attorney Jonathan W. Blodgett:***

Cheryl Watson, Director  
Victim/Witness Assistance Program  
Essex County District Attorney's Office  
Museum Place, Two East India Square  
Salem, MA 01970  
Ph: 978-745-6610  
Fax: 978-741-4971

### ***Franklin & Hampshire Counties***

#### ***District Attorney Elizabeth D. Scheibel:***

Susan Manatt, Director  
Victim/Witness Assistance Program  
Northwestern District Attorney's Office  
One Gleason Plaza  
Northampton, MA 01060  
Ph: 413-586-5780

### ***Hampden County***

#### ***District Attorney William M. Bennett:***

Maria F. Rodriguez, A.D.A.  
Director, Victim/Witness Assistance Program  
Hampden County District Attorney's Office

Hampden County Hall of Justice  
50 State Street, P.O. Box 559  
Springfield, MA 01102-0559  
Ph: 413-747-1038  
Fax: 413-781-4745

### ***Middlesex County***

#### ***District Attorney Gerard T. Leone, Jr.:***

Patrice Provitola, Chief  
Victim/Witness Service Bureau  
Middlesex County District Attorney's Office  
15 Commonwealth Ave.  
Woburn, MA 01801  
Ph: (781) 897-8490  
Fax: 781-897-8319

### ***Norfolk County***

#### ***District Attorney William R. Keating:***

Rai Cunningham, Chief  
Victim/Witness Assistance Program  
Norfolk County District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021  
Ph: 781-830-4800  
Fax: 781-830-4801

### ***Plymouth County***

#### ***District Attorney Timothy J. Cruz:***

Michelle Mawn, Director  
Victim/Witness Program  
Plymouth County District Attorney's Office  
231 Main Street, Suite 102  
Brockton, MA 02303  
Ph: 508-894-6309  
Fax: 508-586-3578

### ***Suffolk County***

#### ***District Attorney Daniel F. Conley:***

Kara Hayes, Director  
Victim/Witness Assistance Program  
Suffolk County District Attorney's Office  
One Bulfinch Place  
Boston, MA 02114  
Ph: 617-619-4000

### ***Worcester County***

#### ***District Attorney John J. Conte:***

Margaret Rwaramba-Baez, Director  
Victim/Witness Assistance Program  
Worcester County District Attorney's Office  
2 Main Street, Room 220  
Worcester, MA 01608  
Ph: (508)368-7234 Fax: 508-7568675



## **Sheriff Department Victim Assistance Programs**

---

Jeff Ryan, Director  
Victim Service Unit  
**Barnstable County Sheriff's Office**  
Route 6A  
Barnstable, MA 02630  
Ph: 508-375-6241  
Fx: 508-362-7737

Trisha Papa, Director  
Victim Service Unit  
**Essex County Sheriff's Office**  
20 Manning Avenue, P.O. Box 807  
Middleton, MA 01949  
Ph: 978-750-1900 x3408  
Fx: 978-750-1998








Linda Sweeney, Director  
Victim Service Unit  
**Middlesex County Sheriff's Office**  
Treble Cove Road, P.O. Box 565  
Billerica, MA 01821  
Ph: 978-667-1711 x3145  
Fx: 978-667-0696





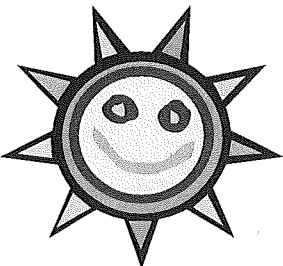
Stacey Sylvester, Director  
Victim Service Unit  
**Norfolk County Sheriff's Office**  
200 West Street  
Dedham, MA 02027  
Ph: 781-329-3705 x265  
Fx: 781-326-1614

Community Programs and Victim Services  
**Suffolk County Sheriff's Department**  
20 Bradston Street  
Boston, MA 02118  
Ph: 617-989-6652  
Fx: 617-989-6563

# Massachusetts Children's Advocacy Centers (CACs)



<p><b>Berkshire County</b>  <b>Berkshire County Kid's Place</b>          63 Wendell Ave.          Pittsfield, MA 01201          413-499-2800</p> 	<p><b>Bristol County</b>  <b>Children's Advocacy Center of Bristol County</b>          139 South Main Street          Fall River, MA 02721          508-674-6111</p> 
<p><b>Cape Cod and Islands</b>  <b>Children's Cove</b>          122 Mary Dunne Road          Barnstable, MA 02630          508-375-0410</p> 	<p><b>Essex County</b>  <b>Essex County Children's Advocacy Center</b>          55 Highland Ave - Room 203          Salem MA 01970          (978) 354-2819</p>
<p><b>Hampden County</b>  <b>Family Advocacy Center</b>  <b>Baystate Medical Center</b>          2 Medical Center Drive, Suite 201          Springfield, MA 01103          413-794-5070</p> 	<p><b>Middlesex County</b>  <b>Middlesex County Children's Advocacy Center</b>          15 Commonwealth Ave          Woburn, MA 01801          781 -897-8300</p> 
<p><b>Norfolk County</b>  <b>Children's Advocacy Center of Norfolk County</b>          45 Shawmut Rd          Canton, MA 02021          781-830-4800 x310          781-251-0835 fax</p> 	<p><b>Northwestern Counties (Franklin and Hampshire)</b></p> <p><b>Hampshire County Children's Advocacy Center</b>          53 Elm Street          Northampton, MA 01060  <b>413-586-9225</b></p>  <p><b>Northwestern County District Attorney's Office</b>          One Gleason Plaza          Northampton, MA 01060          413-586-9225</p>

<p><b>Plymouth County</b>  <b>Plymouth County Children's Advocacy Center</b>  309 Pleasant St.  Brockton, MA 02301  Phone: 508-580-3383  Fax: 508-580-0128</p> 	<p><b>Suffolk County</b>  <b>Children's Advocacy Center of Suffolk County</b>  989 Commonwealth Avenue  Boston, MA 02215  617-779-2146</p> 
<p><b>Worcester County</b>  <b>Worcester County Children's Justice Center</b></p> <p><b>Child Protection Program</b>  UMass Memorial Medical Center  University Campus - Benedict Bldg, A2-200  55 Lake Avenue North  Worcester MA 01655  Tel.: 508-856-6629  Fax: 508-334-739</p>  	



= Pedi SANE Services on-site



= Medical Services on-site

## BAIL NOTIFICATION FORM

### Information to be obtained at initial contact: (make notes on line provided)

- |    |   |     |    |       |
|----|---|-----|----|-------|
| 1. | Is Offender still in home?                  | Yes | No | _____ |
| 2. | Is Victim still in fear?                    | Yes | No | _____ |
| 3. | Are there weapons available to Offender?    | Yes | No | _____ |
| 4. | Was weapon used?                            | Yes | No | _____ |
| 5. | Were the weapons seized?                    | Yes | No | _____ |
| 6. | Are there Minors in the home?               | Yes | No | _____ |
| 7. | Was a 51A filed?                            | Yes | No | _____ |
| 8. | Does the offender have a substance problem? | Yes | No | _____ |
| 9. | Was a restraining order in effect?          | Yes | No | _____ |

\*\*\*\*\* **RESTRAINING ORDER NUMBER:** \_\_\_\_\_ **COURT:** \_\_\_\_\_

- |     |                                      |     |    |       |
|-----|--------------------------------------|-----|----|-------|
| 10. | Was a restraining order discussed?   | Yes | No | _____ |
| 11. | Is a restraining order being sought? | Yes | No | _____ |
| 12. | AWARE PENDANT Discussed?             | Yes | No | _____ |
| 13. | Were Senior Services Notified?       | Yes | No | _____ |
| 14. | Was victim injured?                  | Yes | No | _____ |
| 15. | Were photos taken?                   | Yes | No | _____ |
| 16. | Was victim treated or hospitalized?  | Yes | No | _____ |

### OTHER BAIL INFORMATION

- |     |                                      |       |    |       |
|-----|--------------------------------------|-------|----|-------|
| 17. | Was victim contacted regarding bail? | Yes   | No | _____ |
| 18. | Was bail ordered?                    | Yes   | No | _____ |
| 19. | Conditions of release                | _____ |    |       |
| 20. | Was victim contacted with bail info? | Yes   | No | _____ |
| 21. | Was victim aware of bail review?     | Yes   | No | _____ |
| 22. | Is language assistance needed?       | Yes   | No | _____ |
| 23. | Any disability needs?                | Yes   | No | _____ |

---

**RESTITUTION:** Please provide all information regarding discussions of restitution requests including documentation of losses, amounts requested, amount ordered and victim information provided for probation.

Discussed?    Yes    No    Requested: \$ \_\_\_\_\_ Documentation: \_\_\_\_\_

Court ordered: \$ \_\_\_\_\_ Victim Information provided to probation on \_\_\_\_/\_\_\_\_/\_\_\_\_

Notes: \_\_\_\_\_

---

## **RESTITUTION INFORMATION FORM**

CASE NAME: Commonwealth vs. \_\_\_\_\_ Docket #: \_\_\_\_\_  
RETURN TO: District Attorney, (OFFICE), (ADDRESS) \_\_\_\_\_  
YOUR NAME: \_\_\_\_\_

**1. Did you receive medical or mental health treatment as a result of this crime?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

If Yes, please list health care providers and costs below.

<u>PROVIDER NAME</u>	<u>TREATMENT</u>	<u>COST</u>
_____	_____	_____
_____	_____	_____
		SUBTOTAL: \$ _____
		PLEASE DEDUCT THE AMOUNT PAID BY INSURANCE: \$ _____
		NET LOSS: \$ _____

---

**2. Were you absent from work as a result of this crime, such as due to injury?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

<u>EMPLOYER NAME</u>	<u>DATE (S) ABSENT</u>	<u>AMOUNT OF LOST WAGES</u>
_____	_____	_____
_____	_____	_____
		SUBTOTAL: \$ _____

---

**3. Did you suffer a loss of property (theft or damage) as a result of this crime?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

<u>PROPERTY DAMAGE</u>	<u>REPLACEMENT OR REPAIR COST</u>
_____	_____
_____	_____
_____	_____
SUBTOTAL: \$ _____	
PLEASE DEDUCT THE AMOUNT PAID BY INSURANCE: \$ _____	
NET LOSS: \$ _____	

---

**TOTAL NET LOSS (1 + 2 + 3 above):**      \$ \_\_\_\_\_

\*Please attach copies of bills, estimates, pay stubs or other proof of loss to the form and retain the originals. If your insurance company made a payment, please attach copy of insurance company determination showing payment and your deductible, if any.

PLEASE NOTE: In a criminal matter if you have insurance the judge will not normally order restitution that would be covered by insurance claim, whether you choose to file a claim or not.

If the defendant does not agree to the amount of loss documented above, the court may order an evidentiary hearing to establish the amount. In that case, you will be summonsed to the hearing with your original bills, estimates, etc.

# RESOURCES

*If you are a crime victim, you have certain rights under Massachusetts Law, and you are eligible for certain services.*

For further information about victim rights and victim services, contact the victim witness program in your local district attorney's office or one of the statewide agencies listed below.

## DISTRICT ATTORNEY VICTIM WITNESS PROGRAMS

Berkshire County	(413) 443-3500
Bristol County	(508) 997-0711
Cape and Islands	(508) 362-8103
Essex County	(978) 745-6610
Hampden County	(413) 747-1000
Middlesex County	(781) 897-8490
Norfolk County	(781) 830-4800
Northwestern District	(413) 586-5780
Plymouth County	(508) 894-6309
Suffolk County	(617) 619-4000
Worcester County	(508) 792-0214

## STATEWIDE VICTIM ASSISTANCE PROGRAMS

Massachusetts Office for Victim Assistance  
(617) 727-5200 • [www.mass.gov/mova](http://www.mass.gov/mova)

Massachusetts Parole Board  
(508) 650-4500 • [www.mass.gov/parole](http://www.mass.gov/parole)

Criminal History Systems Board  
(617) 660-4690 • [www.mass.gov/chsb](http://www.mass.gov/chsb)

United States Attorney's Office  
(617) 748-3100 • [www.usdoj.gov/usao/ma](http://www.usdoj.gov/usao/ma)

Department of Youth Services  
(617) 960-3290 • [www.mass.gov/dys](http://www.mass.gov/dys)

Department of Corrections  
(866) 684-2846 • [www.mass.gov/doc](http://www.mass.gov/doc)

# VICTIM COMPENSATION

## FINANCIAL ASSISTANCE FOR VICTIMS OF CRIME IN THE COMMONWEALTH OF MASSACHUSETTS



## OFFICE OF ATTORNEY GENERAL MARTHA COAKLEY VICTIM COMPENSATION & ASSISTANCE DIVISION

One Ashburton Place  
Boston, MA 02108  
(617) 727-2200  
(617) 727-4765 TTY  
(617) 742-6262 Fax  
[www.mass.gov/ago](http://www.mass.gov/ago)

## A MESSAGE FROM ATTORNEY GENERAL MARTHA COAKLEY

Violent crime impacts every aspect of a person's life. The resulting physical and psychological injuries can affect a person's ability

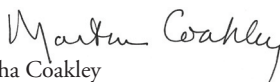


to work, go to school, and meet their own individual goals and aspirations. Often victims may require treatment to address the injuries caused by the violent acts of another. The monetary expenses incurred – after losing a loved one, for medical and dental care, for psychological assistance, and by injuries resulting in an inability to work – should not serve to further victimize those who are affected by violent crime.

As Attorney General, I am committed to empowering crime victims and providing them with the tools and support they need to begin the healing process. Our Victim Compensation Division is one resource that works diligently to make this happen. We are able to provide financial assistance to eligible victims of violent crime for uninsured medical and dental care, mental health counseling, funeral and burial costs, and income lost due to the inability to work. Our division uses funds obtained from perpetrators, and can assist with expenses up to a maximum of \$25,000 per crime. My experienced staff will assist you in understanding your rights as a crime victim, determining what expenses may be eligible for compensation, and assessing what other resources are available to assist you.

If you or a loved one has been the victim of violent crime, please take some time to read this brochure and contact our Victim Compensation staff for further assistance.

Cordially,

  
Martha Coakley  
Massachusetts Attorney General

## WHO IS ELIGIBLE?

- Victims of violent crime occurring in Massachusetts
- Dependents and family members of homicide victims
- Any person responsible for the funeral expenses of a homicide victim

## WHAT ARE THE REQUIREMENTS?

- The crime must have been reported to police within five days unless there is good cause for delay.
- You must cooperate with law enforcement officials in the investigation and prosecution of the crime unless there is a reasonable excuse not to cooperate.
- You must apply for compensation within three years of the crime. Victims under the age of 18 at the time of the crime may apply until age 21, or later in certain limited circumstances.

## WHICH EXPENSES ARE COVERED?

To the extent insurance or other funds do not cover your crime-related expenses, you may be reimbursed for:

- Medical and dental expenses (including equipment, supplies and medications)
- Counseling expenses (for victims, for family members of homicide victims, and for children who witness violence against a family member)
- Funeral/burial costs up to \$4,000
- Lost wages (for victims only)
- Loss of financial support (for dependents of homicide victims)
- Homemaker expenses

Expenses not covered: property losses, compensation for pain and suffering, and all other losses.

## HOW DO I APPLY?

- Complete the application and return it to the Victim Compensation and Assistance Division for verification. In general, you will receive a decision four to six months later.
- Your claim can be reopened for future expenses.

*Please print legibly and fill out both sides.***I. VICTIM INFORMATION**Victim's name: \_\_\_\_\_ Female: \_\_\_\_\_ Male: \_\_\_\_\_  
First Middle Initial Last

Mailing address: \_\_\_\_\_ Home phone: (\_\_\_\_) \_\_\_\_\_

City/State: \_\_\_\_\_ Zip: \_\_\_\_\_ Cell phone: (\_\_\_\_) \_\_\_\_\_

Email address: \_\_\_\_\_

Date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Age at time of incident: \_\_\_\_\_ SSN: \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_  
Month Day Year**II. APPLICANT INFORMATION** *If victim is applicant, write "same." If under 18, application must be completed by parent/guardian.*Applicant's name: \_\_\_\_\_ Female: \_\_\_\_\_ Male: \_\_\_\_\_  
First Middle Initial Last

Mailing address: \_\_\_\_\_ Home phone: (\_\_\_\_) \_\_\_\_\_

City/State: \_\_\_\_\_ Zip: \_\_\_\_\_ Cell phone: (\_\_\_\_) \_\_\_\_\_

Email address: \_\_\_\_\_

Date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Relationship to victim: \_\_\_\_\_ SSN: \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_  
Month Day Year

If filing on behalf of minor dependant(s) of homicide victim, relationship to minor dependant(s): \_\_\_\_\_

**III. CRIME INFORMATION** *Type of crime:*

- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> Armed robbery     | <input type="checkbox"/> Arson          | <input type="checkbox"/> Assault                | <input type="checkbox"/> Child physical or sexual assault |
| <input type="checkbox"/> Domestic violence | <input type="checkbox"/> Drunk driving  | <input type="checkbox"/> Other vehicular crimes | <input type="checkbox"/> Homicide                         |
| <input type="checkbox"/> Kidnapping        | <input type="checkbox"/> Sexual assault | <input type="checkbox"/> Stalking               | <input type="checkbox"/> Other: _____                     |

Exact location of crime: \_\_\_\_\_ City/State: \_\_\_\_\_

Date of crime: \_\_\_\_/\_\_\_\_/\_\_\_\_ Date crime was reported: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Day Year Month Day Year*If not reported within 5 days, please explain why in an attached statement.*

Name of police department: \_\_\_\_\_ Investigating officer: \_\_\_\_\_

Name(s) of person(s) who committed crime (if known): \_\_\_\_\_

If you have been assisted by a victim advocate in the court/district attorney's office, provide the name and telephone number of advocate: \_\_\_\_\_

Briefly describe the crime and any injuries which resulted: \_\_\_\_\_

**IV. EXPENSES** *Check types of expenses for which you seek compensation.*

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Medical services*               | <input type="checkbox"/> Lost wages ( <i>for victim only</i> )                                   | <input type="checkbox"/> Counseling for victim*  |
| <input type="checkbox"/> Medical supplies/pharmacy*      | <input type="checkbox"/> Loss of financial support ( <i>for dependants of homicide victims</i> ) | <input type="checkbox"/> Counseling for family members of homicide victim*                     |
| <input type="checkbox"/> Dental services*                | <input type="checkbox"/> Funeral/burial* †   | <input type="checkbox"/> Counseling for children who witness violence against a family member* |
| <input type="checkbox"/> Replacement homemaker services* |  |  |

*\*Attach copies of bills and/or receipts.*

† Name of funeral home: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_



**V. LOST INCOME** *Complete if seeking lost wages or loss of support.*

Victim's employer: \_\_\_\_\_ Contact person: \_\_\_\_\_

Mailing address: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

City/State: \_\_\_\_\_ Zip: \_\_\_\_\_

If victim has or will return to work, estimated period of disability: \_\_\_\_\_

If requesting financial support for dependant(s) of a homicide victim, provide the following information:

Name(s) of dependant(s)	Date of birth	SSN	Relationship to victim
_____	____/____/____	____-____-____	_____
_____	____/____/____	____-____-____	_____
_____	____/____/____	____-____-____	_____
_____	____/____/____	____-____-____	_____

**VI. OTHER SOURCES OF FINANCIAL ASSISTANCE** *Check all potential sources of full or partial payment of expenses.*

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Health insurance        | <input type="checkbox"/> Hospital-based "free care" | <input type="checkbox"/> Workers' compensation                               |
| <input type="checkbox"/> Life/accident insurance | <input type="checkbox"/> Unemployment benefits      | <input type="checkbox"/> Restitution   |
| <input type="checkbox"/> Automobile insurance    | <input type="checkbox"/> Disability benefits        | <input type="checkbox"/> Public benefits (welfare, Medicare, Medicaid, SSDI) |
| <input type="checkbox"/> Other (specify): _____  |   |  |

Name of applicable insurance companies: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_ Policy No.: \_\_\_\_\_

Have you file or do you intend to file a civil lawsuit? Yes: \_\_\_\_\_ No: \_\_\_\_\_ Not sure: \_\_\_\_\_

If yes, attorney's name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_

**VII. OPTIONAL INFORMATION** *For statistical purposes only.*

Race/ethnicity of victim: ☐ White/Caucasian ☐ Hispanic ☐ Native American ☐ I decline to answer this question

☐ Black/African-American ☐ Asian/Pacific-Islander ☐ Other

Who referred you to Victim Compensation? \_\_\_\_\_

**ACKNOWLEDGEMENT AND INFORMATION RELEASE**

I understand that the Victim Compensation Fund is a fund of last resort. I agree to inform the Division of any funds I receive from any source for losses for which I have requested compensation, and agree to promptly reimburse the Commonwealth for any such funds awarded to me or on my behalf.

I give permission to any hospital, medical facility, doctor, mental health provider, insurance company, employer, person or agency, including state and federal agencies, to give information to the Victim Compensation and Assistance Division. I understand that the information will be used to determine my claim for victim compensation benefits. I do not authorize the use or release of this information to any person or entity for any other purpose whatsoever. A photocopy of this signed release is as valid as the original. This authorization shall expire upon final determination of all requirements under M.G.L. c. 258C and 940 CMR 14.00.

I certify, under the pains and penalties of perjury, that all information and supporting documentation contained in this application is true and accurate to the best of my knowledge and belief.

Applicant signature: \_\_\_\_\_ Date: \_\_\_\_\_  
*Parent or guardian if victim is a minor.*

Return completed application to:

Office of Attorney General Martha Coakley, Victim Compensation & Assistance Division  
 One Ashburton Place, Boston, MA 02108  
 Phone: (617) 727-2200 Fax: (617) 742-6262 TTY: (617) 727-4765

**OFFICE OF THE DISTRICT ATTORNEY**

**VICTIM IMPACT STATEMENT**

**Commonwealth vs.** \_\_\_\_\_

**Name** \_\_\_\_\_

**If you are not the victim, please indicate your name, and your relationship to the victim** \_\_\_\_\_

The Massachusetts "Victim Bill of Rights" (G.L.258B) provides crime victims with important rights, including the right to be present in court at the time of sentencing and the right to make a statement to the court, as to how this crime has affected you and your family.

This statement may be presented to the judge after the defendant has been found guilty or submits to sufficient facts to warrant a finding of guilty. It may be made orally or in writing, and may include your recommendation as to what kind of sentence you think the defendant should receive.

**Please Note:**

It is important to be as accurate and concise as possible as Massachusetts Law requires that, if the defendant is convicted or admits to sufficient facts, this information will be made available to the defendant, to the court, and if appropriate will be forwarded to the Massachusetts Parole Board. The defendant may receive a copy of this statement before trial or disposition of the case. This information may also be forwarded to the appropriate probation department.

**1. Psychological Impact**

Please describe the psychological and/or emotional impact this crime has had on you and your family:

---

---

---

---

---

**2. Physical Impact**

Please describe any physical injuries you sustained as a result of this incident, and any medical treatment (including counseling) you received: \_\_\_\_\_

---

---

---

---

---

Total cost TO YOU of medical treatment: \_\_\_\_\_

---

If bills were covered by insurance, please indicate: \_\_\_\_\_

---

---

---

### 3. Financial Impact

Please describe any financial impact this crime has had on you, including loss of or damage to property that resulted from this crime: \_\_\_\_\_

Amount covered by Insurance: \_\_\_\_\_

**PLEASE NOTE:** If you are requesting restitution for your out-of-pocket financial losses, you **MUST** also complete a **RESTITUTION INFORMATION FORM**.

### 4. Overall Impact

Please describe how your life may have changed as a result of this crime: \_\_\_\_\_

### 5. Sentence Recommendation

Please indicate your recommendation as to the sentencing of the defendant:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

If prepared by someone other than the victim, please note so here.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Relationship to Victim)

PLEASE USE THE SPACE BELOW AND THE BACK OF THIS PAGE TO INCLUDE ANY ADDITIONAL INFORMATION.

# APPLICATION FOR ACCESS TO C.O.R.I. DOCUMENTS

The **Criminal Offender Record Information (CORI) Law (M.G.L. c.6, s.178A)** mandates that victims, witnesses, family members of homicide victims, and parents/guardians of minor aged victims (as defined by the Victim Rights Law, M.G.L. c.258B) shall, upon request, be certified **to receive CORI from criminal justice agencies regarding the criminal case which pertains to them.**

In addition, criminal justice agencies may also, in their discretion, disclose CORI relating to other offenses committed by the offender. They may also disclose an offender's **evaluative (mental health) and intelligence (investigative) information** which is not considered to be CORI. The criminal justice agency may disclose this discretionary information if they deem it necessary for the security and well being of the "178A certified person."

**CORI** is certain documentation and information held by criminal justice agencies regarding an offender's crime, arrest, prosecution, conviction, incarceration, probation and parole.

**\*\*Applicants must provide criminal justice documentation to verify their eligibility status to receive CORI under M.G.L. c.6, s.178A.** Documentation can include, but is not limited to, a brief statement from the victim witness advocate/prosecutor involved in the case, copies of any documents or letters issued by the court or District Attorney's Office, and police reports.

## OFFENDER INFORMATION

Name:	DOB:	Social Security #:
*Date of Crime:	Charges:	
Docket #:	Probation Central File #:	
Sentence:		Date of Sentence:

\*\* Applicant must be at least 18 years of age \*\*

## APPLICANT INFORMATION

Name:	DOB:	Social Security #:
Mailing Address:	City:	State: Zip:
Home Phone: ( )	Business/Other Phone: ( )	
Victim's Name (if not applicant)	DOB:	Relationship to Victim

## YOU ARE APPLYING AS:

☐ Victim ☐ Witness ☐ Family member of homicide victim ☐ Parent/Guardian of minor aged victim

Do you want to receive a copy of the offender's criminal record? YES NO

Applicant's Signature:\_\_\_\_\_ Date:\_\_\_\_\_

Victim Witness Advocate:\_\_\_\_\_ Court:\_\_\_\_\_ Phone:\_\_\_\_\_

Criminal History Systems Board  
200 Arlington Street, Suite 2200, Room 2112  
Chelsea, MA 02150

(Revised 4/05)

Phone: (617) 660-4690 Fax: (617) 660-5973

# APPLICATION FOR NOTICE OF AN OFFENDER'S RELEASE

1). **The Victim Rights Law** (M.G.L., c. 258B), mandates that victims, witnesses, family members of homicide victims and parents/guardians of minor aged victims shall, **upon request**, be notified, in advance, by the appropriate custodial authority whenever the offender is transferred to a less secure facility, escapes from custody or receives a temporary, provisional, or final release.

2). The **Criminal Offender Record Information (CORI) Law** (M.G.L. c.6, s.172c) mandates that any person who reasonably believes that his/her physical safety is at risk by an inmate shall, **upon request**, be notified, in advance, of an offender's release under a **Citizen's Initiated Petition" (CIP)**. Under the **CIP** process, you must provide a written statement with this application explaining why you believe the inmate might harm you.

<b>INMATE INFORMATION</b>		Probation Central File (PCF) #:	
Name of Inmate:		Alias(es):	
DOB:	SSN:	Race:	
Charges:			
Sentence:		Date of Sentence:	
<b>CURRENT</b> Place of Incarceration:			

## APPLICANT INFORMATION \*\*\*Applicant must be over 18 years of age\*\*\*

Applicant (Ms./Mr.):		DOB:	SSN:	
Address:	City:	State:	Zip:	
Home Phone: (    )		Business/Other Phone: (    )		
Special Needs (i.e., non-English speaking):				

## YOU ARE APPLYING AS:

1. ☐ Victim ☐ Witness ☐ Family member of homicide victim ☐ Parent/Guardian of minor aged victim
2. ☐ Citizen's Initiated Petition (*a statement must be provided for #2*)

## IF APPLICANT IS NOT THE VICTIM

Victim's Name:	DOB:
Applicant's relationship to victim:	

**\*\*APPLICANT'S SIGNATURE** \_\_\_\_\_

## ADVOCATE INFORMATION

Name:	Office:	Court:	
Address:	Phone: (    )	Fax: (    )	

(Revised 4/05)

**Criminal History Systems Board**  
**200 Arlington Street, Suite 2200, Room 2112**  
**Chelsea, MA 02150**  
**Phone: (617) 660-4690, Fax: (617) 660-5973**





Deval L. Patrick  
Governor  
Timothy P. Murray  
Lieutenant Governor

The Commonwealth of Massachusetts  
Executive Office of Public Safety & Security  
Criminal History Systems Board

200 Arlington Street, Suite 2200  
Chelsea, Massachusetts 02150  
Tel: 617-660-4600  
TTY Tel: 617-660-4606  
Fax: 617-660-4613  
[www.mass.gov/chsb](http://www.mass.gov/chsb)

Kevin M. Burke  
Secretary of Public Safety  
Curtis M. Wood  
Acting Executive Director

## **KEEP US INFORMED**

**Massachusetts's State Law requires** that you keep us informed of any changes in your current name, address, and home/work telephone numbers, at all times.

Unless you inform us of these changes, we can not guarantee that you will receive the notifications for which you have been approved.

PLEASE CALL US IF YOU HAVE A NEW NAME, ADDRESS,  
HOME OR WORK TELEPHONE NUMBER.

VICTIM SERVICE UNIT – (617) 660-4690

### CHANGE OF CONTACT INFORMATION

Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_ Apt. \_\_\_\_\_  
City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

**Please include the following:**

**Offender's Name:** \_\_\_\_\_ **Certification #** \_\_\_\_\_

Please mail/fax to: Criminal History Systems Board, Victim Services Unit  
200 Arlington Street, Suite 2200  
Chelsea, MA 02150  
Fax: 617-660-5973

**CERTIFICATION**  
**CANCELLATION REQUEST FORM**

Date\_\_\_\_\_

Victim Services Unit  
Criminal History Systems Board  
200 Arlington Street  
Chelsea, MA 02150

I \_\_\_\_\_, hereby request that my certification with the  
(Certified Person's Name – *please print*)  
Criminal History Systems Board pertaining to offender \_\_\_\_\_ be canceled.  
(Offender's Name)

I no longer wish to receive notification regarding the inmate's temporary, provisional or final  
release from custody.

My file number is \_\_\_\_\_. Please contact me at \_\_\_\_\_ should you  
(Certification # - *if known*) (Home/Work Phone)  
have any questions regarding my cancellation request.

Sincerely,

\_\_\_\_\_  
(Certified Person's Signature)

Please Fill In Your Current Contact Information:

Street: _____	Apt. #: _____
City: _____	State: _____ Zip: _____
Home Phone: _____	Work Phone: _____

**Please mail or fax to:**  
Criminal History Systems Board  
Victim Services Unit  
200 Arlington Street, Suite 2200  
Chelsea, MA 02150  
Phone (617) 660-4690  
Fax (617) 660-5973



# SEX OFFENDER REGISTRY BOARD

## VICTIM PARTICIPATION AND NOTIFICATION FORM

The Sex Offender Registry Law allows "Victims of Record" of convicted sex offenders to submit a written Victim Impact Statement to the Sex Offender Registry Board to be considered in determining a sex offender's level of dangerousness and risk to re-offend. "Victims of Record" are those victims whose offender was convicted of a sex offense against them. "Victims of Record" can also be notified by the Sex Offender Registry Board of a sex offender's final classification whether or not they choose to submit an impact statement.

### SEX OFFENDER CONVICTION INFORMATION:

Name:	Alias:	Sex Offender #
DOB:	SSN:	Inmate #:
Arrest Date:	Sentence Date:	Probation File# (PCF)
Docket #	Sex Offense:	Court:
Docket #	Sex Offense:	Court:
Docket #	Sex Offense:	Court:

\*Please include only the sex offense convictions that correspond to the "Victim of Record" identified on this form. If you are unaware of Sex Offender #, the Inmate # or the Probation Central File #, please leave blank. Use other side of form for additional info, if needed.

### SEX OFFENDER STATUS:

<input type="checkbox"/> On Parole	<input type="checkbox"/> On Probation	<input type="checkbox"/> Incarcerated at _____	<input type="checkbox"/> Civilly Committed at _____
<input type="checkbox"/> Under no criminal justice jurisdiction	<input type="checkbox"/> Status Unknown	<input type="checkbox"/> Other _____	

### VICTIM OF RECORD INFORMATION: (information is held confidential from offender)

Name:	DOB:	SSN:	
Address:	City:	State:	Zip:
Home #:	Work #:	Cell #:	Other #:

### Complete only if Applicant is *not* the Victim of Record: (information is held confidential from offender)

You Are:	<input type="checkbox"/> Parent/Guardian of Minor Aged Victim <input type="checkbox"/> Parent/Guardian of Incompetent or Deceased Victim		
Name:	DOB:	SSN:	Relation:
Address:	City:	State:	Zip:
Home #:	Work #:	Cell #:	Other #:

\*Please be advised that the offender has the right to view materials considered in their classification including the impact statement.

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

### ADVOCATE/REFERRAL SOURCE:

Name:	Agency:
Address:	Email:
Phone #:	Fax #:

### PLEASE SEND TO:

Judy Norton Senfleben, Director of Victim Services  
Sex Offender Registry Board, Box 4547, Salem, MA 01970  
Phone (978) 740-6441 and Fax (978) 740-6464  
Email: [Judy.Norton@state.ma.us](mailto:Judy.Norton@state.ma.us) and Website: [www.state.ma.us/sorb](http://www.state.ma.us/sorb)



## SUMMARY OF "SEX OFFENSES" – G.L. 6, § 178C

### Registration Requirements and Timelines

A sex offender who was convicted, adjudicated a minor, incarcerated, on probation, on parole or was released from a civil commitment for a sex offense on or after August 1, 1981 is required to register with the SORB.

Crime	G.L.		Sexually Violent Offense	Sex Offense Involving a Child	Federal Wetterling Offense
	c.	§			
Indecent assault & battery on a child under 14	265	13B	X	X	X
Indecent assault & battery on a mentally retarded person	265	13F	X		
Indecent assault & battery on a person age 14 or over	265	13H			
Rape	265	22	X		
Rape of a child <16 with force	265	22A	X	X	X
Rape and abuse of a child	265	23		X	X
Assault with intent to rape	265	24	X		
Assault of a child with intent to rape	265	24B	X	X	X
Kidnapping of a child	265	26		X	X
Enticing a child under the age of 16 for the purposes of committing a crime	265	26C		X	X
Enticing away a person for prostitution or sexual intercourse	272	2			
Drugging persons for sexual intercourse	272	3	X		
Inducing a minor into prostitution	272	4A		X	X
Living off or sharing earnings of a minor prostitute	272	4B		X	X
Incestuous marriage or intercourse	272	17			
Disseminating to a minor material harmful to a minor	272	28		X	X
Posing or exhibiting a child in a state of nudity	272	29A		X	X
Dissemination of visual material of a child in a state of nudity or sexual conduct	272	29B		X	X
Possession of child pornography	272	29C			X
Unnatural and lascivious acts with a child under 16	272	35A	X	X	X
Aggravated Rape	277	39	X	X	X
2 <sup>nd</sup> Open and Gross lewdness and lascivious behavior	272	16			
<b>Sex Offenses: Also includes any attempt to commit the above crimes (G.L. c. 274, § 6) or "a like violation of the laws of another state, the US or a military, territorial or Indian tribal authority."</b>					

### Length of Registration

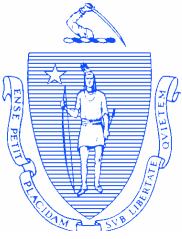
<b>Sexually Violent Offense</b>	<b>Lifetime</b> registration requirement for adults. Juveniles can ask for relief and/or termination if their only offense was committed as a juvenile.
<b>Sex Offense Involving a Child</b>	For a single offense committed as an adult, the offender must register for at least 10 years but not more than 20 years. Following 10 years of registration and being offense-free, offenders can ask the Board to terminate their duty to register.
<b>Wetterling Offense</b>	Lifetime registration for adults with two or more separate convictions for Wetterling Offenses committed on different occasions. Juveniles can ask for relief and/or termination if their only offenses were Wetterling offenses committed as a juvenile.

### Relief of Registration by the Court available

<b>Adults:</b>	Indecent Assault and Battery Enticing away a person for prostitution or sexual intercourse Incestuous marriage or intercourse Possession of Child Pornography Open and gross lewdness and Lascivious behavior
<b>Juveniles:</b>	Any Offense

#### **SORB CONTACTS:**

Victim Service Unit, 978.740.6440  
Legal Duty Line, 978.740.6410  
Registration and Classification Duty Lines, 978.740-6409, 6504



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, M.D.  
SECRETARY

JANE E. TEWKSBURY, Esq.  
COMMISSIONER

# *The Commonwealth of Massachusetts*

Executive Office of Health and Human Services

## **Department of Youth Services**

27 Wormwood Street, Suite 400

Boston, MA 02210-1613

617.727.7575  
FAX#: 617.951.2409

### **JUVENILE OFFENDER NOTIFICATION AND INFORMATION**

#### **(1) Who is eligible to receive notice of a juvenile offender's release?**

The Victim Rights Law M.G.L. 258B, s. 3(t) mandates that victims, family members of homicide victims and parents/guardians of minor age victims, shall, upon request, be informed in advance by the Department of Youth Services when the juvenile offender receives a temporary, provisional or final release from custody or is transferred from a secure facility to a less secure facility. Notification will also be provided in the event of an escape.

#### **(2) Why is certification needed to receive notice?**

Certain information about juvenile offenders is confidential and protected under the law. Recent amendments to the law allow the Department of Youth Services to directly notify the certified individual of changes in the juvenile offender's DYS placement.

#### **(3) How is certification obtained?**

Certification occurs after the juvenile has been adjudicated delinquent by the court and has been committed to the Department of Youth Services. Applications are completed by the individual requesting notification with the assistance of a Victim Witness Advocate from the District Attorney's Office or a Victim Advocate with the DYS Victim Services Unit. Applications are submitted to the Victim Services Unit, which is responsible for approving all certifications. To ensure timely notification, applications should be completed upon disposition of the case.

#### **(4) Will the juvenile offender be informed of the certification?**

No. All certifications and information pertaining to certifications are kept confidential.

#### **(5) What happens after certification?**

The Victim Services Unit at the Department of Youth Services sends a certification letter to applicants verifying their certification status. Once certified, the Victim Services Unit will provide advance notice when the juvenile offender is transferred from a secure facility to a less secure facility, becomes pass eligible, is released to the community or receives a final discharge from DYS custody. Notification will also be provided in the event of an escape.

#### **(6) Who answers questions about a juvenile offender who is committed to the Department of Youth Services?**

Any and all questions regarding the placement and status of a juvenile offender should be directed to the Victim Services Unit.

#### **(7) What if the certified person's contact information changes?**

To ensure proper and timely notification, it is important that all certified individuals inform the Victim Services Unit of any changes in their name, address or telephone numbers. **NOTICE CANNOT BE GIVEN WITHOUT THE PROPER CONTACT INFORMATION.** All contact information will be kept confidential.

If you have any questions regarding the certification and notification process, please call the DYS Victim Services Unit at 617.960.3290 and ask to speak to a Victim Advocate.

**DEPARTMENT OF YOUTH SERVICES  
VICTIM SERVICES UNIT**

27 Wormwood Street  
Suite 400  
Boston, Massachusetts 02210  
Telephone Number: 617.960.3290  
Facsimile Number: \*617.727.5792  
*\*for application forms only*

**JUVENILE OFFENDER NOTIFICATION AND INFORMATION**

**The Victim Rights Law** M.G.L., c. 258B, s.3 (t), mandates that victims, family members of homicide victims and parents/guardians of minor age victims, shall, upon request, be informed in advance by the Department of Youth Services when the juvenile offender receives a temporary, provisional or final release from custody or is transferred from a secure facility to a less secure facility. Notification will also be provided in the event of an escape.

**JUVENILE OFFENDER INFORMATION \*\*\*\* to be completed by agency representative\*\*\*\***

<b>Name of Juvenile</b>		
DOB:	Gender:	Alias(es):
Charges:		
Sentence:		
Date of Sentence/Commitment:		

**APPLICANT INFORMATION \*\*\*\* Applicant must be over 17 years of age \*\*\*\***

Applicant (Mr./Mrs.):			
DOB:	SSN:		
Address:	City:	State:	Zip:
Home Phone: (    )	Business/Other Phone: (    )		
Special Needs (i.e., non-English speaking):			
(Optional information for statistical purposes only) Race:                      Gender:			

**YOU ARE APPLYING AS A:**

Family Member of Homicide Victim                      ☐                      Victim ☐  
Parent/Guardian of Minor Age Victim                      ☐

**IF APPLICANT IS NOT THE VICTIM**

Victim's Name:	DOB:
Applicant's Relationship to Victim:	

**Applicant's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

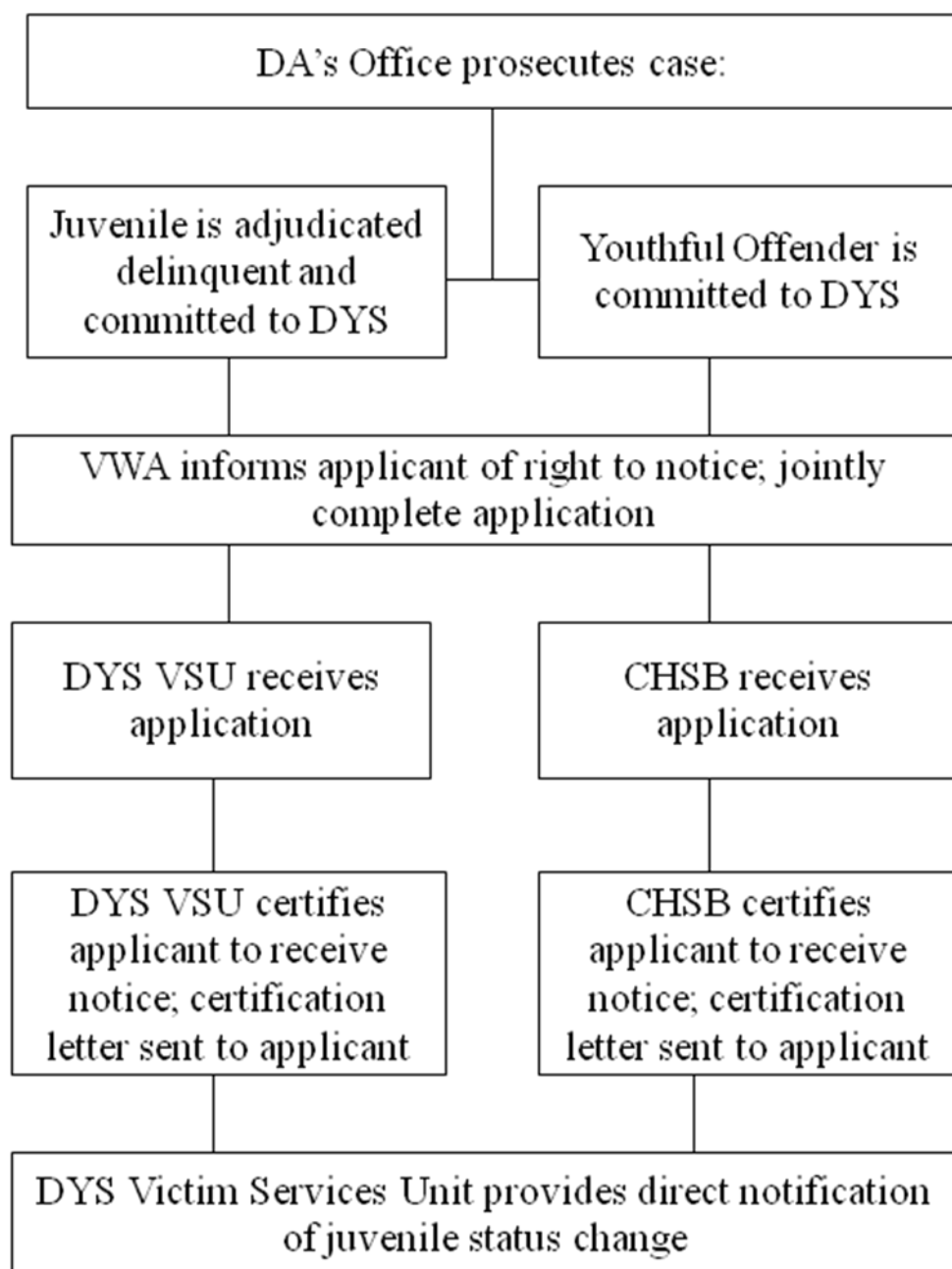
**ADVOCATE INFORMATION**

Name:	Office:	Court:
Address:	Phone: (    )	Fax: (    )

# Department of Youth Services

## Victim Services Unit

### Certification and Notification Process



## U VISA CERTIFICATION FORM

I, \_\_\_\_\_, hereby affirm the following:  
(NAME)

1. I am a: (check one)

\_\_\_\_\_ Federal official      \_\_\_\_\_ State official      \_\_\_\_\_ Local official  
(municipal, district, county)

\_\_\_\_\_ INS officer\* (see 2B below)

Specifically, I am a: (check one)

\_\_\_\_\_ Law Enforcement Officer      \_\_\_\_\_ Prosecutor;  
\_\_\_\_\_ Judge      \_\_\_\_\_ Other Investigating Authority

\_\_\_\_\_  
(JOB TITLE)

\_\_\_\_\_  
(NAME OF EMPLOYER)

\_\_\_\_\_  
(STREET ADDRESS/LOCATION)

\_\_\_\_\_  
(CITY, STATE & ZIP CODE)

\_\_\_\_\_  
(TELEPHONE)

2A. I am responsible or the agency for which I work is responsible for investigating (or overseeing the investigation of) criminal activity involving violations of (some or all of) the following types of offenses and similar violations under Federal, State or local criminal laws: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy or solicitation to commit any of these crimes OR

\*2B. I am an INS officer with information not limited to immigration violations related to criminal activity described above or similar criminal activity.

3. The criminal activity at issue in this case may involve (but is not limited to) possible violations of the following criminal laws:

(PROVIDE STATUTE OR CODE CITATION(S) AND OFFENSE NAME(S))

---

---

and based on my expertise and understanding of these laws, I have determined that these laws fall within the list of offenses set forth in Question #2 or is a similar activity violating Federal, State or local criminal law.

4. It is alleged that this criminal activity occurred on or about:

(SPECIFY AS MUCH AS POSSIBLE DATE(S) AND LOCATION(S) OF CRIMINAL ACTIVITY)

---

5. In accordance with INA § 214(o), 8 U.S. C. §1184(o)(1), I affirm that

\_\_\_\_\_: (CHECK ALL THAT APPLY)

(NAME OF U VISA APPLICANT)\*\*

- \_\_\_\_\_ has been helpful;
- \_\_\_\_\_ is being helpful;
- \_\_\_\_\_ is likely to be helpful

in an/the investigation and/or prosecution of this alleged criminal activity.

6. I affirm that \_\_\_\_\_ possesses relevant information

(NAME OF U VISA APPLICANT)\*\*

relating to this criminal activity. This information includes (but is not limited to) the following:  
(PROVIDE BRIEF DESCRIPTION OF INFORMATION)

---

---

---

---

\* \* If the U visa applicant is under the age of 16, please certify that the applicant's parent, guardian or "next friend" meets these requirements.

7. I affirm that the alleged criminal activity occurred: (CHECK ALL THAT APPLY)

\_\_\_\_\_ in the United States (including Indian country and military installations);  
\_\_\_\_\_ in territories and possessions of the United States; OR  
\_\_\_\_\_ outside the United States, but violated United States' laws.

Certification for applicant's spouse, child or parent

8. This investigation and/or prosecution would be harmed without the assistance of

\_\_\_\_\_  
(NAME OF APPLICANT'S SPOUSE, CHILD OR PARENT)

who is the \_\_\_\_\_ spouse \_\_\_\_\_ child \_\_\_\_\_ parent of the applicant listed above.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE



## Immigration and Customs Enforcement

One of the missions of the Department of Homeland Security's Immigration and Customs Enforcement (ICE) is to enforce the laws regulating the admission of foreign-born persons (aliens) into the United States. The ICE can initiate removal (also known as deportation) proceedings against aliens who are convicted of certain crimes. The ICE refers to aliens convicted of removable criminal offenses as criminal aliens.

The United States government recognizes the significant and undesirable impact that criminal aliens have on our society. For that reason, laws require the ICE to remove (deport) certain criminal aliens, even if they legally entered the United States. The ICE can also remove aliens who illegally entered regardless of their criminal record.

Administrative removal (deportation) proceedings are not a part of the criminal trial that results in an alien's incarceration. However, ICE can still use certain criminal convictions as the basis of removing an alien from the United States. This is not double jeopardy because removal is a civil action and not a punishment.

The ICE Institutional Removal Program is a national program that identifies removable aliens in Federal and state correctional facilities and conducts removal proceedings while the inmate is incarcerated so that the alien can be removed immediately after completion of their criminal sentence. The ICE takes custody of the inmate *after* the alien has completed his/her Federal or state criminal incarceration.

The removal process can take from several days to several months. Generally, the criminal alien remains in custody until ICE can remove the alien to his/her country. On occasion, ICE may not be able to remove an alien. This can happen for several reasons – the most common being the inability of ICE to secure travel authorization documents for the alien. Depending on the circumstances, ICE may have to release the alien under an order of supervision.

## Victim-Witness Notification Program

The ICE Victim-Witness Notification Program will provide post incarceration information to eligible victims and witnesses who register to be notified of release related activities of an alien offender.

Victims and witnesses registered in Federal and state correctional-based notification programs will be informed of the availability of the ICE Victim-Witness Notification Program.

Victims and witnesses must indicate their desire for ICE notification of an alien's post-incarceration status by submitting the request form enclosed in this brochure to the ICE Victim-Witness Notification Program. After it is confirmed that the alien is in ICE custody, the request will be forwarded to the location where the alien is in custody. The ICE will make every effort to keep victims and witnesses advised of the release status of the offender. Victims and witnesses will be advised of the following release related activities: bond releases, parole, waivers, removals, or the death of an offender. Occasionally, the ICE will transfer aliens between custodial facilities. INS will not routinely notify victims or witnesses of these internal transfers. However, any victim or witness may learn the location of an offender by calling or writing the ICE Victim-Witness Notification Program.

The ICE may remove an alien to another country immediately following their release from a Federal or state correctional facility. Although the ICE makes very effort to control illegal entry into the United States, the ICE cannot ensure that the offender may not reenter the United States illegally.

# Victim-Witness Notification Program



## U.S. Immigration and Customs Enforcement

U.S. Immigration & Customs Enforcement  
Victim- Notification Program  
Office of Investigations  
500 12<sup>th</sup> ST. SW Room 6219  
Washington, DC 20024

Telephone number 1-866-872-4973  
Fax Number 202-732-5876

4/14/2009

# Victim-Witness Request for Notification of Criminal Alien Status

*Request is exempt from Freedom of Information Act Release*

## **To: Immigration and Customs Enforcement (ICE) Victim-Witness Notification Program**

I am the victim/witness in a criminal case and I wish to be notified of significant status changes and actual release or removal (deportation) of:

*Fill in the sections you know*

1. Offender Name/	
2. Offender Date of Birth (if known)/	
3. Place of birth (if known)/	
4. Offender Alien Number (if known)/	
5. Offender State Correctional Number (if known)/	
6. Offender Federal Correctional Number (if known)/	
7. Offender Social Security Number (if known)/	
8. FBI Number (if known)/	
9. Offender prosecuted for what crime/	
10. Prosecution occurred where/when	
11. Last facility where offender incarcerated/released/	
12. Expected release date/	

I understand that the information I provide in this letter will be shared only with law enforcement personnel who have been designated victim-witness responsibilities. I agree that my name, address, and phone number may be shared with these individuals for notification purposes. My current address information is as follows (please type or print). I understand that if my address or telephone number(s) change, I must contact the ICE Victim-Witness Notification Program to inform ICE of the new information.

*Fill in this section/ **PRINT CLEARLY***

Name/	
Address/	
Telephone Number/	
Home/	
Work (if applicable)/	
Pager (if applicable)/	
Cell (if applicable)/	

Sincerely yours,

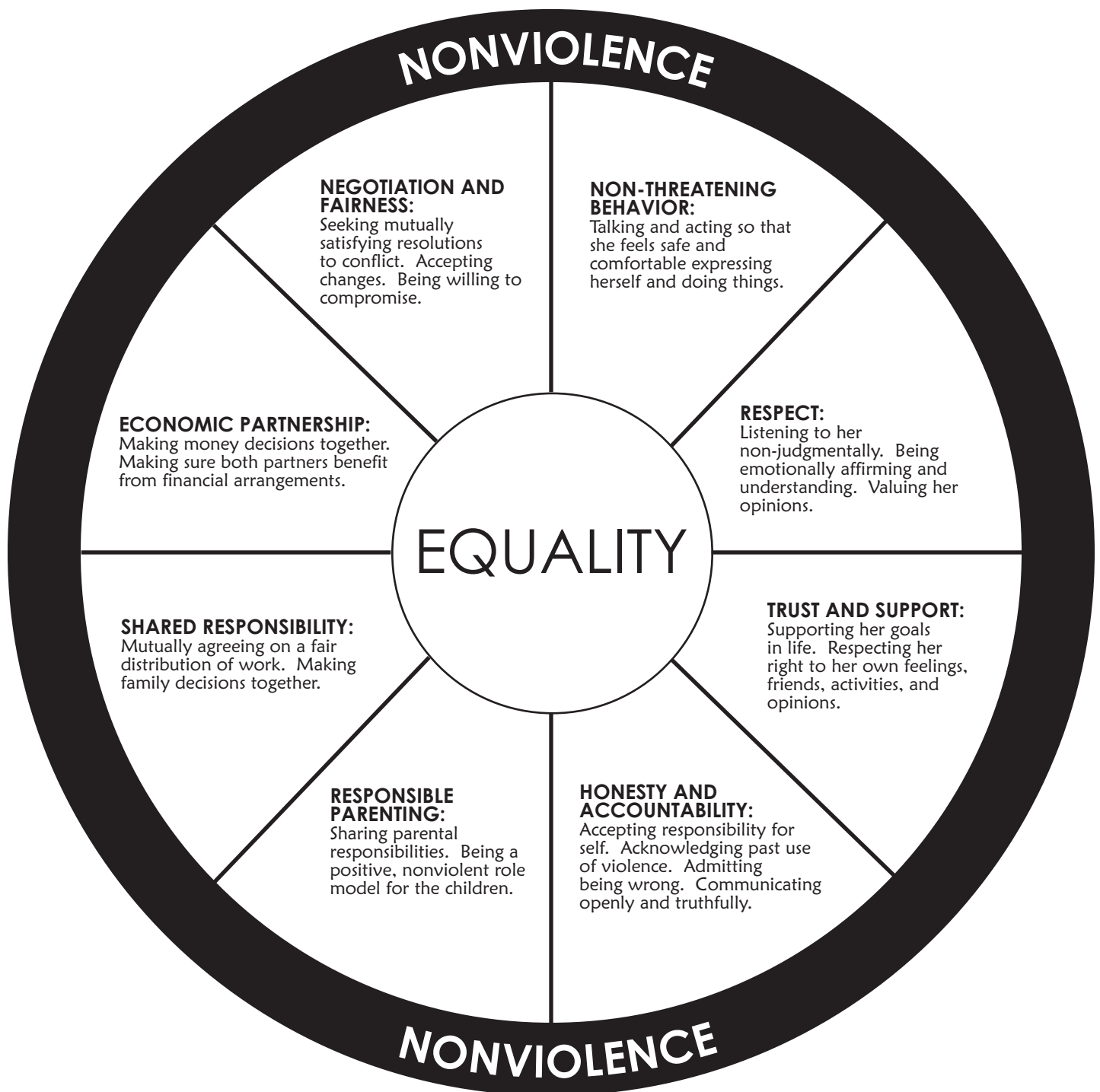
Signature \_\_\_\_\_ Date \_\_\_\_\_

Send to: Immigration and Customs Enforcement  
Victim-Witness Notification Program  
425 I Street NW  
INV Room 3040  
Washington, DC 20536  
Telephone 202-616-8737 Fax 202-353-3957  
Toll free 1-866-872-4973

Office Use Only \_\_\_\_\_

Rec'd \_\_\_\_\_ Faxed \_\_\_\_\_ Emailed \_\_\_\_\_ Mailed \_\_\_\_\_ Loc \_\_\_\_\_

# EQUALITY WHEEL



## WHAT'S THE DIFFERENCE BETWEEN ANGER MANAGEMENT AND CERTIFIED BATTERER INTERVENTION PROGRAMS?

	<b>Anger Management</b>	<b>Certified Batterer Intervention</b>
<b>Are programs state-certified?</b>	No	Yes. Certification is administered by the Massachusetts Department of Public Health.
<b>Who is served by the programs?</b>	Perpetrators of stranger or non-intimate violence	Specifically designed to work with domestic violence offenders
<b>How long are programs?</b>	Usually 8-20 sessions, with an average program lasting 10 sessions	At least 40 sessions
<b>Do programs contact victims?</b>	No	Yes. If the victim chooses, the program will remain in regular contact with her and provide her with referrals, safety planning and information to help protect her children.
<b>Are programs monitored by a state agency?</b>	No	Yes. By the Massachusetts Department of Public Health
<b>Are programs linked with a battered women's agency?</b>	No	Yes. Each program must have a letter of agreement and formal linkage with a battered women's agency.
<b>Do programs assess batterers for lethality?</b>	No	Yes. While not a perfect prediction model, certified batterer intervention programs at the very least ask the questions which reveal how potentially lethal a batterer may be – such as if he keeps a gun at home or has ever been convicted of other violent offenses.
<b>What is the emphasis of the intervention?</b>	Violence is seen as a momentary outburst of anger. So perpetrators are taught to use techniques like “time outs.”	Physical violence is seen as one of many forms of abusive behaviors chosen by batterers to control their intimate partners, including physical, sexual, verbal, emotional and economic abuse. Batterer intervention programs hold batterers accountable for the violent and abusive choices they make. They teach batterers to recognize how their abuse affects their partners and children and to practice alternatives to abusive behaviors.
<b>Are group facilitators trained about domestic violence?</b>	Subject to agency discretion	State standards specify 24 hours of specialized training at a certified site and twelve hours of observation.
<b>How would I address grievances with this type of program?</b>	Talk to the director of the program	1) Talk to the director of the program 2) Call the Massachusetts Department of Public Health at 617-624-5497
<b>What type of data collection occurs?</b>	No statewide system	The Massachusetts Department of Public Health has developed a statewide data collection system.

*Additionally, certified batterer intervention programs provide tailored services to meet the needs of linguistic and cultural minorities (with groups in Spanish, Portuguese, Vietnamese, Khmer, Mandarin, and Cantonese), perpetrators with disabilities, lesbians who batter, DSS-referred batterers and adolescent perpetrators.*

## Crisis Intervention

[This paper is drawn from Chapter Two of Marlene A. Young, *Victim Assistance: Frontiers and Fundamentals*, a publication of the National Organization for Victim Assistance. Permission to reprint this paper is granted so long as its source is properly attributed.]

### I. Overview

*With the gift of listening comes the gift of healing, because listening to your brothers or sisters until they have said the last words in their hearts is healing and consoling. Someone has said that it is possible "to listen a person's soul into existence." I like that.*

—Catherine de Hueck Doherty

Natural caregivers have known for centuries the value of listening with great care and little judgment to a person's sorrow and pain. Though some people have a natural gift for providing that kind of help, most people need some assistance in learning the basics of crisis intervention—it is, to a degree, "contra-instinctual"—and everyone can, with study, improve their crisis intervention skills.

In the aftermath of a catastrophe, most victims must deal not only with the physical and emotional shockwaves of the event but also, in short order, with the sense of helplessness, powerlessness, and a loss of control. These and the other dimensions of "crisis" are described more fully in the earlier "trauma of victimization" chapter.

For many victims, the physical and emotional reactions which describe crisis are not severe, and recede after a few hours or days. For others, the crisis is put on hold while they mobilize their survival skills, and only days, even years, later, are they slapped with a sense of the enormity of the event, now vividly remembered. Even victims who do not develop the symptoms of long-term stress reactions face the risk that certain "triggers" will reproduce the old feelings of panic, helplessness, anger, and the like.

"Crisis intervention" is obviously a humane effort to reduce the severity of a victim's crisis, to help the victim win as much mastery over the crisis experience as possible. To understand the potential benefits of crisis intervention, it is worth emphasizing that these are a battery of skills that victim advocates should possess—but so should others whose professional work brings them into contact with victims in crisis.

A common response in the shock of the moment is for the victim to retreat into a childlike state, and, when the immediate danger is passed, to turn to someone nearby who is perceived as an authority figure for help—a law enforcement officer, teacher, nurse, a friend, anyone who offers a sense of "parental" comfort. Anyone whose job constantly puts them in that role discovers how "accessible" the victim is at that moment. The helper is now invested with extraordinary influence in the life of the victim in crisis. In these circumstances, the helper is a crisis intervenor—perhaps a gifted one, perhaps one whose talents have been forged by experience, or far more likely, a conscientious professional with no training or skills in how to interact with people in crisis, to the detriment of both the victim and the professional.

If it is important for those in the emergency services and criminal justice professions to use crisis intervention techniques in their short encounters with victims, it is all the more essential for victim advocates and counselors to master the ideas and skills that help restore to victims a sense of control over their lives.

As was evident in the chapter on the psychological trauma of crime victimization, "crisis" encompasses a number of intense, tumultuous emotions; it can be a continuing condition, or alternatively flare and recede; any stressful, post-crime event, such as going to a battered women's shelter, or to a lineup, or to a trial, may put victims back into crisis. While there are no predictors about who will experience crisis, or when the onset will be, or how severe it will be in intensity or duration, a working presumption for most crisis intervenors is that the sooner the service is offered, the better. Indeed, there is a conviction among many practitioners that on-scene intervention, when the victim is in the early stages of distress, may prove to prevent or greatly reduce the crisis symptoms that might otherwise afflict the victim.

On the premise that the reader has reviewed the section on the trauma of victimization, the following covers the basic techniques of crisis intervention and some hints for helping victims and survivors in the aftermath of trauma.

## II. Techniques

### A. "Safety and Security"

1. The first concern of any crisis intervenor should be for the physical safety of the victim. Until it is clear that the victim is not physically in danger or in need of emergency medical aid, other issues should be put aside. This is not always immediately obvious. Victims who are in physical shock may be unaware of the injuries they have already sustained or the dangers they still face.

For the crisis intervenor who is responding to a telephone crisis call, the question should be posed immediately, "Are you safe now?" Intervenors who are doing on-scene or face-to-face intervention should ask victims if they are physically harmed. That question alone may cause the victim to become aware of a previously undiscovered injury.

2. A parallel concern should be whether the victim *feels* safe. The victim may not feel safe in the following circumstances:

- The victim can see and hear the assailant being interviewed by law enforcement officers.
- The victim is being interviewed in the same area where an attack took place.
- The victim is not given time to replace torn clothes.
- The victim is cold and uncomfortable.
- The assailant has not been apprehended and he has threatened to return.

Any of these may make the victim feel unsafe even if there are law enforcement officers present. In the aftermath of the Edmond, Oklahoma, post office mass murders in 1986, one of the survivors of the attack said that he would not feel safe until the assailant, Patrick Sherrill, whose final killing was of himself, was physically in his grave.

3. A priority for some victims and survivors is the safety of others as well. If a couple has been robbed in a street crime, each may be more worried for the other person than himself or herself. Parents are often more concerned about the safety of their children than their own.
4. Survivors of victims of homicide may not focus on safety but rather seek a sense of security through the provision of privacy and nurturing. Their anguish and grief can be made more painful if there are unfamiliar and unwanted witnesses to their sorrow.

They, too, will suffer feelings of helplessness and powerlessness. The shock of the arbitrary death of a loved one is usually not assimilated immediately and survivors may not understand questions or directives given to them. One mother did not realize that she had said yes when she was asked if she wanted to identify the body of her son. When she was taken to the morgue, she became hysterical and distraught because she was not properly prepared.

5. All victims and survivors need to know that their reactions, their comments, and their pain will be kept confidential. If confidentiality is limited by law or policy, those limits should be clearly explained.
6. Security is also promoted when victims and survivors are given opportunities to regain control of events. They cannot undo the crime or the death of loved ones, but there may be opportunities for them to take charge of things that happen in the immediate aftermath.

7. Hints for Helping.

- a. Make sure the victims/survivors feel safe or secure at this point in time.
  - Sit down to talk.
  - Ask the victims/survivors where they would feel safest when you talk to them, and move to that location.
  - If it is true, reassure them with the words "You are safe now."
  - Identify yourself and your agency clearly, and explain your standards of confidentiality. You might say, "Our program's standards require me to keep all information that you tell me confidential unless you give your permission to me to release it." If you can't keep all information confidential because you are with a police or prosecutorial agency, then be honest about the limits of confidentiality. You might say, "Our program requires me to report anything you tell me that might help a defendant in this case, but I am not required to report anything else, and I will not do so unless you give me your permission."
  - If possible, keep media away from victims/survivors or help them in responding to media questions. If the case involves a sensational crime and there are media representatives approaching the survivors, try to ensure that the victims/survivors understand that they do not have to answer questions unless they want to, and under circumstances of their own choosing; NOVA's Media Code of Ethics may help the advocate and the victim in this situation (see the chapter on the media).
  - If they have loved ones about whom they are concerned, try to find out as much



information as possible about the safety of the loved ones. For instance, a mother who has been a victim on the way home from work might not be as worried about the victimization as the safety of a child who is home alone awaiting her arrival. See if a colleague can be dispatched to the home to provide care for the child until the mother is able to return. Or see if she can identify a relative or neighbor who might assume the caretaking role in her absence.

- If victims are to be interviewed by law enforcement officers or others, try to ensure that they understand questions by asking them to repeat the question back to the interviewer.
  - Provide victims with information that may help to assure them of their safety. For instance, if they have been survivors of a massacre, it may help if they are assured that the gunman is dead, or that he has been apprehended.
  - If they are not safe, keep them informed about the extent of additional threat. For instance, if the gunman is still at large, try to get information about his whereabouts. If possible, find them an alternative location at which to stay for a few hours or a few days. In the aftermath of the serial killings of five co-eds in Gainesville, Florida, the victim/witness program and the community arranged for students to sleep together in dormitory-like conditions in a large auditorium surrounded by guards, all to restore a sense of safety.
  - Give victims permission to express any reactions and respond non-judgmentally. Say: “You have a right to be upset over this tragedy, so don’t be afraid to tell me what you are thinking.”
- b. Respond to the need for nurturing — but be wary of becoming a “rescuer” on whom the victim becomes dependent. The “rescuer” who ends up months later making decisions for the victim has subverted the primary goal of crisis intervention; that is, to help the victim restore control over his or her life. The following tips suggest appropriate ways in which the intervenor can step in on a temporary basis.
- It is useful to take care of practical things that need to be done but are beyond the victim’s ability to accomplish. For example, a victim of a sexual assault may appreciate it if you arrange for a friend to bring her a new set of clothes, after—as with every courtesy—getting permission to do so. In making such offers, don’t assume anything. For example, the last person a sexual assault victim may wish to see immediately after a rape is a spouse or partner.
  - Offer to provide child care, help with transportation, make telephone calls, and so forth. Be specific in making such offers so that the victim can simply respond with a “yes” or a “no”.
  - An apt analogy for the role of the crisis intervenor at this stage is as follows: when a person breaks his leg, a doctor sets it and puts it in a cast. While it heals, the patient uses crutches to get around, and when the cast is removed, the leg still needs exercise and care to become strong again. When someone survives a violent crime or the death of a loved one, they survive with a fractured heart. The crisis intervenor becomes like

the doctor. The initial intervention helps the survivor by protecting that heart as much as possible against further harm. Later, the crisis intervenor provides support, understanding, and a few crutches while the survivor begins the long process of healing a broken heart.

- c. Help survivors to re-establish a sense of control over the small things, then the larger ones, in their lives.
- While it is important to assist survivors with practical activities, it is also important to allow them to make decisions for themselves and to take an active role in planning their future.
- The crisis intervenor initially can offer survivors a sense of control by asking them simple questions involving choices that are easily made. For instance, "What name would you like me to use in talking with you?" "Where would you like to sit while we talk?" "Would you like a glass of water?"
- Often the recovery of a physical object that is important to the survivor helps to re-establish a sense of control. For instance, after an arson burned down much of one family's home, the entire family was strengthened when a law enforcement officer found their cat in the bushes nearby. The family had thought the cat had died in the fire.

#### B. "Ventilation and Validation"

1. Ventilation refers to the process of allowing the survivors to "tell their story." While the idea of "telling your story" seems a simple concept, the process is not easy. Victims need to tell their story over and over again. The repetitive process is a way of putting the pieces together and cognitively organizing the event so that it can be integrated into the survivor's life. Their first memory of the event is likely to be narrowly focused on, say, a particular sensory perception or a particular activity that occurred during the event. Victims usually see the criminal attack with tunnel vision. They know intuitively that other things are happening around them, but they may focus on an assailant's knife, their struggle to get away, their first impression of a burglarized room.

As time goes by, memory will reveal other parts of the event. These bits of memory will come back in dreams, intrusive thoughts, and simply during the story-telling process. The victimization story will probably change over time as they learn new things and use the new information to reorganize their memories.

For example, a victim who reported a burglary first told the crisis intervenor that he had heard a noise and he went downstairs to see what was wrong, finding a burglar in his front room. The burglar grabbed something and struck him in the stomach before running out the front door. There was a crash and then everything was silent.

When the man repeated the story the second time, he said that he remembered that it was just a noise, but it sounded like some whispering and rustling. On a later retelling, he remembered that when he came downstairs, he saw a brief flash of light toward the back of the house.

Upon investigation, it was discovered that there had probably been two burglars and

one had exited through the kitchen window in the rear of the house.

From a law enforcement perspective, the problem with this process of reconstructing a story is that it sometimes results in inconsistent or contradictory stories, which undermine an investigation or a prosecution. However, from a crisis intervention perspective, it is perfectly normal for the process of ventilation to reveal a more complete story over time. Realistically, a victim will tell his story over and over again, with or without a crisis intervenor, in order to reconstruct the event, so that the story will often change anyway. The difference is that the crisis intervenor will provide a sounding board for the victim's distress as the review process unfolds.

For victims, the replaying of the story over again helps them get control of the real story. The "real" story is not only the recitation of the event itself, but usually includes the story of various incidents in the immediate aftermath; the story of ongoing traumatic incidents related to the crime; the story of families' or friends' involvement in the event; and so forth. Each of these stories must be integrated into the victim's final mental re-recording of the event.

2. A part of ventilation is a process of finding words or other ways that will give expression to experiences and reactions. In this aspect, ventilation is often culturally-specific. Some cultures may express their reactions through physical or various artistic forms rather than words. In most of the United States, words are the most comfortable form of expression.

The power found in putting words to feelings and facts is tremendous. There is often a depth of emotion in telling another person that a loved one has died, even in finding the name of the loved one. The power is also illustrated in the release that many victims find when an intervenor responds to their ventilation with a word that expresses what victims feel. For instance, victims may feel intense anger towards an assailant and find the word "anger" insignificant to express that intensity. When an intervenor offers a word like "outrage" or "fury" to describe their feelings, victims often feel a sense of liberation—a sense of permission to feel such intense emotions.

The exact words to describe events and experiences are often vital. For example, Mothers Against Drunk Driving (MADD) is adamant about the importance of calling the collision of a car driven by someone drunk a drunk-driving "crash," not an "accident," to emphasize the criminal nature of the event. Similarly, survivors of the Pan Am 103 terrorist bombing are offended when others call the event a "crash," a term often used to describe a mechanical or human error.

3. Validation is a process through which the crisis intervenor makes it clear that most reactions to horrific events are "normal."
  - a. Validation should be content-specific. Example: rather than saying "I can't imagine how upset you are," it is preferable to say "I can't imagine how upset you are about your son's death in the car crash."
  - b. Care should be taken in the words that are used to validate. For instance, many survivors do not want to hear that their reactions are "normal reactions to an abnormal situation"—a common summation of what crisis and trauma produce—because survi-

vors want to have their experience validated as unique. Telling them that their reactions are “not uncommon” seems to be more effective.

- c. Where possible, repetition of the actual phrases that the survivors use to describe experiences is useful. Example, if someone says, “I can’t sleep at night, I am so afraid that someone will break in and kill me and my family,” an appropriate response would be, “It’s not unusual for you to be afraid after such a terrifying experience. If you can’t sleep at night, that only shows how afraid you are.”
- 4. The focus of validation should be that most reactions of anger, fear, frustration, guilt, and grief do not mean that the victim is abnormal, immoral, or a bad person. They reflect a pattern of human distress in reaction to a unique criminal attack.
  - a. While most reactions are normal, there are some people with pre-existing mental health problems who have harmful reactions. There are also some who react to personal disasters in a dangerous way—to themselves or others. In the aftermath of crisis, the intervenor should always be alert to any words or other signs of suicidal thoughts or threatening behavior towards specific individuals. If these arise, seek immediate professional help—a mental health professional, a suicide hotline, even a law enforcement agency if there is an imminent threat to someone else.
  - b. While most reactions are normal, most people have not experienced such intense feelings, so they may think they are “going crazy.” Survivors should be reassured that while this crisis has thrown their lives into chaos, they are not, as a consequence, crazy.

#### 5. Hints for Helping.

- a. Ask the victim to describe the event.
- b. Ask the victim to describe where they were at the time of the crime, who they were with, and what they saw, heard, touched, said, or did.

These two introductory questions will help the victim focus on the crime in an objective way. It will help the victim impose an order on the event and begin to take control of the story. It may help to ask the victim to recall that day from the beginning, so that the “normal” parts become part of the crisis story.

- c. Ask the victim to describe his or her reactions and responses. As the victim begins the description, remember to validate the reactions and responses. If she says: “I remember turning stone cold when I felt the hand on my back and a tug at my purse,” say, “Some people have called that a ‘frozen fright’ reaction.”
- d. Ask the victim to describe what has happened since the crime, including contact with family members, friends, the criminal justice system, and so on. Responses to this question will help reveal whether the victim has suffered additional indignities as a result of the crime or whether the victim has been treated with dignity and compassion.
- e. Ask the victim to describe other reactions he or she has experienced up to now. Again, validate reactions.
- f. Let the victim talk for as long as you can. If you are running out of time, give the victim

at least a fifteen-minute warning, such as, “Mrs. Jones, I really want to hear more about your experience and reactions, but I have to leave in about fifteen minutes. If we don’t finish up this part by then, I want to do that tomorrow, at a time that is good for you. If I don’t hear from you, I’ll give you a call, if that’s okay.”

g. Don’t assume anything—even the apparent pattern of the crisis reaction is suspect. So, for example, the victim’s controlled calm of the moment may yield to tears in a few minutes, or a few weeks. Indeed, if the victim is experiencing crisis, it is safe to bet that his or her reactions will take new form over time.

h. Don’t say things like:

“I understand.”

“It sounds like . . .”

“I’m glad you can share those feelings.”

“You’re lucky that. . .”

“It’ll take some time but you’ll get over it.”

“I can imagine how you feel.”

“Don’t worry, it’s going to be all right.”

“Try to be strong for your children.”

“Calm down and try to relax.”

Do say things like:

“You are safe now (if true).”

“I’m glad you’re here with me now.”

“I’m glad you’re talking with me now.”

“I am sorry it happened.”

“It wasn’t your fault (if there was no attributable blame to the victim).”

“Your reaction is not an uncommon response to such a terrible thing.”

“It must have been really upsetting to see [hear, feel, smell, touch] that.”

“I can’t imagine how terrible you are feeling.”

“You are not going crazy.”

“Things may never be the same, but they can get better.”

To improve communication with the victim, avoid words like:

“Feelings” — although this chapter is concerned with victims’ feelings, in practice it is better to stick with the word “reactions” to describe “feelings.” Many people are uncomfortable with being asked to talk about their feelings or emotions.

“Share” or “sharing”—ask people to tell you about their experiences. Don’t ask them to “share” those experiences or thank them for “sharing”. No one can literally share another person’s experience, even if they have suffered through the same event. Many people resent the presumption implicit in this term, or the “social

work” connotation it carries.

“Client” or “Victim” or “Survivor,” when talking to or about a person for whom you are providing crisis intervention. Use the victim’s preferred name.

“Incident” or “Event,” when referring to the crime or the criminal attack. While such words may be used in other settings, they are inappropriate in talking with the person who has survived such an “event”.

“Alleged,” when referring to a victim. Let the lawyers speak of alleged victims and offenders if they need to. Victim advocates should assume that people who describe themselves that way are what they say—victims of crime.

### C. “Prediction and Preparation”

1. One of the potent needs that most victims have is for information about the crime and what will happen next in their lives. Remember, their lives have typically been thrown into chaos and they feel out of control. A way to regain control is to know what has happened and what will happen—when, where, how.
2. The information that is most important to victims is practical information. The following are examples. Note that some topics may raise scary possibilities that the victim has not even considered; the intervenor may tactfully touch on such issues or defer them. However, never duck any unpleasant surprise if there is reason to believe that the victim will find out about it soon.
  - a. Will the victim have to relocate? Many burglary victims need to move temporarily because their home is no longer secure. If relocation is necessary or recommended, what are the victim’s options?
  - b. Does the victim have adequate financial resources to pay for any immediate needs caused by the crime? The robbery victim may not have money to pay for food or rent. The rape victim may not have money for a forensic exam or medical treatment. Even if a compensation program may reimburse a victim at a later date, the need for immediate money is sometimes overwhelming.
  - c. What legal issues confront the victim? Will the case be processed in the criminal justice system? Will there be an investigation? What are the chances that there will be an arrest—and then prosecution, trial, conviction, and sentencing? Does the victim have civil litigation options? Might it be feasible for the victim to sue the offender or a third party who might be held responsible for factors leading to the attack? Note that honest answers and estimates are essential; to the victim of a “cold” burglary with no immediate suspects, the bad news is that fewer than one such case in fifty results in an arrest in most jurisdictions—and giving a rosier picture will undermine your future credibility. By the same token, there may be many questions that arise which are beyond the intervenor’s expertise; note them, and help the victim get expert answers.
  - d. What immediate medical concerns face the victim? An injured victim may need information about the extent of those injuries. A sexual assault victim may need information to make informed decisions on testing for pregnancy or sexually-transmitted

diseases, including HIV. The survivor of a victim of homicide or catastrophic injury may need detailed information about the cause of death or extent of injuries.

- e. What will be expected of the survivors of a homicide victim in the immediate future? Will they be asked to identify the body? If so, what is the condition of the body? Is there a need to address immediately funeral considerations? (Some religions call for immediate burial.) Do the survivors know their loved one's body will be given an autopsy?
  - f. What does the victim need to know about the media? As indicated above, if the case is sensational or has a "newsworthy" facet to it, it is likely that there will be media coverage. Does the victim know his or her rights? Is the victim prepared for a full media intrusion? Has the victim been warned that what appears in the media may not have any relation to the truth as he or she has experienced it?
3. The second priority is for information on possible or likely emotional reactions that the victims might face over the next day or two, and over the next six months or so—emphasizing that there is no particular timetable when victims can expect to experience crisis reactions, or which of the intense emotions may surface. In many ways, this review will become as important as anything else they learn. In the initial stages of dealing with the crime, practical issues are their priority. Some of the emotional concerns that should be outlined, however, are the following:
- a. Immediate physical and mental reactions to crisis. These reactions may include inability to sleep, lack of appetite, anxiety, numbness, estrangement from the world, a sense of isolation, anger, fear, frustration, grief, and an inability to concentrate.
  - b. Long-term physical and mental reactions. These reactions may include intrusive thoughts, nightmares, terror attacks, continued sense of isolation, inability to communicate with others, sleep disturbances, depression, inability to feel emotion, disturbance of sexual activity, startle reactions, irritability, lack of concentration, and so forth.
  - c. Reactions of significant others. While some friends or family members serve as the most important source of emotional support for victims, many cause as much harm as good. Three common reactions that may cause victims distress are: overprotectiveness; excessive anger and blame directed toward the victim; and an unwillingness to talk about or listen to stories of the crime.
  - d. Victims should expect that everyday events may trigger crisis reactions similar to the ones they suffered when the crime occurred. Thus, the birthday of a son who was murdered may trigger overwhelming feelings of grief and anger about the murder. A sunset of a particular shade and color may trigger a panic attack in a victim who has been robbed during such a sunset. The smell of alcohol on the breath of a young man may trigger an outburst of rage in a young woman who had been raped by a man who had been drinking.
4. In addition to needing predictable information, victims need assistance in preparing for ways in which they can deal with the practical and emotional future. The following are some hints for helping.
- a. Take one day at a time. Suggest that the victim plan each day's activities around

needed practical tasks. Help the victim list the tasks that need to be done and set a goal for accomplishing a certain number each day. Victims who have been severely traumatized may want to check in with you after each day to report their progress and to receive positive feedback on any successes.

- b. Problem-solving. Show the victim how to use problem-solving techniques to address the overwhelming problems that he might face. Suggest that the victim list the three most important problems confronting him for the next day. After he makes his list, have him analyze whether all three really need to be done in the next twenty-four hours. If he thinks so, ask him to sort the list in priority order. Take the first problem he has listed and ask him to think about all the possible ways he might deal with the problem. After he has discussed such ideas, ask him to choose the option that he thinks is most feasible.

*Example:* Jim is a robbery victim. The robber stole his wallet and the contents of his pockets, which included all of his cash, his bank card, his driver's license, his car and apartment keys, and a pocket watch. Jim is panicky because it's 9 at night and he doesn't have any money and doesn't know how to get home. Even if he is able to get there, he doesn't have keys to get into his apartment or to drive to work in the morning.

You ask Jim to list his three biggest problems. He says: getting home, getting in his apartment, and getting to work in the morning, in that priority order. You ask him to think of all the possible ways he might be able to get home. After some thought, he decides that he can borrow a quarter from you and call a friend to come get him. He then realizes that his friend would probably let him stay at his house overnight, if needed. He also realizes, as he is thinking, that he might be able to call his landlord from his friend's house and arrange to get into his apartment. As he begins to think calmly and carefully about the problem he remembers he has an extra set of keys to both his apartment and his car at home . . . and so the problem-solving begins and may continue.

- c. Talk and write about the event. Suggest to victims that they use audiotapes or write a journal to tell their unfolding stories. Even if no one else sees or hears these stories, it is a way of expressing oneself and a way of processing thoughts.
- d. Plan time for memories and memorials. It can be predicted that certain things will be trigger events for future crisis reactions. Urge victims to try to think through what those trigger events might be and to allow themselves time to deal with those reactions. For example, a woman who had been sexually assaulted on October 14 routinely took that day off from work to do something nice for herself and to think about her pain.
- e. Encourage victims to identify a friend or family member on whom they can rely for support during times when they must confront practical problems. If they are able to name that person, suggest that they call and explain their need for support and help. If this is done in advance, it makes it easier to request certain help when the time comes.
- f. Good nutrition, adequate sleep, and moderate exercise can significantly help victims



survive times of crisis. That underestimated triad is, in fact, the basis for virtually all stress reduction programs. Help victims set up their own regular routine of health. At first it may be difficult, but if they keep trying they will readily realize some benefits.

### **III. Conclusion**

Crisis intervention is more than a shoulder to cry on, a hand to hold, or an ear with which to listen. It encompasses all of those attributes in a crisis intervenor and more. It involves skill and knowledge, combined in a simple but powerful way. Providing victims with a sense of safety and security; allowing them a chance for ventilation and validation; and giving them accurate prediction and preparation for the future summarizes that combination. The strength of the crisis intervention process can be seen in the tributes that thousands of victims have given their advocates who were at their sides in their times of need. It can be seen in the fact that most of those victims do not need long-term counseling or mental health therapy.

Charles Dickens said, "No one is useless in this world who lightens the burdens of others." It is hoped that this chapter will help crisis intervenors lighten the burdens of the others who are victims of crime.

## **Bibliography**

### ***Crisis Intervention***

Aguilera, D.C. & Messick, J.M., *Crisis Intervention: Theory and Methodology*, C.V. Mosby: St. Louis, MO, 1974.

Bard, M. & Sangrey, D., *The Crime Victim's Book*, Brunner/Mazel: New York, 1986, 2nd Edition.

Edwards, R.V., *Crisis Intervention and How It Works*, Charles C. Thomas: Springfield, IL, 1979 (2nd printing).

Figley, C., ed., *Trauma and Its Wake*, Brunner/Mazel: New York, 1985.

Figley, C. & McCubbin, H.I., eds., *Stress and The Family: Volume II, Coping with Catastrophe*, Brunner/Mazel: New York, 1983.

France, K., *Crisis Intervention*, Charles C. Thomas: Springfield, IL, 1982.

Harris, C.J., "A Family Crisis-Intervention Model for the Treatment of Post-Traumatic Stress Reaction," *Journal of Traumatic Stress*, Vol. 4 #2, April, 1991.

Manton, M. & Talbot, A., "Crisis Intervention After an Armed Hold-Up: Guidelines for Counselors," *Journal of Traumatic Stress*, Vol.3, #4, October, 1990.

Roberts, A.R., (ed.) *Contemporary Perspectives on Crisis Intervention and Prevention*, Sage: Newbury Park, CA, 1990.

Slaikeu, K.A., *Crisis Intervention: A Handbook for Practice and Research*, Allyn & Bacon: Boston, MA, 1984.

Young, M.A., "Crime, Violence, and Terrorism," in *Psychological Aspects of Disaster*, Gist, R. & Lubin, B., eds., Wiley & Son: New York, 1989.

Young, M.A. & Stein, J.H., *The Victim Service System: A Guide to Action*, National Organization for Victim Assistance: Washington, D.C., 1983.

## **COMMON ABBREVIATIONS**

### **FOUND ON FILES**

	Defendant
ADA	Assistant District Attorney
ARR	Arraignment
ASF	Admission to Sufficient Facts
Case	Case Status
Cont	Continuance/Continued/To Be Continued
CWOF	Continued Without a Finding
D/R	Default Removal
Def	Default (sometimes used as "Defendant" in police reports)
Del	Delinquent
Dispo	Disposition
DR	Damage Report
DSS	Dept. of Social Services
Emot Supp	Emotional Support
Mot	Motion
NO VW	Victim Witness is NOT involved in case
O & B	Orientation and Briefing
OOPS	Out of Pocket Expenses
OV	Office Visit
PC or PCH	Probable Cause Hearing
PT or PTC	Pretrial Conference
RR	Restitution Review
Stat	Status
T	Trial
TCFV	Telephone Call From Victim
TCTV	Telephone Call To Victim
, VT	Victim
VIS	Victim Impact Statement
VW NPR	VW waiting for police report in order to screen case
VW	Victim Witness has picked up case

NOTOABB.SAM

## ABBREVIATIONS FOR NOTOS

Abbreviations		Sex	
Defendant		Female	F
Victim	VT, (V),	Male	M
Telephone Call To Victim	TCTV	Unknown	U
Telephone Call From Victim	TCFV		
Office Visit	OV	Build	
Orientation and Briefing	O&B		
Case Status	Case Stat	Slight	S
Emotional Support	Emot Supp	Medium	M
Witness Fee	Wit Fee	Heavy	H
Damage Report	D.R.		
Out Of Pocket Expenses	OOPS	Race	
Victim Impact Statement	VIS		
Date of Incident	DOI	White	W
Victim of Violent Crime	VVC	Black	B
Criminal Offender Record Info	CORI	Hispanic	H
Assistant District Attorney	ADA	Native American	Nat/Am
Vic/Wit Needs Police Report	VWNPR	Cape Verdian	CV
		Asian/Pacific Islands	AS/PI
		Portugal/Azores	PR/AZ
		Other	O
		Unknown	U
Court Activity		Marital Status	
Arraignment	ARR		
Pre-trial Conference/Hearing	PTC, PTH		
Probable Cause Hearing	PCH		
Motions	M, MOT		
Status	S, Stat	Co-habit	C
Default	Def	Divorced	D
Default Removal	D/R	Married	M
Restitution Review	R.R.	Separated	S
Jury Trial	JT	Single	S
Trial	T		
Sentencing			
Continued Without a Finding	CWOF		
Guilty	G		
Not Guilty	NG		
Nolle Prossed	N.P.		
Continued Generally	GC		
Dismissed	Dism.		
Admission to Sufficient Facts	ASF		
House of Correction	HOC		
MCI Cedar Junction	CJ		
Suspended Sentence	SS		

# **COMMON DISPOSTIONS**

## **Adult Cases**

### **Nolle Prosequi**

- The prosecutor withdraws the prosecution of the case. The case may be brought at a later date.

### **Case Dismissed**

- No guilty finding
- Dismissed “with prejudice” barring the case from being brought again or “without prejudice” in which the case may be brought again. Courts sometimes “dismiss with prejudice upon payment of court costs.”

### **Pretrial Probation**

- Before guilty finding but may also happen later
- Placed on probation for a period, sometimes with conditions and monitoring by a probation officer
- Persons over 18 with previous convictions of “Rape of Child with Force” or “Assault with Intent to Rape a Child” or “Unnatural Acts with a Child under 16” may not be placed on pretrial probation until a not guilty finding or adjudication of delinquency, or after a verdict resulting in their serving five years of a jail sentence.

### **Continued Without a Finding After Admission to Sufficient Facts**

- No guilty finding
- Can involve payment of costs and/or restitution
- Usually six months to one year can involve probation
- Victim/witness fee

### **Probation**

- Guilty finding
- Conditions attached
- Restitution
- Community service alcohol/drug program

- **Victim/witness fee**

### **Suspended Sentence with Probation for a Term of Years**

- **For adults, guilty finding**
- **Probation with conditions attached**
- **If conditions are violated, then the sentence is imposed**

### **House of Correction or State Prison Sentence**

- **Guilty finding**
- **Sent to House of Correction or State Prison. Department of Correction and Parole Board calculate release**

## **Juvenile Cases**

### **Nolle Prosequi**

- **The prosecutor withdraws prosecution of the case. The case maybe brought again at a later date.**

### **Case Dismissed**

- **No adjudication of delinquency**
- **Dismissed “with prejudice” barring the case from being brought again, or “without prejudice” in which the case may be brought again. Courts sometimes “dismiss with prejudice upon payment of court costs.”**

### **Pretrial Probation**

- **Before adjudication of delinquency but may also happen later**
- **Placed on probation for a period with appropriate conditions**

### **Continued Without a Finding After Admission to Sufficient Facts**

- **No adjudication of delinquency**
- **Payment of costs and/or restitution**
- **Usually six months to one year and can include probation**
- **Victim/witness fee**

### **Department of Youth Services, Suspended to Age 18**

- **Adjudication of delinquency**

- **Probation**
- **Restitution**
- **Community service or programs such as alcohol/drug program or forestry camp**
- **Victim/witness fee**

**Department of Youth Services Commitment**

- **Adjudication of delinquency**
- **To age 18**
- **Custody of the Department of Youth Services**
- **Restitution can only be ordered if other charges were disposed of with less than commitment**
- **Victim/witness fee**

**Youthful Offender Cases**

- **Commitment to DYS until age 21; placed on adult probation.**
- **Sentenced as an adult; sentence to be served in the Youthful Offender Unit at the Department of Correction.**

## **Glossary of Common Legal Terms**

**Acquittal:** determination that the evidence is not sufficient to prove that a person charged with a crime actually committed it.

**Admission to Sufficient Facts:** the accused acknowledges and admits that there is sufficient evidence to warrant a guilty finding.

**Appeal:** a request to a higher court to review the lower court's decision.

**Arraignment:** the initial court appearance of the accused where the complaint or indictment is read, a plea is entered, and bail and other conditions are decided.

**Attorney-Client Privilege:** a professional relationship that prohibits the attorney from disclosing the content of communications without the client's consent.

**Bail:** an amount of money required to be paid to the court to ensure the defendant's future attendance in court.

**Bench Trial:** a trial held before a judge without a jury.

**Burden of Proof:** In criminal trials, prosecutors are required to prove beyond a reasonable doubt that a defendant is guilty of the crime charged.

**Change of Venue:** the transfer of a case to a court in a different geographic location.

**Competency:** a determination that a defendant or witness has sufficient mental capacity to participate in a trial. Both defendants and witnesses must be competent to proceed with a trial. Defendants need to understand the nature, manner and purpose of the legal proceedings, and he/she must be able to communicate with his/her attorney and participate in the defense. Witnesses must have the capacity to observe, recall and relate experiences, as well as understand the difference between truths and fabrications.

**Complaint:** a formal written document to initiate a criminal proceeding.

**Concurrent Sentence:** a criminal penalty consisting of two sentences that are to be served in sequence, with one to begin when the other has been completed.

**Contempt:** the willful failure to obey a court order, or the showing of disrespect or unacceptable behavior in the court.



**Continuance:** a postponement of a court event.

**Continued Without a Finding (CWOFF):** a procedure by which, after accepting an admission of sufficient facts from a defendant, or finding after trial that there are sufficient facts to support a finding of guilt, the court does not enter a guilty finding, but rather continues the case for a period of time. At the end of that time, if the defendant has not violated the law again and has met the conditions of the continuance, the charge is dismissed.

**Criminal Responsibility:** describes whether a defendant can be held responsible for his behavior. To be deemed not criminally responsible, the defendant must suffer from a mental disease/defect that existed at the time of the crime, and that disease/defect must make the defendant unable to appreciate the wrongfulness of his actions or to conform his behavior to the law.

**Default:** a defendant's failure to appear at a required legal proceeding.

**Dismissal with Prejudice:** a judge's decision to terminate the prosecution of a charge, preventing the same charge from being filed against the defendant again.

**Dismissal without Prejudice:** a judge's decision to terminate the prosecution of a charge, but allowing the prosecution to bring the same charge against the defendant in the future.

**Discovery:** pre-trial process that allows each party to seek and obtain facts and evidence about the case from the other party.

**Disqualification:** evidence that is not allowed to be introduced in court.

**Disposition:** the outcome of a case, usually referring to the sentence imposed.

**Docket:** the court's daily case calendar; also refers to the document that maintains a record of all official court actions on a case.

**Exculpatory Evidence:** evidence indicating that the defendant may not have committed the crime charged. Such evidence must be turned over to the defense attorney. Exculpatory evidence may include information that advocates learn from conversations with victims and witnesses.

Examples of exculpatory evidence include:

- Evidence learned from a witness that calls into question some part of the prosecution's version of the events;
- Evidence that challenges the credibility of a key prosecution witness, such as discovering that the witness has filed a false report or been convicted of

- perjury in the past;
- Evidence of a witness's incriminatory yet inconsistent statements about the same event.

**Felony:** a crime punishable by incarceration in a state prison for a period of years.

**Immunity:** legal protection from prosecution, usually given to a witness whose testimony includes information relative to crimes committed.

**Incident Report:** a police officer's written report regarding the police response to a reported crime.

**Indictment:** a formal written statement issued by a grand jury concluding that there is sufficient evidence to charge a person with a crime.

**Injunction:** a court order directing one or more persons to refrain from doing specified acts.

**Juvenile Delinquent:** an individual under the age of 17 who has violated a criminal law.

**Mandatory Sentence:** a fixed sentence required by statute.

**Misdemeanor:** a criminal offense considered by law to be less serious than a felony which may be punished by a House of Correction sentence or a fine, but not by imprisonment in state prison.

**Personal Recognizance:** a pre-trial release that allows the defendant to sign a promise to appear in court whenever notified to do so.

**Presentence Report:** a report completed by the probation officer and submitted to the judge before the sentencing of a defendant. The report is based on an investigation by the probation officer into the defendant's background, the circumstances of the crime, and information supplied by the victim.

**Pretrial Conference:** a hearing to report the status of the case to the court, and to discuss the merits of the case, exchange discovery information, and possibly work out a plea agreement.

**Probable Cause:** a set of facts or circumstances which would indicate to a reasonable person that an offense was committed by a particular individual.

**Probable Cause Hearing:** a court proceeding held before a judge to determine whether there is sufficient evidence to transfer the criminal case from District Court to Superior Court. Also, a court proceeding held before a judge or clerk

magistrate to determine whether there is sufficient evidence to hold a defendant who was arrested without an arrest warrant until his or her arraignment.

**Probation:** the defendant is placed under the supervision of a probation officer and is required to fulfill certain conditions set forth by the court for a specified period of time.

**Sequestration of Witnesses:** to prevent tainting testimony, the court removes witnesses from the courtroom, or orders witnesses not to discuss the trial.

**Statute of Limitations:** the period of time established by law to determine when a civil action or criminal prosecution must commence.

**Subpoena:** a court-issued written command to appear at a certain time to give testimony.

**Sustain:** a judge's acceptance of an objection.

**Testimony:** statements given under oath.

**Verdict:** the formal decision made by a jury upon completion of the trial.

**Victim Impact Statement:** a written or oral statement made by the victim to the court at sentencing describing the physical, emotional and financial effects of the crime and recommending a sentence to be imposed on the offender.

**Voir Dire:** a process of examining prospective jurors by prosecutors and defense attorneys to prevent biased individuals from serving on the jury.

**Warrant:** an order issued by a court that directs a law enforcement officer to arrest a person, search a location, seize an object, or do some other specified act such as drawing blood, etc.

**Witness:** someone who has personal knowledge of relevant circumstances of a case, and who may testify under oath.

**Witness Fee:** a fee provided to victims and other witnesses to cover travel expenses for each day they are required in court.