

As filed 2007 – 2009 Session
AN ACT TO PROTECT AND ENHANCE THE RIGHTS OF CHILD AND
ADULT VICTIMS AND WITNESSES OF CRIME

Lead Sponsors
Senate Majority Leader Frederick E. Berry
Representative Peter J. Koutoujian

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 258B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting, after the word “delinquency”, in line 10, the following words:- or conviction as a youthful offender

SECTION 2. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by striking, in lines 12-14, the words “or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made” and inserting, in place thereof, the following words:- adjudicated as a delinquent or convicted as a youthful offender, or against whom a finding of sufficient facts is made

SECTION 3. Said section 1 of said chapter 258B, as so appearing, is hereby further amended, after the word “stepparent” in lines 15-16, the following word:- grandparent,

SECTION 4. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting, after the word “victim” in line 20, the following words:- “Orientation”, a familiarization with the courtroom setting, court personnel, and rules of the court, to the extent practicable under the circumstances as required within this chapter; this requirement may be satisfied through the use of diagrams, photographs, or other reasonable methods.

SECTION 5. Said section 1 of said chapter 258B, as so appearing, is hereby further amended, by deleting, after the word “incompetent” in line 31, the words: “or deceased” and inserting, in place thereof, the words:- “, the family members of such person if the person is deceased even if no complaint or indictment has been issued”

SECTION 6. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting, after the word “prosecution”, in line 41, the following words:- or family member or guardian if such person is a minor, incompetent or deceased,

SECTION 7. Subsection (b) of section 3 of said chapter 258B, as so appearing, is hereby amended by inserting, in line 16, after the word “all”, the following words:- adult and juvenile

SECTION 8. Subsection (d) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking, in lines 31-34, the words “protection from local law enforcement agencies from harm and threats of harm arising out of their cooperation with

law enforcement and prosecution efforts” and inserting, in place thereof, the following words:- assistance in developing safety plans and appropriate referrals

SECTION 9. Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking out subsection (i) in its entirety and replacing it with the following new subsection:-

(i) for victims, family members, and witnesses, to be provided, by the court, 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, and separate from any district attorney’s office, during court proceedings. The court shall 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.

SECTION 10. Subsection (l) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking the word “A” in line 86 and inserting, in place thereof, the following word:- “B”

SECTION 11. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is hereby amended by inserting, at the end thereof, the following:- provided further, defense counsel may not seek to interview a victim or witness under the age of majority, incompetent, or cognitively impaired, until the victim or witness has been informed, in the presence of a parent/guardian who is not the defendant, of the right to submit to or decline the interview;

SECTION 12. Subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking, in line 111, the word “at” and inserting, in place thereof, the following word:- before

SECTION 13. Said subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby further amended by inserting after the word “defendant”, in lines 111-112, the following words:- , even if there is admission to sufficient facts, the sentence is mandatory, or there is an agreed upon plea,

SECTION 14. Said subsection (p) of said chapter 3 of said chapter 258B, as so appearing, is hereby further amended by inserting, at the end thereof, the following:- provided further, upon showing by the prosecutor that a personal appearance by the victim will cause an unreasonable hardship on the victim, the court shall permit the victim to exercise the right to be heard by submitting a statement through audio tape or videotape to be heard or viewed before sentence or disposition is imposed;

SECTION 15. Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking out subsection (t) in its entirety and replacing it with the following new subsection:-

(t) for victims and witnesses, to be informed by the prosecutor about notification rights and the certification process required to access the criminal offender record information files pursuant to sections 172(c) and 178A of chapter 6. Individuals certified by the criminal history systems board, or, in the case of a juvenile defendant, certified by the department of youth services, will be informed by the appropriate custodial authority if the offender escapes from custody, receive advance notification when the offender receives a temporary, provisional or final release from custody or is transferred from a secure facility to a less-secure facility. Certified individuals shall provide the criminal history systems board, or the department of youth services in the case of a juvenile defendant, with current contact information;

SECTION 16. Said section 3 of said chapter 258B, as so appearing, is hereby further amended by inserting, at the end thereof, the following new subsections:-

(w) for victims and witnesses who are minor children or adults with disabilities as defined in subsection (k) of section 13 of chapter 265, as so appearing, notwithstanding any law to the contrary, to have parents, a counselor, friend or other person having a supportive relationship with the victim or witness, in addition to the victim witness advocate, remain in the courtroom during the child's testimony unless, in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial will be prejudiced;

(x) for victims and witnesses who are minor children or adults with disabilities, as defined in subsection (k) of section 13 of chapter 265, as so appearing, for prosecutors to provide an orientation, as defined in this chapter, to the courtroom setting, court personnel, and rules of the court, to the extent practicable under the circumstances;

(y) for victims and witnesses, to have a summary of the rights afforded under this section conspicuously posted in any courthouse and in any police station. The victim and witness assistance board, pursuant to section 4 of this chapter, shall devise and provide posters to satisfy this requirement to any court and any police station, and, upon request and at the discretion of the office and board, to any other institution or organization. The board shall develop the posters in a variety of languages as determined by the Massachusetts office for victim assistance. Upon request, the board will respond, to the extent possible, to any requests for additional language translations of the posters. The office and the board shall cooperate with the Massachusetts disabled persons protection commission to ensure that notice of victim rights is communicated to those victims and witnesses who are blind;

(z) for victims, to confer with the prosecution prior to the acceptance of a plea of guilty or admission to sufficient facts. Before the judge accepts a plea of guilty, an admission to sufficient facts, a disposition, or an agreed-upon sentence recommendation, the judge shall ask the prosecutor if the victim has been consulted regarding plea discussions, whether or not the victim agrees or disagrees with the plea discussions and agreement, if the victim was notified of the court date and is present, and if the victim would like to assert their right to offer a victim impact statement;

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

(bb) for victims and witnesses, to be informed by the court at the daily commencement of the regular criminal docket at which accused persons are arraigned, that a summary of their rights is posted within the courthouse;

(cc) for victims of the commission or attempted commission of violent acts, and others as deemed appropriate by the responding officer, to be notified by said officer who has determined that a crime has been committed, of their rights under this act. Unless the officer reasonably concludes that it is not practicable to do so under the circumstances, he or she shall present a card prepared by the Massachusetts office for victim assistance in consultation with the victim and witness assistance board which includes, but is not limited to, a summary of their rights under this chapter and relevant referrals to victim services and victim compensation.

SECTION 17. Section 8 of said chapter 258B, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words, “. The court shall impose an assessment of \$50” and inserting, in place thereof, the following word:- , and

SECTION 18. Said section 8 of said chapter 258B, as so appearing, is hereby further amended by striking out, in lines 21-31, the words “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” and inserting, in place thereof, the following sentence:- Any assessment made pursuant to this section shall not be subject to waiver by any court for any reason