



Senate Bill 1559
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

Background

Enacted in 1984, the Massachusetts Victim Bill of Rights created the most comprehensive rights for victims of crime in the United States at that time. For twenty-five years, this law has resulted in countless victims, witnesses, and their families receiving critical rights and services and the assistance necessary to participate in an often confusing and intimidating criminal justice process. In addition, this length of time has demonstrated that victim rights can and do co-exist with defendants' constitutional rights to ensure the fair administration of justice.

During the past twenty-five years, the face of crime and the needs of crime victims have changed and Massachusetts has fallen behind. This bill builds upon the successes of the existing law, strengthens and updates it, and will help return the Commonwealth to the forefront of victim rights. As we honor the Twenty-fifth Anniversary of the Victim Bill of Rights with the filing of this bill, we will be continuing our legacy of promoting fairness and accessibility, dignity and respect for victims and witnesses who are critical to an effective justice system.

How Were the Legislative Goals Identified?

MOVA has solicited and received feedback from numerous diverse constituents across the Commonwealth including victims/survivors, victim service providers, criminal justice agencies, law enforcement personnel, medical and mental health professionals, attorneys, legislators, among others. Through this feedback and research conducted of other states' victim rights laws, MOVA and the Victim and Witness Assistance Board identified the priority issues included in this legislation.

Content

The three overarching goals of this bill are to: (1) clarify and strengthen current language in M.G.L. Ch. 258B; (2) codify practices by criminal justice agencies that have evolved over the last 10+ years; and (3) add new rights to the Victim Bill of Rights that reflect the needs of crime victims today and which exist as precedents in other states' laws.

The following section-by-section analysis explains the provisions of this legislation and the rationale behind them. Please direct any questions to Christopher Klaskin, Legislative Affairs Coordinator at 617.727.7885 or christopher.klaskin@state.ma.us.

SECTION-BY-SECTION SUMMARY AND BACKGROUND

SECTIONS 1 and 2.

Amends the definition of 'disposition' to include delinquent adjudication and youthful offender convictions

Background:

This section was drafted in collaboration with the Department of Youth Services.

SECTION 3.

Amends the definition of 'family member' so that grandparents of a victim or witness are authorized to request CORI certification

Background:

Currently, grandparents, unlike other key family members, cannot easily access CORI certification without having to go through an extended process of paperwork because they are not explicitly identified as "family members" within the definition in MGL Ch. 258B. Grandparents often play a critical role in the lives of many young victims as primary caregivers and guardians. Providing access to this information will enable them to effectively support and advocate for a grandchild in their care or otherwise. Including grandparents in this definition also makes it consistent with the definition in the Victim Compensation law, MGL Chapter 258C.

SECTION 4. (See also Section 19(x))

Inserts a definition of the term "orientation" to Chapter 258B

Background:

Section 19(x) of this legislation establishes the right for a victim or witness who is a child and/or adult who has a disability to be provided with an orientation to the courtroom setting, court personnel, and rules of the court. This section inserts a new definition of the term "orientation" that helps clarify some practices that will satisfy this requirement.

The orientation intended by this right will help victims and witnesses to feel some sense of security and preparedness by gaining a better understanding of what to expect from the court process and courtroom setting. It is well documented that trauma-related anxiety is heightened by the added stress of decreased physical or mental access to the court process. Not only is it appropriate to ensure that vulnerable victims and witnesses do not suffer by virtue of their participation in the process, but it also helps maximize their effectiveness as witnesses.

SECTION 5 and 6.

Amends the definition of "victim" to include the family members of any victim of homicide even if no complaint or indictment has been issued

Background:

Currently, MGL 258B's rights apply only to victims and their family members when there has been a complaint or indictment issued. Though a clause added in 1995 does provide that prosecutors are not precluded from providing, subject to available resources, services to additional parties, this still leaves a large gap for many homicide survivors across the state. This amendment would help address the growing and vocal concern among homicide survivors that this is a significant gap in access to services and information when the case is yet to be solved.

SECTION 7 and 8.

Amends the definition of "witness" to include the family member or guardian of a person who has been summoned to testify if the person is a minor, incompetent or deceased

SECTION 9.

Clarifies that the right of victims and family members to be present at all court proceedings to include both adult and juvenile proceedings

Background:

This language was added to reflect the specific needs of victims and witnesses in the juvenile court system, an area of practice that has evolved over time.

SECTION 10.

Clarifies that victims are entitled to receive appropriate referrals and assistance in developing safety plans and seeking appropriate protections.

Background:

Currently, M.G.L. Ch.258B, §3(d) grants the right to “protection assistance.” This language has often been misleading and confusing, causing victims and witnesses to believe that routine police protection may be available. This change reflects the system’s actual ability to address safety concerns through safety planning, relevant referrals, and possible legal remedies to prevent and respond to witness intimidation or retaliation.

SECTION 11.

Amends existing language to require that all courthouses include a secure waiting area or room that is separate from the defendant, the defendant’s family, friends, attorneys, or witnesses, and separate from any district attorney’s office during court proceedings

Background:

Many victims and their family members experience intimidation, harassment, threats, and assaults by the defendant, the defendant’s family and others while waiting in the courthouse to participate in the court process. The current Victim Bill of Rights provides separate and secure waiting areas “*subject to available resources,*” resulting in this right being a largely unfulfilled promise since its inception. This amendment removes the “*subject to available resources*” language to ensure this right is implemented and made accessible to victims and their families across the state.

Recognizing the very legitimate fiscal and space constraints the courts face in implementing this provision, the amendment further establishes a Task Force of involved stakeholders to assess the availability and feasibility of space in courthouses and to create a comprehensive statewide implementation plan, timelines, reporting guidelines and subsequent progress reports. This approach will help ensure that there is a good faith effort to move the implementation of this critical right to fruition over a reasonable period of time.

SECTION 12.

Changes text of M.G.L. §3(l) to reference M.G.L. Ch.268 §14B instead of M.G.L. Ch.268 §14A

Background:

This is a technical amendment to reflect that §14B refers specifically to victims and witnesses, whereas §14A refers specifically to jurors.

SECTION 13 and 14.

Updates an existing right by addressing the specific needs of a victim or witness who is a child or incompetent or cognitively impaired. This provision is revised so that such victims or witnesses must be notified, by the prosecutor in the presence of a parent, adult family member or guardian other than the defendant, of their existing right to submit to or decline an interview by defense counsel

Background:

This amendment recognizes the vulnerabilities of victims and witnesses who are children, incompetent, and/or cognitively impaired and requires simply that they are notified of this right with a trusted adult present. Providing this notification will enable victims and witnesses to make an informed decision regarding whether to submit to or decline the interview.

SECTIONS 15 and 16.

Ensures that the opportunity for a victim to present a Victim Impact Statement occurs before a sentence or disposition is imposed. Ensures that the opportunity to present a Victim Impact Statement occurs even if there is an admission to sufficient facts, the sentence is mandatory, or there is an agreed-upon plea

Background:

The current law grants the right for victims and witnesses to be heard through oral and written impact statements at sentencing or the disposition of the case against the defendant. Victims consistently report that this opportunity is crucial to providing them with a meaningful opportunity to participate in the process and to make the impact of the crime known to the sentencing judge.

Many victims reported that their Victim Impact Statements were heard only *after* the sentence had been imposed. In other instances, judges did not permit a victim to be heard if there was an agreed-upon recommendation for a plea, or if a mandatory sentence was imposed. This amendment clarifies and strengthens the original intent of this provision.

SECTION 17.

Authorizes the court to permit, upon a showing by the prosecutor that a personal appearance by the victim will cause an unreasonable hardship on the victim, a Victim Impact Statement to be offered by audiotape or videotape before sentence or disposition is imposed

Background:

Other states include options in their victim rights laws that enable victims, who may be physically or emotionally unable to be present in court, to offer their Victim Impact Statements in these alternative methods before a sentence is imposed.

SECTION 18.

Clarifies language pertaining to post-conviction notification and certification to include victims of juveniles adjudicated delinquent

Background:

This language was drafted in collaboration with the Department of Youth Services.

SECTION 19, (w)

Permits a victim or witness who is a child or adult with a disability, as defined in M.G.L. Ch.265 (13)(k) to have, in addition to the victim witness advocate, parents, a counselor, friend or other person having a supportive relationship with the witness present in the courtroom during their testimony. This right will be afforded unless, in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial would be prejudiced by a particular individual's presence.

Background:

Basic accommodations are needed for children and individuals with disabilities. These accommodations will not only lessen the potential for re-victimization by the system, but will also help ensure the reliable participation of such individuals in the court process. Other states offer this provision in their victim rights laws. The language for this provision was also developed in consultation with the Disabled Persons Protection Commission.

SECTION 19, (x) (See also Section 4)

Requires that the prosecutor provide an orientation, as defined, to the courtroom and court procedure to any victim or witness who is a child or adult with a disability, as defined in M.G.L. Ch.265 (13)(k)

Background:

This language was developed in collaboration with the Disabled Persons Protection Commission and is further explained in the background for Section 4.

SECTION 19, (y)

Requires that a summary of victim rights be posted in accessible locations in all courthouses and police stations throughout the state. MOVA will be responsible for creating and distributing such postings, in English and other languages, as determined by the Victim & Witness Assistance Board, which will satisfy this requirement

Background:

By posting notice of the rights in courthouses and police stations, we increase access by enabling victims and witnesses to receive timely notice of their rights. This provision is one included in other states' victim rights laws and was developed in collaboration with survivors and providers working with non-English speaking populations, DPPC, and others.

SECTION 19, (z)

Requires judges, at plea colloquy, to ensure that the victim has had input and has been informed of an admission to sufficient facts, plea, disposition, or an agreed-upon sentence recommendation by inquiring as such of the prosecutor

SECTION 19, (aa)

Requires notice that victims have the right to present a written Victim Impact Statement to the Sex Offender Registry Board and to be informed, upon specific request, of the defendant's classification status and other authorized information

Background:

When the original Victim Bill of Rights was enacted, the Sex Offender Registry Board (SORB) did not yet exist. This language was drafted in collaboration with SORB.

SECTION 19, (bb)

Requires judges to read a brief statement at the outset of daily court proceedings indicating that victim rights are posted and the location of that posting in the courthouse

Background:

Involving judges in the notification of victim rights would serve not only to provide timely notification to victims, but also as a means to further institutionalize victim rights in the criminal justice system. As an example, Connecticut law requires a judge to read a short statement advising those in the courtroom of the specific rights of victims of crime. This legislation addresses this same goal by requiring that judges simply reference the rights of victims and witnesses briefly and where the postings within the courthouse can be found.

SECTION 19, (cc)

Requires a responding officer who has reasonably concluded that a violent crime has been committed to provide written notice of victim rights and appropriate resource referrals, where it is practicable to do so. Said notices will be prepared by the Massachusetts Office for Victim Assistance. Written notice can be provided to other victims at the discretion of the responding officer whenever appropriate.

Background:

Many states require law enforcement first responders to notify victims of their rights. For example, CT, AZ, and MD require law enforcement to provide victims with initial written notification of their rights. This practice has proven results. Education and training were largely successful with officers trained to respond to similar needs and rights of victims of domestic violence under M.G.L. Ch.209A. MOVA

would assume responsibility for production and distribution of written materials to satisfy this requirement and would also offer its services as a trainer to law enforcement agencies.

SECTION 20.

Deletes this antiquated Victim Witness Program reporting requirement to reflect 2003 Romney Administration small fund consolidations

Background:

When the original Victim Bill of Rights was enacted, the Victim Witness Assistance Board had oversight over the Victim Witness Assistance Fund and allocations to, and reporting requirements from, District Attorney Victim Witness Assistance Programs. In 2003, the Romney Administration consolidated the Victim and Witness Assistance Fund into the General Fund. In addition, funds to support the DAs' Victim Witness Assistance Programs are allocated directly to the respective District Attorney's Office line items. This provision will update the statute to reflect these current realities.

SECTION 21.

Technical language change regarding interagency collaborations that exist

SECTION 22.

Mandates only one victim/witness fee of \$90.00 for both felonies and misdemeanors, and maintains a \$45.00 assessment for juveniles who are adjudicated delinquent

Background:

The original bifurcation of assessments has proved to make little sense over time; both felonies and misdemeanors are extremely serious from a victimization standpoint and, ironically, it is often in cases of serious felonies, particularly where a defendant receives a sentence of incarceration, that the assessment has been waived. One fee also serves to increase this revenue source. It continues to make sense to maintain a smaller assessment for juveniles.

SECTION 23.

Eliminates the possibility of judges waiving victim/witness fee assessments

Background:

The original law allowed for the waiver of these assessments if written findings of fact were entered by the judge. This has never proved to be realistic and has resulted in a too common practice of waiving the fee without any written findings. Since then, for example, the Drunk Driving Trust Fund legislation went into effect, which mandates an assessment for convicted OUI offenders with no ability for waiver. We seek to bring this statute into line.

SECTION 24. (See also Section 20)

Deletes antiquated responsibilities for administering the Victim Witness Assistance Fund to reflect changes made during the 2003 Romney Administration fund consolidations