

NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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MASSACHUSETTS VICTIMS' RIGHTS LAWS¹

Constitution

Massachusetts does not have a victims' rights amendment to its constitution.

Statutes

**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
§ 1 – Definitions**

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.

¹ Not intended to be exhaustive.

"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.

§ 2 – Eligibility of victim for services

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.

§ 3 – Rights afforded victims, witnesses or family members

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 victims' 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.

§ 5 – Programs created and maintained by district attorney; services

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.

§ 6 – Program plan

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.

§ 7 – Interagency cooperation

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.

§ 8 – Assessments imposed by court

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.

§ 9 – Deposit of assessments

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.

§ 10 – Construction

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.

§ 11 – Duration of rights and duties

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.

§ 12 – Assurance of rights; assistance by criminal justice agencies

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.

§ 13 – Failure to provide rights, privileges, or notice to victim; no grounds for appeal of or objection to conviction

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.