

## Select Victims' Rights – Massachusetts

### USING THIS RESOURCE

This resource is intended to provide a base of knowledge regarding crime victims' rights in Massachusetts and promising practices to ensure compliance with and enforcement of those rights. To keep this *Guide* as user-friendly as possible in light of the breadth, complexity and evolving nature of law, the *Guide* does not include all laws. The *Guide* is intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. For more in-depth information about the laws governing privacy, confidentiality and privilege in Massachusetts, see the companion resource: *Law Enforcement-Based Victim Services in Massachusetts: Privacy, Privilege and Confidentiality*.

The following icons are used throughout this resource to highlight key moments for the user.



= Promising Practices: As used in this *Guide*, the “promising practices” indicator highlights procedures, methods or techniques, grounded in victim-centered and trauma-informed research and experience, that afford victims meaningful rights in the justice system.



= Take Note: As used in this *Guide*, the “take note” indicator provides context for the law cited or discussed. For example, if a law has a particularly narrow application or does not explicitly prohibit an action the “take note” indicator is used to highlight or provide clarity around the law.

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<sup>1</sup> This table of contents and index of rights provides specific page references for many of the victims' rights laws contained within this *Guide*. The referenced laws are often narrower in scope than the broader rights identified in the index and may contain components of multiple core rights. Not all of the laws contained within this *Guide* are referenced in the table of contents and index; therefore, it is recommended that this document be reviewed in full.

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<p><b>SELECT DEFINITIONS</b></p>	<p><b>Massachusetts Statutes</b></p>
<p><b>Rights of Victims and Witnesses of Crime Definitions.</b></p> <p>As used in this chapter, the following words shall have the following meanings, unless the context otherwise requires:</p> <p>“Board”, the victim and witness assistance board as established in section four.</p> <p>“Court”, a forum established under the General Laws for the adjudication of criminal and delinquency complaints, indictments and civil motor vehicle infractions.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“Restitution”, money or services which a court orders a defendant to pay or render to a victim</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 1.</p>


<p>as part of the disposition.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p> These definitions apply to Massachusetts’ victims’ rights statute, Mass. Gen. Laws Ann. ch. 258B. Many of the statutory provisions contained in Chapter 258B are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Address Confidentiality Program Definitions.</b></p> <p>For the purposes of this chapter the following words shall, unless the context requires otherwise, have the following meanings:</p> <p>“Abuse”, as provided in section 1 of chapter 209A.</p> <p>“Address”, a residential street, school or work address of an individual, as specified on the application to be a program participant under this chapter.</p>	<p>Mass. Gen. Law Ann. ch. 9A, § 1.</p>


<p>“Program participant”, a person certified by the state secretary to participate in the program.</p> <p>“Application assistant”, an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault, or stalking and who has been designated by the respective agency, and trained, accepted and registered by the state secretary to assist individuals in the completion of program participation applications.</p> <p>“Secretary”, the state secretary.</p> <p>“Rape”, as provided in sections 22, 22A, 22B, 22C and 23, 23A, 23B of chapter 265 and sections 2, 4 and 17 of chapter 272.</p> <p>“Sexual assault”, as provided in sections 13B, 13B ½, 13B ¾, 13F, 13H, 24, 24B, 26D and 50 of chapter 265 and sections 4A, 17, 29A, 29B and 35A of chapter 272.</p> <p>“Stalking”, as provided in section 43 of chapter 265.</p> <p> These definitions apply to Massachusetts’ address confidentiality program, Mass. Gen. Laws Ann. ch. 9A, §§ 1 to 7. Some of these statutory provisions are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Sexual Assault Counselor-Victim Privilege Definitions.</b></p> <p>As used in this section the following words, unless the context clearly requires otherwise, shall have the following meaning:</p> <p>“Rape crisis center”, any office, institution or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical and legal counseling.</p>	<p>Mass. Gen. Laws Ann. ch. 233, § 20J.</p>

“Sexual assault counsellor”, a person who is employed by or is a volunteer in a rape crisis center, has undergone thirty-five hours of training, who reports to and is under the direct control and supervision of a licensed social worker, nurse, psychiatrist, psychologist or psychotherapist and whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

“Victim”, a person who has suffered a sexual assault and who consults a sexual assault counsellor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such sexual assault.

“Confidential communication”, information transmitted in confidence by and between a victim of sexual assault and a sexual assault counsellor by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the sexual assault counsellor which arises out of and in the course of such counseling and assisting, including, but not limited to reports, records, working papers or memoranda.

 These definitions apply to Massachusetts’ sexual assault counselor-victim privilege, Mass. Gen. Laws Ann. ch. 233, § 20J. The text of this privilege is included below in the section “Select Crime Victims’ Rights.”

 The Massachusetts Guide to Evidence contains a summary of how and when this privilege applies. *See* Mass. G. Evid. § 506; *see also* Mass. G. Evid. § 102 (“The sections contained in this Guide summarize the law of evidence applied in proceedings in the courts of the Commonwealth of Massachusetts as set forth in the Massachusetts General Laws, common law, and rules of court, and as required by the Constitutions of the United States and Massachusetts. The provisions contained in this Guide may be cited by lawyers, parties, and judges, but are not to be construed as adopted rules of evidence or as changing the existing law of evidence.”). The Massachusetts Guide to Evidence can be accessed online at <https://www.mass.gov/guides/massachusetts-guide-to-evidence>.

**Domestic Violence Counselor-Victim Privilege Definitions.**

As used in this section the following words shall unless the context clearly requires otherwise have the following meanings:

“Abuse”, causing or attempting to cause physical harm; placing another in fear of imminent physical harm; causing another to engage in sexual relations against his will by force, threat of force, or coercion.

“Confidential communication”, information transmitted in confidence by and between a victim and a domestic violence victims’ counselor by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the domestic violence victims’ counselor which arises out of and in the course of such counseling and assisting, including, but not limited to, reports, records, working papers, or memoranda.

“Domestic violence victims’ counselor”, a person who is employed or volunteers in a domestic violence victims’ program, who has undergone a minimum of twenty-five hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a domestic violence victims’ program, and whose primary purpose is the rendering of advice, counseling or assistance to victims of abuse.

“Domestic violence victims’ program”, any refuge, shelter, office, safe home, institution or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling.


“Victim”, a person who has suffered abuse and who consults a domestic violence victims’ counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such abuse.


Mass. Gen. Laws Ann. ch. 233, § 20K.





These definitions apply to Massachusetts’ domestic violence counselor-victim privilege,






<p>Mass. Gen. Laws Ann. ch. 233, § 20K. The text of this privilege is included below in the section “Select Crime Victims’ Rights.”</p> <p> The Massachusetts Guide to Evidence contains a summary of how and when this privilege applies. <i>See</i> Mass. G. Evid. § 505; <i>see also</i> Mass. G. Evid. § 102 (“The sections contained in this Guide summarize the law of evidence applied in proceedings in the courts of the Commonwealth of Massachusetts as set forth in the Massachusetts General Laws, common law, and rules of court, and as required by the Constitutions of the United States and Massachusetts. The provisions contained in this Guide may be cited by lawyers, parties, and judges, but are not to be construed as adopted rules of evidence or as changing the existing law of evidence.”). The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p>	
<p><b>Human Trafficking Caseworker-Victim Privilege Definitions.</b></p> <p>As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:</p> <p>“Confidential communication”, information transmitted in confidence by and between a victim and a victim’s caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term confidential communication shall include all information received by a victim’s caseworker which arises out of and in the course of such counseling and assisting including, but not limited to, reports, records, working papers or memoranda.</p> <p>“Human trafficking victim” or “victim”, a person who is subjected to the conduct prohibited under sections 50 or 51 of chapter 265.</p> <p>“Human trafficking victims’ caseworker,” a person who is employed by or volunteers with a program serving human trafficking victims, who has undergone a minimum of 25 hours of</p>	<p>Mass. Gen. Laws Ann. ch. 233, § 20M(a).</p>




<p>training and who reports to and is under the direct control and supervision of a direct service supervisor of a human trafficking victim program, and whose primary purpose is the rendering of advice, counseling or assistance to human trafficking victims.</p> <p>“Human trafficking victims’ program”, any refuge, shelter, office, safe house, institution or center established for the purpose of offering assistance to human trafficking victims through crisis intervention, medical, legal or support counseling.</p> <p> These definitions apply to Massachusetts’ human trafficking caseworker-victim privilege, Mass. Gen. Laws Ann. ch. 233, § 20K. The text of this privilege is included below in the section “Select Crime Victims’ Rights.”</p>	
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<p><b>SELECT CRIME VICTIMS' RIGHTS</b></p>	<p><b>Massachusetts Statutes and Rules</b></p>
<p><b>Victims are Eligible for Services Even When Complaint or Indictment Has Not Been Issued.</b></p> <p>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.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 2.</p>
<p><b>Victims' Basic and Fundamental Rights: Purpose.</b></p> <p>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: [list of rights].</p> <p> The various victims' rights and interests contained in this section of Massachusetts' victims' rights law are included below.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3.</p>
<p><b>Victims' Basic and Fundamental Rights Must be Conspicuously Posted in Police Stations and Courthouses.</b></p> <p>There shall be conspicuously posted in all courthouses and police stations a summary of the</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3.</p>

<p>rights afforded under this section. The victim and witness assistance board, pursuant to section 4, shall devise and provide posters to satisfy this requirement to court officials and police station personnel, and, upon request and at the discretion of the office and board, to any other institution or organization to post and maintain in space accessible to the general public. The board shall develop such 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 such posters.</p>	
<p><b>Victims' Right to Have Prosecutor Inform Them About Rights and the Victims' Role in the Criminal Justice Process; Right to Periodic Updates from Prosecutor.</b></p> <p>[The right] 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[.]</p> <p> A promising practice is to provide victims with this information as soon as possible. Consideration should be given to providing written notice in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully maintain documentation of a victim's request to exercise rights.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(a).</p>
<p><b>Victims' Right to be Present at All Court Proceedings.</b></p> <p>[The right] for victims and family members, to be present at all court proceedings related to</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(b).</p>

<p>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[.]</p> <p> Massachusetts Rule of Criminal Procedure 21 governs witness sequestration.</p> <p> Victims’ right to be present at all court proceedings, including trial, should provide for the victims’ presence during the entirety of the trial. Even if the victim is to be a witness and the court concludes that the victim’s testimony would be materially affected if the victim hears other testimony, consider discussing with the prosecutor the possibility of the victim testifying first to best ensure the victim’s right to be present during the entirety of the trial.</p>	
<p><b>Victims’ Right to Notice from Prosecutor.</b></p> <p>[The right] 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[.]</p> <p> A promising practice is to have a policy and procedure in place that reminds victims of their responsibility to keep their information current and that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(c).</p>



<p><b>Victims' Right to Protection From Harm and Threats Arising From Cooperation with Law Enforcement and Prosecution Efforts.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(d).</p>
<p><b>Victims' Right to Information About Financial Assistance and Social Services.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(e).</p>
<p><b>Victims' Right to Prompt Disposition of Case.</b></p> <p>[The right] for victims and witnesses, to a prompt disposition of the case in which they are involved as a victim or a witness[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(f).</p>
<p><b>Victims' Right to Confer with the Prosecution.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(g).</p>



<p> Massachusetts' Guide to Evidence summarizes and analyzes the protocol used in Massachusetts when a victim's confidential records are sought from a third-party. <i>See</i> Mass G. Evid. § 1108 (discussing and reprinting the protocol set forth in state rules of procedure and case law). Where a victim is the subject of a records request, "he or she has the opportunity to confer with the prosecutor prior to the hearing." <i>Id.</i> at § 1108(a)(3)(iv). The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p>	
<p><b>Victims' Right to Confidentiality; Law Enforcement's Obligation to Maintain Confidentiality.</b></p> <p>[The right] 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[.]</p> <p> Government agencies are barred from disclosing the name and personal identifying information of victims of adjudicated crimes and victims of domestic violence, regardless of a victim's exercise of the right to request confidentiality. Mass. Gen. Laws Ann. ch. 66, § 10B.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully maintain documentation of a victim's request to exercise rights.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(h).</p>




 A promising practice is to have a policy and procedure in place to ensure compliance with any confidentiality orders.	
<p><b>Victims' Right to a Separate, Secure Waiting Area in the Courthouse.</b></p> <p>[The right] for victims, family members and witnesses to be provided, by the court as provided in section 17 of chapter 211B, 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 the district attorney's office; provided, however, that the court shall designate a waiting area at each courthouse; and provided further, that designation of those areas shall be made in accordance with the implementation plan developed by the task force.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(i).</p>
<p><b>Victims' Right to be Informed of Procedures to Apply for and Receive Witness Fees.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(j).</p>
<p><b>Victims' Right to Employer and Creditor Intercession Services.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(k).</p>






<p><b>Victims' Right to Testify in Response to a Subpoena without Consequences to Employment.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(l).</p>
<p><b>Victims' Right to Refuse Defense Interviews.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(m).</p>
<p><b>Victims' Right to Confer with the Probation Officer Prior to Filing of Full Presentence Report.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(n).</p>

<p><b>Victims' Right to Restitution.</b></p> <p>[The right] 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> <p> Victims should be informed that they are entitled to restitution upon the conviction of defendant for losses caused by defendant's criminal conduct. Assisting victims with the documentation of their losses—including anticipated future expenses—is recommended from the earliest moments of the case.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(o).</p>
<p><b>Victims' Right to Be Heard at Sentencing or Disposition.</b></p> <p>[The right] 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[.]</p> <p> Chapter 279, § 4B of the Massachusetts General Code outlines prosecutors' notification obligations to crime victims regarding their right to give an oral or written statement at sentencing. Mass. Gen. Laws Ann. ch. 279, § 4B. This statutory provision also provides for circumstances where the victim is unable to make an oral or written statement due to age or mental, emotional or physical capacity. <i>Id.</i></p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(p).</p>

<p> Massachusetts Abuse Prevention Guidelines note, in reference to Mass. Gen. Laws ch. 258B, § 3(p) and Mass. Gen. Laws ch. 279, § 4B, that, in cases involving domestic abuse, “[i]f the victim is not present at sentencing, the court should ask the prosecutor whether the victim has been consulted about the Commonwealth’s recommendation on sentencing, if any, and, if so, what comments the victim made. If the victim has not been consulted, sentencing may be postponed to give the victim an opportunity to be heard.” Ma. R. Abuse Prev. Guideline 8:13. This Guideline only applies to the District Court, the Boston Municipal Court, and the Superior Court. <i>Id.</i> at n.21.</p> <p> A promising practice is to be familiar with the acceptable formats for victim impact statements so that victims can be informed about all of their options. Depending on your jurisdiction’s law, victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology.</p>	
<p><b>Victims’ Right to be Informed of the Final Disposition of the Case.</b></p> <p>[The right] 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[.]</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(q).</p>
<p><b>Victims’ Right to Return of Personal Property; Law Enforcement or Prosecutor’s Responsibility to Return Property.</b></p> <p>[The right] for victims, to have any personal property that was stolen or taken for evidentiary</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(r).</p>

<p>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[.]</p> <p> A promising practice is to have a policy and procedure in place to facilitate the return of victims' property within ten days and that clearly defines what "as expeditiously as possible" means. Instructions should be ready and available to provide to victims, explaining how they may obtain their property, and including the name of a person that they may contact to check the status of the return.</p>	
<p><b>Victims' Right to Be Informed of Defendant's Parole Eligibility and Status.</b></p> <p>[The right] for victims, to be informed by the parole board of information regarding the defendant's parole eligibility and status in the criminal justice system[.]</p> <p> The parole board must notify victims at least thirty days before a parole hearing. Mass. Gen. Laws Ann. ch. 127, § 133A. The victim "may appear in person or be represented or make written recommendations to the board." <i>Id.</i></p> <p> A promising practice is to have a police and procedure in place that reminds victims of their responsibility to keep their contact information current and that enables victims to make any necessary updates easily.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(s).</p>
<p><b>Victims' Right to Be Informed in Advance of Defendant's Release, Transfer or Escape from Custody.</b></p> <p>[The right] for victims, to be informed in advance by the appropriate custodial authority</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(t).</p>


<p>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[.]</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully maintain documentation of a victim’s request to exercise rights.</p> <p> A promising practice is to have a policy and procedure in place that reminds victims of their responsibility to keep their contact information current and that enables victims to make any necessary updates easily.</p>	
<p><b>Victims’ Right to Be Informed of Right to Pursue Civil Damages.</b></p> <p>[The right] 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.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(u).</p>
<p><b>Family Member of Homicide Victim’s Right to Possess Photograph of the Victim in the Courtroom.</b></p> <p>[The right] 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 any way 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</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(v).</p>

<p>admission into evidence of a photograph that the court deems relevant and material.</p>	
<p><b>Victims' Right, as Employees of the Department of Youth Services, to the Nondisclosure of Their Personal Contact Information.</b></p> <p>Where the victim or witness is an employee of the department of youth services, no law enforcement agency, prosecutor, defense counsel or parole, probation or corrections official shall disclose or state 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.</p> <p> All victims have the right to request such confidentiality in the criminal justice system. Mass. Gen. Laws Ann. ch. 258B, § 3(h). "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." <i>Id.</i> As with Mass. Gen. Laws Ann. ch. 258, § 3(w), "[t]he 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>Id.</i></p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 3(w).</p>
<p><b>District Attorneys' Obligations Regarding the Creation and Maintenance of Programs to Support Victims' Rights and Services.</b></p> <p>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:</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 5.</p>

<p>(a) court appearance notification services, including cancellations of appearances;</p> <p>(b) informational services relative to the availability and collection of witness fees, victim compensation and restitution;</p> <p>(c) escort and other transportation services related to the investigation or prosecution of the case, if necessary;</p> <p>(d) case process notification services;</p> <p>(e) employer intercession services;</p> <p>(f) expedited return of property services;</p> <p>(g) protection services;</p> <p>(h) family support services including child and other dependent care services;</p> <p>(i) waiting facilities; and</p> <p>(j) social service referrals.</p>	
<p><b>Interagency Cooperation Required.</b></p> <p>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.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 7.</p>

<p><b>No Entitlement or Cause of Action Against Public Employee, Public Agency, the Commonwealth or Any Agency Responsible for the Enforcement of Victims' Rights.</b></p> <p>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.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 10.</p>
<p><b>Duration of Victims' Rights and Related Duties.</b></p> <p>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.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 11.</p>
<p><b>Law Enforcement's Obligations to Assure that Victims Are Afforded Rights.</b></p> <p>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.</p> <p>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.</p> <p>The board shall assist the prosecutors in providing the rights set forth in this chapter by</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 12.</p>



<p>preparing for distribution to victims written materials explaining the rights and services to which they are entitled.</p> <p>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.</p> <p>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.</p> <p> A promising practice is to have a policy and procedure in place for advising victims of significant changes to their rights and responsibilities.</p>	
<p><b>Defendant Lacks Standing to Object to Failure to Comply with Victims' Rights.</b></p> <p>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.</p>	<p>Mass. Gen. Laws Ann. ch. 258B, § 13.</p>
<p><b>Victims' Right to Notice of Sentencing; Victims' Right to Make an Oral or Written Statement at Sentencing.</b></p> <p>Before disposition in any case where a defendant has been found guilty of any felony or any crime against the person or crime where physical injury to a person results, excluding any crime for which a sentence of death may be imposed, and which involves an identified victim</p>	<p>Mass. Gen. Laws Ann. ch. 279, § 4B.</p>

whose whereabouts are known, the district attorney shall give the victim actual notice of the time and place of sentencing and of the victim's right to make a statement to the court, orally or in writing at the victim's option, as to the impact of the crime and as to a recommended sentence. Before disposition, the court shall allow any victim who elects to make such an oral statement the opportunity to do so in the presence of the defendant. Before disposition, the district attorney shall file any such written statement with the court and shall make it available to the defendant.

If the victim is unable to make an oral or written statement because of his mental, emotional, or physical incapacity or his age, his attorney or a designated family member shall be provided the notice and the opportunity to make a statement prescribed in this paragraph.



Before said disposition the office of the district attorney shall cause to be prepared a written statement as to the impact of the crime on the victim, which shall be filed with the court as part of the presentence report and made available to the defendant. The statement shall include the following: (1) the name of the victim; (2) documentation of the net financial loss, if any, suffered by the victim or a family member as a result of the crime; (3) in cases where the crime has had an impact on the victim's personal welfare or family relationship or has had a psychological impact on the victim or his family, a statement of such impact.

The court shall allow the defendant to have the opportunity to rebut the victim's oral or written statement and the district attorney's written statement if the court decides to rely upon such statements or parts thereof in imposing sentence.

No sentence shall be invalidated because of failure to comply with the provisions of this section. This section shall not be construed to create any cause of action or any right of appeal on behalf of any person.



Mass. Gen. Laws Ann. ch. 258B, § 3(p) guarantees victims the right to be heard at sentencing through an oral and written impact statement, pursuant to this statutory provision.

<p> Massachusetts Abuse Prevention Guidelines note, in reference to Mass. Gen. Laws ch. 258B, § 3(p) and Mass. Gen. Laws ch. 279, § 4B, that, in cases involving domestic abuse, “[i]f the victim is not present at sentencing, the court should ask the prosecutor whether the victim has been consulted about the Commonwealth’s recommendation on sentencing, if any, and, if so, what comments the victim made. If the victim has not been consulted, sentencing may be postponed to give the victim an opportunity to be heard.” Ma. R. Abuse Prev. Guideline 8:13. This Guideline only applies to the District Court, the Boston Municipal Court, and the Superior Court. <i>Id.</i> at n.21.</p> <p> A promising practice is to be familiar with the acceptable formats for victim impact statements so that victims can be informed about all of their options. Depending on your jurisdiction’s law, victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology.</p>	
<p><b>Guidelines for Law Enforcement’s Response to Domestic Violence and Sexual Violence Complaints.</b></p> <p>(a) The municipal police training committee shall establish, within the recruit basic training curriculum, a course for regional and municipal police training schools for the training of law enforcement officers in the commonwealth in the handling of domestic violence and sexual violence complaints and also shall develop guidelines for law enforcement response to domestic violence and sexual violence. The course of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence and sexual violence situations, availability of civil remedies and community resources and protection of the victim. The course of instruction and guidelines shall also include specific training on adolescent development, trauma and family dynamics. As appropriate, the training presenters shall include domestic violence and sexual violence experts with expertise in the delivery of direct services to victims of domestic violence and sexual violence, including utilizing the staff of</p>	<p>Mass. Gen. Laws Ann., ch. 6, § 116A.</p>

community based domestic violence, rape and sexual assault service providers and survivors of domestic violence, rape or sexual assault in the presentation of the training.

As used in this section, “law enforcement officer” shall mean any officer of a local police department, the office of environmental law enforcement, the University of Massachusetts and state police. As used in this section, “victim” shall mean any child or adult victim of such abuse, including elder victims.

(b) The course of basic training for law enforcement officers shall include at least 8 hours of instruction in the following procedures and techniques:

- (1) the procedures and responsibilities set forth in chapter 209A relating to response to, and enforcement of, court orders, including violations of orders issued pursuant to said chapter 209A;
- (2) the service of said chapter 209A complaints and orders;
- (3) verification and enforcement of temporary restraining and vacate orders when the suspect is present or the suspect has fled;
- (4) the legal duties imposed upon law enforcement officers to offer protection and assistance, including guidelines for making felony and misdemeanor arrests, and for mandatory reporting of child and elder abuse cases and cases involving individuals with disabilities;
- (5) techniques for handling domestic violence and sexual violence incidents that minimize the likelihood of injury to the law enforcement officer;
- (6) techniques for handling domestic violence and sexual violence incidents that promote the safety of the victim, including the importance of keeping the victim informed as to the whereabouts of the suspect and other such information helpful for victim safety planning;
- (7) the nature and extent of domestic violence and sexual violence, including the physiological and psychological effects of the pattern of domestic violence and sexual violence on victims, including children who witness such abuse;
- (8) the increased vulnerability of victims who are gay, lesbian, bisexual, transgender, low-income, minority or immigrant, including training on ways in which the indicators of dangerousness in these communities may be different from those in non-marginalized communities;
- (9) the dynamics of coercive controlling behavior that increases dangerousness even when such patterns of behavior are not themselves violent;

(10) the legal rights and the remedies available to victims of domestic violence and sexual violence;

(11) documentation, report writing and evidence collection, which shall include methods for assessing the degree of risk of homicide involved in situations of domestic violence, including, but not limited to, gathering information from the victim regarding the suspect's past reported and non-reported behavior and dangerousness, such as: (i) whether the suspect has ever used a weapon against the victim or threatened the victim with a weapon; (ii) whether the suspect owns a gun; (iii) whether the suspect's physical violence against the victim has increased in severity or frequency; (iv) whether the suspect has threatened to kill the victim; (v) whether the suspect has ever threatened or attempted suicide; (vi) whether the suspect has used or threatened physical violence against the victim's family, other household members or pets; (vii) whether the suspect uses illegal drugs; (viii) whether the suspect abuses alcohol; and (ix) whether there have been specific instances of strangulation or suffocation of the victim by the suspect;

(12) tenancy and custody issues, including those of married and unmarried couples;

(13) the impact of law enforcement intervention on children in domestic violence and sexual violence situations;

(14) the services and facilities available to victims of abuse, including the victim's compensation programs, emergency shelters and legal advocacy programs; and

(15) techniques for increasing cooperation and immediate data sharing among different areas of law enforcement in combating domestic violence and sexual violence.

(c) All law enforcement recruits shall receive the course of basic training for law enforcement officers, established in subsections (a) and (b), as part of their required certification process.

(d) The course of basic training for law enforcement officers shall be taught as part of the crisis intervention and conflict resolution components of the recruit academy training. Such training shall not increase in the currently required 480 hours of recruit training curriculum.

(e) The course of instruction, the learning and performance objectives, the standards for training and the guidelines shall be developed by the municipal police training committee in

<p>consultation with appropriate groups and individuals having an interest and expertise in the fields of domestic violence and sexual violence.</p> <p>(f) The municipal police training committee shall, subject to appropriation, periodically include within its in-service training curriculum a course of instruction on handling domestic violence and sexual violence complaints consistent with paragraphs (1) to (15), inclusive, of subsection (b).</p>	
<p><b>Law Enforcement’s Obligations to Victims in Domestic Abuse Cases.</b></p> <p>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:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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</p>	<p>Mass. Gen. Laws Ann. ch. 209A, § 6.</p>

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 department of criminal justice information services.



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.



Massachusetts Abuse Prevention Guidelines note that if an abuse sentence “involves immediate release of the defendant from custody, and the victim is not present, the judge must make a reasonable effort to see that the victim is notified about the release.” Ma. R. Abuse Prev. Guideline 8:13 (citing Mass. Gen. Laws ch. 209A, § 6). “The judge may direct the police, prosecutor, or victim witness advocate to make the contact. If one of these parties does not agree to do so, the judge should assign the task to a probation officer or member of the clerk’s office.” *Id.* This Guideline only applies to the District Court, the Boston Municipal Court, and the Superior Court. *Id.* at n.21.



A promising practice is to have a policy and procedure in place to notify victims at the earliest possible moment in the case that they are entitled to a copy of the full incident report at no cost upon request to the appropriate law enforcement department. The notification should include instructions explaining how victims may obtain the report.

<p><b>Law Enforcement’s Obligations Regarding Emergency Response To Prevent Further Abuse or Harassment.</b></p> <p>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:</p> <p>(1) assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;</p> <p>(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;</p> <p>(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;</p> <p>(4) provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place;</p> <p>(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</p>	<p>Mass. Gen. Laws Ann. ch. 258E, § 8.</p>
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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.



When a judge or other person authorized to take bail bails any person arrested under this chapter, reasonable efforts shall be made to inform the victim of such release prior to or at the time of the release. When any person charged with or arrested for a crime involving harassment 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 or stay-away 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 provided, at no cost, with a certified copy of the no-contact or stay-away order.




A promising practice is to have a policy and procedure in place to notify victims at the earliest possible moment in the case that they are entitled to a copy of the full incident

<p>report at no cost upon request to the appropriate law enforcement department. The notification should include instructions explaining how victims may obtain the report.</p>	
<p><b>Victims' Right to Obtain Criminal Offender Record and Other Information.</b></p> <p>A victim of crime, witness or family member of a homicide victim, all as defined by section 1 of chapter 258B, may obtain all available criminal offender record information of the person accused or convicted of said crime. Criminal justice agencies may also disclose to such persons such additional information, including, but not limited to, evaluative information, as such agencies determine is reasonably necessary for the security and well being of such persons.</p> <p> The definitions referenced in this article are from Mass. Gen. Laws Ann. ch. 258B, § 1. They are included above in the section "Select Definitions."</p>	<p>Mass. Gen. Laws Ann. ch. 6, § 178A.</p>
<p><b>Victims' Rights to Notice and to Testify in Civil Actions Alleging Erroneous Felony Conviction.</b></p> <p>Service of process for a civil action brought pursuant to this chapter shall be made upon the attorney general for the commonwealth who shall defend the commonwealth against all such claims. The attorney general shall immediately notify the district attorney for the county that prosecuted the felony that forms the basis for the claim. Any district attorney so notified by the attorney general shall immediately notify any individual meeting the definition of "victim", as set forth in section 1 or chapter 258B, of the felony conviction that forms the basis of the claim. Any such victim shall be allowed, but may not be compelled, to testify or furnish other evidence. If such victim is unavailable to testify or decides not to testify, his prior recorded testimony, given under oath at a relevant proceeding, shall only be admissible after judicial review and determination that such testimony, or portion thereof, may be helpful to the factfinder. The attorney general shall consult with the appropriate district attorney relative to the merits of such action and, following consultation, shall have</p>	<p>Mass. Gen. Laws Ann. ch. 258D, § 4.</p>

<p>discretion to determine whether to proffer as evidence any documents, records, testimony or other information brought forward to the attorney general by such district attorney in defense of the commonwealth at a time deemed appropriate by the attorney general. The attorney general may arbitrate or settle any claim for damages filed under this chapter, but any award or settlement in excess of \$80,000 shall be made only with the prior approval of the secretary of administration and finance. The acceptance by the claimant of any such award or settlement shall be in writing and shall, except when procured by fraud, be final and conclusive on the claimant, and shall constitute a complete release of any claim by the claimant against the commonwealth and a complete bar to any action by the claimant against the commonwealth by reason of the same subject matter.</p> <p> The definition of “victim” referenced in this article is from Mass. Gen. Laws Ann. ch. 258B, § 1. It is included above in the section “Select Definitions.”</p>	
<p><b>Victims’ Right to Confidentiality of Reports of Rape, Sexual Assault and Domestic Violence; Victims’ Right to Access Such Reports; Access of Others to Reports for Performance of Duties.</b></p> <p>All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality; provided, however, that all such reports shall be accessible at all reasonable times, upon written request, to: (i) the victim, the victim’s attorney, others specifically authorized by the victim to obtain such information, prosecutors and (ii) victim-witness advocates as defined in section 1 of chapter 258B, domestic violence victims’ counselors as defined in section 20K of chapter 233, sexual assault counselors as defined in section 20J of chapter 233, if such access is necessary in the performance of their duties; and provided further, that all such reports shall be accessible at all reasonable times, upon written, telephonic, facsimile or electronic mail request to law enforcement officers, district attorneys or assistant district attorneys and all persons authorized to admit persons to bail</p>	<p>Mass. Gen. Laws Ann. ch. 41, § 97D.</p>

<p>pursuant to section 57 of chapter 276. Communications between police officers and victims of said offenses and abuse may also be shared with the forgoing named persons if such access is necessary in the performance of their duties. A violation of this section shall be punished by imprisonment for not more than 1 year or by a fine of not more than \$1,000, or both such fine and imprisonment.</p> <p> A promising practice is to have a policy and procedure in place to ensure compliance with this confidentiality requirement. Officers should notify victims, as early as possible, of the confidentiality of their reports, as well as the statutory limitations on this confidentiality.</p>	
<p><b>Confidentiality of Sexual Assault Victims' Names.</b></p> <p>That portion of the records of a court or any police department of the commonwealth or any of its political subdivisions, which contains the name of the victim in an arrest, investigation or complaint for rape or assault with intent to rape under section thirteen B, 13B ½, 13B ¾, twenty-two, twenty-two A, 22B, 22C, twenty-three, 23A, 23B, twenty-four or twenty-four B, inclusive, of chapter two hundred and sixty-five, or an arrest, investigation or complaint for trafficking of persons under section 50 of said chapter 265, shall be withheld from public inspection, except with the consent of a justice of such court where the complaint or indictment is or would be prosecuted.</p> <p>Said portion of such court record or police record shall not be deemed to be a public record under the provisions of section seven of chapter four.</p> <p>Except as otherwise provided in this section, it shall be unlawful to publish, disseminate or otherwise disclose the name of any individual identified as an alleged victim of any of the offenses described in the first paragraph. A violation of this section shall be punishable by a fine of not less than two thousand five hundred dollars nor more than ten thousand dollars.</p> <p> A promising practice is to have a policy and procedure in place to ensure compliance with this confidentiality requirement. Officers should notify victims, as early as possible, of</p>	<p>Mass. Gen. Laws Ann. ch. 265, § 24C.</p>

<p>the confidentiality of their names, as well as the statutory limitations on this confidentiality.</p>	
<p><b>Government Agencies Barred from Disclosing the Name and Personal Identifying Information of Victims of Adjudicated Crimes and Victims of Domestic Violence.</b></p> <p>. . . The home address, telephone number, personal email address or place of employment or education of victims of adjudicated crimes [and] of victims of domestic violence . . . and the name, home address, telephone number, personal email address or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed. . . .</p> <p> All crime victims have a statutory right to request confidentiality in the criminal justice system. <i>See</i> Mass. Gen. Laws Ann. ch. 258B, § 3(h).</p>	<p>Mass. Gen. Law Ann. ch. 66, § 10B.</p>
<p><b>Address Confidentiality Program: Application and Certification Procedures; False Information; Penalty.</b></p> <p>There is hereby established an address confidentiality program to be administered by the secretary under the following application and certification procedures:</p> <p>(1) Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the secretary to have an address designated by the secretary serve as the person's address or the address of the minor or incapacitated person.</p> <p>(2) The secretary shall approve an application only if it is filed with the office of the secretary in the manner established by regulation, and on a form prescribed by the secretary. A completed application shall contain:</p> <p>(i) the application preparation date, the applicant's signature and the signature and</p>	<p>Mass. Gen. Law Ann. ch. 9A, § 2.</p>





registration number of the application assistant who assisted the applicant in applying to be a program participant;  
 (ii) a designation of the secretary as agent for purposes of service of process and for receipt of first-class mail;  
 (iii) the mailing address where the applicant may be contacted by the secretary, or his designee, and the telephone number or numbers where the applicant may be called by the secretary or his designee; and,  
 (iv) one or more addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household.



(3) Upon receipt of a properly completed application, the secretary shall certify the applicant as a program participant. An applicant shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date.



(4) The secretary shall forward all first class mail to the appropriate program participants.




(5) A person who knowingly provides false or incorrect information in an application or who knowingly falsely attests that disclosure of the applicant's address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made, shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than six months in a house of correction and by cancellation of program certification.




 The terms used in this statutory provision are defined in Mass. Gen. Laws Ann. ch. 9A, § 1. These definitions are included above in the section "Select Definitions."




 The regulatory provision governing the confidentiality program's application and certification processes sets forth the specific requirements for program participation. *See generally* 950 Mass. Code Reg. 130.04. Program participants must, *inter alia*: (a) be a current Massachusetts resident; (b) be a victim of domestic violence, sexual assault or stalking; and (c) provide specific evidence that they are victims of domestic violence,


<p>sexual assault or stalking. <i>Id.</i></p> <p> Additional information about the state’s address confidentiality program is contained in other statutes, regulations and court rules. <i>See, e.g.</i>, Mass. Gen. Laws Ann. ch. 9A, § 3 (cancellation of certification when victim obtains name change or new residential street address without providing the state secretary with notice of change); <i>id.</i> at § 4 (acceptance of substitute address); <i>id.</i> at § 5 (availability of participant’s address for inspection or copying); <i>id.</i> at § 6 (application and supporting materials are not public records; exemption from mandatory disclosure); <i>id.</i> at § 7 (state secretary to promulgate regulations); <i>see generally</i> 950 Mass. Code Reg. 130.00 (administration of address confidentiality program); <i>see also</i> Mass. Sup. Ct. R. 1:20 (authorizing address confidentiality).</p> <p> A promising practice is for law enforcement to have information on address confidentiality programs accessible and ready to provide to victims of domestic abuse, sexual assault and stalking.</p>	
<p><b>Address Confidentiality Program: Acceptance of Substitute Address.</b></p> <p>Upon demonstration by a program participant of his certification in the program, state and local agencies shall accept the address designated by the secretary as a program participant’s substitute address when creating a new public record unless the secretary has determined that:</p> <p>(1) The agency has a bona fide statutory or administrative requirement for the use of the participant’s actual residential address, such that it is unable to fulfill its statutory duties and obligations without such residential address; and</p> <p>(2) The participant’s actual residential address will be used only for those statutory and administrative purposes.</p>	<p>Mass. Gen. Law Ann. ch. 9A, § 4.</p>

<p> The terms used in this statutory provision are defined in Mass. Gen. Laws Ann. ch. 9A, § 1. These definitions are included above in the section “Select Definitions.”</p> <p> Additional information about the state’s address confidentiality program is contained in other statutes, regulations and court rules. <i>See, e.g.</i>, Mass. Gen. Laws Ann. ch. 9A, § 2 (application and certification procedures; false information; penalty); <i>id.</i> at § 3 (cancellation of certification when victim obtains name change or new residential street address without providing the state secretary with notice of change); <i>id.</i> at § 5 (availability of participant’s address for inspection or copying); <i>id.</i> at § 6 (application and supporting materials are not public records; exemption from mandatory disclosure); <i>id.</i> at § 7 (state secretary to promulgate regulations); <i>see generally</i> 950 Mass. Code Reg. 130.00 (administration of address confidentiality program); <i>see also</i> Mass. Sup. Ct. R. 1:20 (authorizing address confidentiality).</p>	
<p><b>Address Confidentiality Program: Availability of Participant’s Address for Inspection or Copying.</b></p> <p>The secretary shall not make a program participant’s address, other than the address designated by the secretary, available for inspection or copying, except under the following circumstances:</p> <p>(1) If requested of the secretary by the chief commanding officer of a law enforcement agency or his designee in the manner provided for by regulation.</p> <p>(2) Upon request to the secretary by a commissioner of a state agency, or his specific designee, in the manner provided for by regulation and upon a showing of a bona fide statutory or administrative requirement for the use of the participant’s actual residential address, such that it is unable to fulfill its statutory duties and obligations without such residential address.</p> <p>(3) To a person identified in a court order, upon the secretary’s receipt of that court order</p>	<p>Mass. Gen. Law Ann. ch. 9A, § 5.</p>

<p>which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor.</p> <p>(4) If certification has been canceled due to provision of false or incorrect information in an application or knowingly falsely attesting that disclosure of the applicant's address threatens the safety of the applicant or the applicants children or the minor or incapacitated person on whose behalf the application is made, as provided for in paragraph (5) of section 2.</p> <p> The terms used in this statutory provision are defined in Mass. Gen. Laws Ann. ch. 9A, § 1. These definitions are included above in the section "Select Definitions."</p> <p> Additional information about the state's address confidentiality program is contained in other statutes, regulations and court rules. <i>See, e.g.</i>, Mass. Gen. Laws Ann. ch. 9A, § 2 (application and certification procedures; false information; penalty); <i>id.</i> at § 3 (cancellation of certification when victim obtains name change or new residential street address without providing the state secretary with notice of change); <i>id.</i> at § 4 (acceptance of substitute address); <i>id.</i> at § 6 (application and supporting materials are not public records; exemption from mandatory disclosure); <i>id.</i> at § 7 (state secretary to promulgate regulations); <i>see generally</i> 950 Mass. Code Reg. 130.00 (administration of address confidentiality program); <i>see also</i> Mass. Sup. Ct. R. 1:20 (authorizing address confidentiality).</p>	
<p><b>Address Confidentiality Program: Application and Supporting Materials Are Not Public Records; Exemption from Mandatory Disclosure.</b></p> <p>The program participant's application and supporting materials shall not be a public record and shall be exempt from the mandatory disclosure requirements of clause Twenty-sixth of section 7 of chapter 4 and section 10 of chapter 66.</p> <p> The terms used in this statutory provision are defined in Mass. Gen. Laws Ann. ch. 9A, § 1. These definitions are included above in the section "Select Definitions."</p>	<p>Mass. Gen. Law Ann. ch. 9A, § 6.</p>

<p> Additional information about the state’s address confidentiality program is contained in other statutes, regulations and court rules. <i>See, e.g.</i>, Mass. Gen. Laws Ann. ch. 9A, § 2 (application and certification procedures; false information; penalty); <i>id.</i> at § 3 (cancellation of certification when victim obtains name change or new residential street address without providing the state secretary with notice of change); <i>id.</i> at § 4 (acceptance of substitute address); <i>id.</i> at § 5 (availability of participant’s address for inspection or copying); <i>id.</i> at § 7 (state secretary to promulgate regulations); <i>see generally</i> 950 Mass. Code Reg. 130.00 (administration of address confidentiality program); <i>see also</i> Mass. Sup. Ct. R. 1:20 (authorizing address confidentiality).</p>	
<p><b>Sexual Assault Counselor-Victim Privilege.</b></p> <p>A sexual assault counsellor shall not disclose such confidential communication, without the prior written consent of the victim; provided, however, that nothing in this chapter shall be construed to limit the defendant’s right of cross-examination of such counsellor in a civil or criminal proceeding if such counsellor testifies with such written consent.</p> <p>Such confidential communications shall not be subject to discovery and shall be inadmissible in any criminal or civil proceeding without the prior written consent of the victim to whom the report, record, working paper or memorandum relates.</p> <p> The terms used in this privilege are also contained in Mass. Gen. Laws Ann. ch. 233, § 20J. These definitions are included above in the section “Select Definitions.”</p> <p> A summary of how this privilege is applied in court proceedings is contained in section 506 of the Massachusetts Guide to Evidence. <i>See generally</i> Mass. G. Evid. § 102 (“The sections contained in this Guide summarize the law of evidence applied in proceedings in the courts of the Commonwealth of Massachusetts as set forth in the Massachusetts General Laws, common law, and rules of court, and as required by the Constitutions of the</p>	<p>Mass. Gen. Laws Ann. ch. 233, § 20J.</p>


<p>United States and Massachusetts. The provisions contained in this Guide may be cited by lawyers, parties, and judges, but are not to be construed as adopted rules of evidence or as changing the existing law of evidence.”). The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p> <p> As explained in the Massachusetts Guide to Evidence, “[i]n criminal actions, such confidential communications [between sexual assault counselors and victims] may be subject to discovery and may be admissible as evidence, subject to applicable law.” Mass. G. Evid. § 506(c); <i>see id.</i> at § 506, Editors’ Notes (“[S]ubsection [c] is derived from <i>Commonwealth v. Dwyer</i>, 448 Mass. 122, 145-146 (2006) (establishing protocol in criminal cases governing access to and use of material covered by privilege).”). The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p>	
<p><b>Domestic Violence Counselor-Victim Privilege.</b></p> <p>A domestic violence victims’ counselor shall not disclose such confidential communication without the prior written consent of the victim, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim to whom such confidential communication relates.</p> <p> The terms used in this privilege are also contained in Mass. Gen. Laws Ann. ch. 233, § 20K. These definitions are included above in the section “Select Definitions.”</p> <p> A summary of how this privilege is applied in court proceedings is contained in section 505 of the Massachusetts Guide to Evidence. <i>See generally</i> Mass. G. Evid. § 102 (“The sections contained in this Guide summarize the law of evidence applied in proceedings in the courts of the Commonwealth of Massachusetts as set forth in the Massachusetts General Laws, common law, and rules of court, and as required by the</p>	<p>Mass. Gen. Laws Ann. ch. 233, § 20K(b).</p>


<p>Constitutions of the United States and Massachusetts. The provisions contained in this Guide may be cited by lawyers, parties, and judges, but are not to be construed as adopted rules of evidence or as changing the existing law of evidence.”). The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p> <p> As explained in the Massachusetts Guide to Evidence, “[i]n criminal actions, such confidential communications [between domestic violence counselors and victims] may be subject to discovery and may be admissible as evidence, subject to applicable law.” The provision in Mass. Gen. Laws Ann. ch. 233, § 20K for <i>in camera</i> judicial review prior to discovery of a domestic violence victim’s privileged materials is different from the protocol established in <i>Commonwealth v. Dwyer</i>, 94 N.E.3d 379, 418–19 (Mass. 2006). See Mass. G. Evid. § 505 Editors’ Note (“The specific provision in G. L. c. 233, § 20K, for <i>in camera</i> judicial review prior to an order allowing any discovery of material covered by the domestic violence victims’ counselor privilege is different from the procedure recently established by the Supreme Judicial Court in <i>Commonwealth v. Dwyer</i>, 448 Mass. at 145-146.” (citing Mass. G. Evid., Introductory Note to Article V, Privileges and Disqualifications)). This protocol is discussed and reprinted in Massachusetts Guide to Evidence § 1108. The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p>	
<p><b>Confidentiality of the Location of Domestic Violence Victims’ Programs and Rape Crisis Centers.</b></p> <p>The location and street address of all domestic violence victims’ programs, as defined in section twenty K and rape crisis centers, as defined in section twenty J, shall be absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding.</p>	<p>Mass. Gen. Laws Ann. ch. 233, § 20L.</p>

**Human Trafficking Caseworker-Victim Privilege.**

(b) A human trafficking victims' caseworker shall not disclose any confidential communication without the prior written consent of the victim, or the victim's guardian in the case of a child, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim, or victim's guardian in the case of a child, to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is contained in the communication before allowing such discovery or the introduction of such evidence.

(c) During the initial meeting between a caseworker and victim, the caseworker shall inform the human trafficking victim and any guardian thereof of the confidentiality of communications between a caseworker and victim and the limitations thereto.

 The terms used in this privilege are contained in Mass. Gen. Laws Ann. ch. 233, § 20M(a). These definitions are included above in the section "Select Definitions."

 The provision in paragraph (b) for *in camera* judicial review prior to discovery of a human trafficking victim's privileged materials is different from the protocol established in *Commonwealth v. Dwyer*, 94 N.E.3d 379, 418–19 (Mass. 2006). This protocol is discussed and reprinted in Massachusetts Guide to Evidence § 1108. Although the Massachusetts Guide to Evidence does not contain a section that directly addresses the human trafficking caseworker privilege, the section on the domestic violence counselor-victim privilege is instructive on this point given the nearly identical language between the relevant portions of the two privileges. *See* Mass. G. Evid. § 505 Editors' Note ("The specific provision in G. L. c. 233, § 20K, for *in camera* judicial review prior to an order allowing any discovery of material covered by the domestic violence victims' counselor

Mass. Gen. Laws Ann. ch. 233, § 20M(b)–(c).



<p>privilege is different from the procedure recently established by the Supreme Judicial Court in <i>Commonwealth v. Dwyer</i>, 448 Mass. at 145-146.” (citing Mass. G. Evid., Introductory Note to Article V, Privileges and Disqualifications)). The Massachusetts Guide to Evidence can be accessed online at <a href="https://www.mass.gov/guides/massachusetts-guide-to-evidence">https://www.mass.gov/guides/massachusetts-guide-to-evidence</a>.</p>	
<p><b>Procedure to Access Victims’ Records Pretrial: Notice of Hearing; Right to Confer; Inspection of Records; Presumptively Privileged Records.</b></p> <p>(a) Filing and Service of the Motion.          (1) Whenever in a criminal case a party seeks to summons books, papers, documents, or other objects (records) from any nonparty individual or entity prior to trial, the party shall file a motion pursuant to Mass. R. Crim. P. 17(a)(2), stating the name and address of the custodian of the records (record holder) and the name, if any, of the person who is the subject of the records (third-party subject), for example, a complainant, and describing, as precisely as possible, the records sought. The motion shall be accompanied by an affidavit as required by Mass. R. Crim. P. 13(a)(2) and <i>Commonwealth v. Lampron</i>, 441 Mass. 265 (2004) (<i>Lampron</i>).          (2) The moving party shall serve the motion and affidavit on all parties.          (3) The Commonwealth shall forward copies of the motion and affidavit to the record holder and (where applicable) to the third-party subject, and notify them of the date and place of the hearing on the motion. The Commonwealth shall also inform the record holder and third-party subject that (i) the <i>Lampron</i> hearing shall proceed even if either of them is absent; (ii) the hearing shall be the third-party subject’s only opportunity to address the court; (iii) any statutory privilege applicable to the records sought shall remain in effect unless and until the third-party subject affirmatively waives any such privilege, and that failure to attend the hearing shall not constitute a waiver of any such privilege; and (iv) if the third-party subject is the victim in the case, he or she has the opportunity to confer with the prosecutor prior to the hearing.</p> <p>(b) The <i>Lampron</i> Hearing and Findings.</p>	<p>Mass. G. Evid. § 1108.</p>

(1) A party moving to summons documents pursuant to Mass. R. Crim. P. 17(a)(2) prior to trial must establish good cause by showing (i) that the documents are evidentiary and relevant; (ii) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (iii) that the party cannot properly prepare for trial without such production and inspection in advance of trial, and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (iv) that the application is made in good faith and is not intended as a general fishing expedition.

(2) At the *Lampron* hearing, the judge shall hear from all parties, the record holder, and the third-party subject, if present. The record holder and third-party subject shall be heard on whether the records sought are relevant or statutorily privileged.

(3) Following the *Lampron* hearing, and in the absence of having reviewed the records, the judge shall make oral or written findings with respect to the records sought from each record holder indicating (i) that the party seeking the records has or has not satisfied the requirements of Mass. R. Crim. P. 17(a)(2), and (ii) that the records sought are or are not presumptively privileged. A judge's determination that any records sought are presumptively privileged shall not be appealable as an interlocutory matter and shall carry no weight in any subsequent challenge that a record is in fact not privileged.

(c) Summons and Notice to Record Holder.

(1) If all Mass. R. Crim. P. 17(a)(2) requirements have been met and there has been a finding that the records sought are not presumptively privileged or the third-party subject has waived all applicable statutory privileges, the judge shall order a summons to issue directing the record holder to produce all responsive records to the applicable clerk of the court on the return date stated in the summons. The clerk shall maintain the records in a location separate from the court file, and the records shall be made available for inspection by counsel, as provided in Subsection (d)(1) below. The records shall not be made available for public inspection unless and until any record is filed in connection with a proceeding in the case or introduced in evidence at the trial.

(2) Where a judge has determined that some or all of the requested records are presumptively privileged, the summons shall so inform the record holder and shall order the record holder to produce such records to the clerk of the court in a sealed envelope or box marked "PRIVILEGED," with the name of the record holder, the case name and docket number, and the return date specified on the summons. The clerk shall maintain the records in a location

separate from the court file, clearly designated “presumptively privileged records,” and the records shall not be available for inspection except by counsel as provided in Subsection (d)(2). The records shall not be made available for public inspection unless and until any record is introduced in evidence at trial.

(d) Inspection of Records.

(1) Nonpresumptively Privileged Records. The clerk of court shall permit counsel who obtained the summons to inspect and copy all records that are not presumptively privileged. When the defendant is the moving party, the Commonwealth’s ability to inspect or copy the records is within a judge’s discretion.

(2) Presumptively Privileged Records.

(A) The clerk of court shall permit only defense counsel who obtained the summons to inspect the records, and only on counsel’s signing and filing a protective order in a form approved by the court. The protective order shall provide that any violation of its terms and conditions shall be reported to the Board of Bar Overseers by anyone aware of such violation.

(B) [The Supreme Judicial Court has not reached the issue of whether the procedures governing defense counsel’s review of presumptively privileged records also apply to the Commonwealth.]

(e) Challenge to Privilege Designation.

(1) If, on inspection of the records, defense counsel believes that any record or portion thereof is in fact not privileged, then in lieu of or in addition to a motion to disclose or introduce at trial (see Subsections (f) and (g) below), counsel may file a motion to release specified records or portions thereof from the terms of the protective order.

(2) Defense counsel shall provide notice of the motion to all parties. Prior to the hearing, counsel for the Commonwealth shall be permitted to review such records in order to respond to the motion, subject to signing and filing a protective order as provided in Subsection (d)(2) above.

(3) If a judge determines that any record or portion thereof is not privileged, the record shall be released from the terms of the protective order and may be inspected and copied as provided in Subsection (d)(1) above.

(f) Disclosure of Presumptively Privileged Records.

(1) If defense counsel who obtained the summons believes that the copying or disclosure of some or all of any presumptively privileged record to other persons (for example, the defendant, an investigator, an expert) is necessary to prepare the case for trial, counsel shall file a motion to modify the protective order to permit copying or disclosure of particular records to specifically named individuals. The motion shall be accompanied by an affidavit explaining with specificity the reason why copying or disclosure is necessary; the motion and the affidavit shall not disclose the content of any presumptively privileged record. Counsel shall provide notice of the motion to all parties.

(2) Following a hearing, and in camera inspection of the records by the judge where necessary, a judge may allow the motion only on making oral or written findings that the copying or disclosure is necessary for the defendant to prepare adequately for trial. The judge shall consider alternatives to full disclosure, including agreed to stipulations or disclosure of redacted portions of the records. Before disclosure is made to any person specifically authorized by the judge, that person shall sign a copy of the court order authorizing disclosure. This court order shall clearly state that a violation of its terms shall be punishable as criminal contempt.

(3) All copies of any documents covered by a protective order shall be returned to the court on resolution of the case, *i.e.*, on a change of plea or at the conclusion of any direct appeal following a trial or dismissal of the case.

(g) Use of Presumptively Privileged Records at Trial.

(1) A defendant seeking to introduce at trial some or all of any presumptively privileged record shall file a motion in limine at or before any final pretrial conference.

(2) Counsel for the Commonwealth shall be permitted to review enough of the presumptively privileged records to be able to respond adequately to the motion in limine, subject to signing and filing a protective order as provided in Subsection (d)(2) above.

(3) The judge may allow the motion only on making oral or written findings that introduction at trial of a presumptively privileged record is necessary for the moving defendant to obtain a fair trial. Before permitting the introduction in evidence of such records, the judge shall consider alternatives to introduction, including an agreed to stipulation or introduction of redacted portions of the records.

(h) Preservation of Records for Appeal. Records produced in response to a Mass. R. Crim. P. 17(a)(2) summons shall be retained by the clerk of court until the conclusion of any direct appeal following a trial or dismissal of a case.



This section of the Massachusetts Guide to Evidence summarizes existing law governing access to and use of statutorily privileged third-party records. *See generally* Mass. G. Evid. § 102 (“The sections contained in this Guide summarize the law of evidence applied in proceedings in the courts of the Commonwealth of Massachusetts as set forth in the Massachusetts General Laws, common law, and rules of court, and as required by the Constitutions of the United States and Massachusetts. The provisions contained in this Guide may be cited by lawyers, parties, and judges, but are not to be construed as adopted rules of evidence or as changing the existing law of evidence.”). The Massachusetts Guide to Evidence can be accessed online at <https://www.mass.gov/guides/massachusetts-guide-to-evidence>.



As noted in this section of the Guide, crime victims have the right to confer with the prosecution before the hearing on a request to access their confidential records from a third party. Mass. G. Evid. § 1108(a)(3)(iv). This right stems from Mass. Gen. Laws Ann. ch. 258B, § 3(g).

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