

**SENATE . . . . . No. 1559**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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An Act to protect and enhance the rights of child and adult victims and witnesses of crime..

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

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

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

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

11           Section 4. Said section 1 of said chapter 258B, as so appearing, is hereby further  
12 amended by inserting, after the word “victim” in line 20, the following words:-“Orientation”, a  
13 familiarization with the courtroom setting, court personnel, and rules of the court, to the extent

14 practicable under the circumstances as required within this chapter; this requirement may be  
15 satisfied through the use of diagrams, photographs, or other reasonable methods;

16 Section 5. Said section 1 of chapter 258B, as so appearing, is hereby further amended by  
17 striking, in line 25, the word “which”, and inserting, in place thereof, the following word:- that;

18 Section 6. Said section 1 of said chapter 258B, as so appearing, is hereby further  
19 amended, by deleting, after the word “incompetent” in line 31, the words: “or deceased” and  
20 inserting, in place thereof, the words:- “, the family members of such person if the person is  
21 deceased even if no arrest, indictment, or complaint has been issued”;

22 Section 7. Said section 1 of chapter 258B, as so appearing, is hereby further amended by  
23 striking, in line 40, the words “is expected to”, and inserting, in place thereof, the following  
24 word:- may;

25 Section 8. Said section 1 of said chapter 258B, as so appearing, is hereby further  
26 amended by inserting, after the word “prosecution”, in line 41, the following words:- or family  
27 member or guardian if such person is a minor, incompetent or deceased;

28 Section 9. Subsection (b) of section 3 of said chapter 258B, as so appearing, is hereby  
29 amended by inserting, in line 16, after the word “all”, the following words:- adult and juvenile;

30 Section 10. Subsection (d) of said section 3 of said chapter 258B, as so appearing, is  
31 hereby amended by striking, in lines 31-34, the words “protection from local law enforcement  
32 agencies from harm and threats of harm arising out of their cooperation with law enforcement  
33 and prosecution efforts” and inserting, in place thereof, the following words:- assistance in

34 developing safety plans and appropriate referrals to address harm, threats of harm, or fears  
35 arising out of their cooperation with law enforcement and prosecution efforts;

36 Section 11. Said section 3 of said chapter 258B, as so appearing, is hereby amended by  
37 striking out subsection (i) in its entirety and replacing it with the following new subsection:-

38 (i) for victims, family members, and witnesses, to be provided, by the court as  
39 outlined in MGL 211B (17), with a secure waiting area or room which is separate from the  
40 waiting area of the defendant or the defendant's family, friends, attorneys or witnesses, and  
41 separate from any district attorney's office, during court proceedings. The court shall designate a  
42 waiting area at each courthouse and develop any reasonable safeguards to minimize contact  
43 between victims and the defendant, or the defendant's family, friends, attorneys or witnesses

44 there shall be a task force established to conduct an assessment and implementation plan  
45 regarding the designation or creation of separate and secure waiting areas (SSWA) for victims  
46 and witnesses of crime in the commonwealth's district and superior courthouses, as required  
47 under M.G.L. chapter 258B(3)(i) and M.G.L. chapter 211B(17)

48 The task force shall be chaired by both the executive director of the massachusetts office  
49 for victim assistance and the chief justice of the administrative office of the trial court or his  
50 designee; the task force shall include, but not be limited to: the chair of the victim and witness  
51 assistance board or her designee; one (1) victim/public member of the victim and witness  
52 assistance board; one (1) community-based victim services provider; the commissioner of the  
53 department of capital asset management or his designee; the executive director of the  
54 massachusetts district attorneys association or her designee; and two (2) victim witness

55 assistance program directors from district attorneys' offices. Additional members may be  
56 appointed by the governor in consultation with the co-chairs of the task force

57         Within 180 days of the passage of this act, the task force shall file a report, inclusive of a  
58 SSWA implementation plan, with the chairs of the house and the senate ways and means  
59 committees, the chairs of the house and senate judiciary committee, and the clerks of the house  
60 and the senate. If deemed necessary by the co-chairs, a 90 day grace period may be granted for  
61 submission of the report. Once the submission plan has been filed, the task force shall submit an  
62 implementation progress report to said recipients every 365 days. For those district and superior  
63 courthouses undergoing new construction or substantial renovation, the SSWA as defined by the  
64 task force shall be included in the final plans and completed construction;

65         Section 12. Subsection (l) of said section 3 of said chapter 258B, as so appearing, is  
66 hereby amended by striking the word "A" in line 86 and inserting, in place thereof, the following  
67 word:- "B";

68         Section 13. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is  
69 hereby amended by inserting, in line 88, after the word "informed", the following words:- by the  
70 prosecutor;

71         Section 14. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is  
72 hereby amended by inserting, at the end thereof, the following:- provided further, defense  
73 counsel may not seek to interview a victim or witness under the age of majority, incompetent, or  
74 cognitively impaired, until the victim or witness has been informed, in the presence of a  
75 parent/guardian or accompanying adult who is not the defendant, of the right to submit to or  
76 decline the interview;

77 Section 15. Subsection (p) of said section 3 of said chapter 258B, as so appearing, is  
78 hereby amended by striking, in line 111, the word “at” and inserting, in place thereof, the  
79 following word:- before;

80 Section 16. Said subsection (p) of said section 3 of said chapter 258B, as so appearing, is  
81 hereby further amended by inserting after the word “defendant”, in lines 111-112, the following  
82 words:- , even if there is admission to sufficient facts, the sentence is mandatory, or there is an  
83 agreed upon plea;

84 Section 17. Said subsection (p) of said chapter 3 of said chapter 258B, as so appearing, is  
85 hereby further amended by inserting, at the end thereof, the following:- provided further, upon  
86 showing by the prosecutor that a personal appearance by the victim will cause an unreasonable  
87 hardship on the victim, the court shall permit the victim to exercise the right to be heard by  
88 submitting a statement through audio tape or videotape to be heard or viewed before sentence or  
89 disposition is imposed;

90 Section 18. Said section 3 of said chapter 258B, as so appearing, is hereby amended by  
91 striking out subsection (t) in its entirety and replacing it with the following new subsection:-

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

99 Certified individuals shall provide the criminal history systems board, or the department of youth  
100 services in the case of a juvenile defendant, with current contact information;

101 Section 19. Said section 3 of said chapter 258B, as so appearing, is hereby further  
102 amended by inserting, at the end thereof, the following new subsections:-

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

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

113 (y) for victims and witnesses, to have a summary of the rights afforded under this  
114 section conspicuously posted in all courthouses and police stations. The victim and witness  
115 assistance board, pursuant to section 4 of this chapter, shall devise and provide posters to satisfy  
116 this requirement to court officials and police station personnel, and, upon request and at the  
117 discretion of the office and board, to any other institution or organization to post and maintain in  
118 space accessible to the general public. The board shall develop the posters in a variety of  
119 languages as determined by the Massachusetts office for victim assistance. Upon request, the

120 board will respond, to the extent possible, to any requests for additional language translations of  
121 the posters;

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

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

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

139 (cc) for victims of the commission or attempted commission of violent acts, and  
140 others as deemed appropriate by the responding officer, to be notified by said officer who has  
141 determined that a crime has been committed, of their rights under this act. Unless the officer

142 reasonably concludes that it is not practicable or safe to do so under the circumstances, he or she  
143 shall present a card prepared by the Massachusetts office for victim assistance in consultation  
144 with the victim and witness assistance board which includes, but is not limited to, a summary of  
145 their rights under this chapter, relevant referrals to victim services and, pursuant to MGL 258C,  
146 referrals for victim compensation;

147           Section 20. Section 6 of said chapter 258B, as so appearing, is hereby amended by  
148 striking out Section 6 in its entirety;

149           Section 21. Section 7 of said chapter 258B, as so appearing, is hereby amended by  
150 striking out after the words attorney and agency, in line 1, local;

151           Section 22. Section 8 of said chapter 258B, as so appearing, is hereby amended by  
152 striking out, in lines 4 and 5, the words, “. The court shall impose an assessment of \$50” and  
153 inserting, in place thereof, the following word:- , and;

154           Section 23. Said section 8 of said chapter 258B, as so appearing, is hereby further  
155 amended by striking out, in lines 21-31, the words “In the discretion of the court or the clerk  
156 magistrate in the case of a civil motor vehicle infraction that has not been heard by or brought  
157 before a justice, a civil motor vehicle assessment imposed pursuant to this section which would  
158 cause the person against whom the assessment is imposed severe financial hardship, may be  
159 reduced or waived. An assessment other than for a civil motor vehicle infraction imposed  
160 pursuant to this section may be reduced or waived only upon a written finding of fact that such  
161 payment would cause the person against whom the assessment is imposed severe financial  
162 hardship. Such a finding shall be made independently of a finding of indigency for purposes of



163 appointing counsel” and inserting, in place thereof, the following sentence:- Any assessment  
164 made pursuant to this section shall not be subject to waiver by any court for any reason;

165 Section 24. Section 9 of said chapter 258B, as so appearing, is hereby amended by  
166 striking out Section 9 in its entirety;