

SENATE No. 2566

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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. Section 1 of chapter 258B of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by inserting after the word “delinquency”, in line 10, the
3 following words:- or conviction as a youthful offender.

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

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

12 SECTION 4. Said section 1 of said chapter 258B, as so appearing, is hereby further
13 amended by inserting after the definition of “Family member” the following definition:-

14 “Orientation”, a familiarization with the courtroom setting, court personnel and rules of
15 court to the extent practicable under the circumstances as required in this chapter; provided,
16 however, that this requirement may be satisfied through the use of diagrams, photographs or
17 other reasonable methods.

18 SECTION 5. Said section 1 of said chapter 258B, as so appearing, is hereby further
19 amended by striking out , in line 25, the word “which”, and inserting, in place thereof the
20 following word:- that.

21 SECTION 6. Said section 1 of said chapter 258B, as so appearing, is hereby further
22 amended by striking out the definition of “Victim” and inserting in place thereof the following
23 definition:-

24 “Victim”, a natural person who suffers direct or threatened physical, emotional or
25 financial harm as the result of the commission or attempted commission of a crime or
26 delinquency offense as demonstrated by the issuance of a complaint or indictment, the family
27 members of such person if the person is a minor or incompetent, the family members of such
28 person if the person is deceased even if no arrest, indictment or complaint has been issued and,
29 for relevant provisions of this chapter, a person who is the subject of a case reported to a
30 prosecutor under section 18 of chapter 19A, sections 5 and 9 of chapter 19C and section 51B of
31 chapter 119 and the family members of any such person if the person is a minor, incompetent or
32 deceased.

33 SECTION 7. Said section 1 of said chapter 258B, as so appearing, is hereby further
34 amended by striking out, in lines 40 and 41, the words “is expected to be summoned to testify for
35 the prosecution” and inserting in place thereof the following words:- may be summoned to testify

36 for the prosecution or that person’s family member or guardian if the person is a minor,
37 incompetent or deceased.

38 SECTION 8. Section 3 of said chapter 258B is hereby amended by inserting after the
39 word “all”, in line 16, as so appearing, the following words:- adult and juvenile.

40 SECTION 9. Said section 3 of said chapter 258Bis hereby further amended by striking
41 out, in lines 31 and 32,as so appearing, the words “protection from the local law enforcement
42 agencies from harm and threats of harm” and inserting in place thereof the following words:-
43 assistance in developing safety plans and appropriate referrals to address harm, threats of harm
44 or fears.

45 SECTION 10. Said section 3 of said chapter 258Bis hereby further amended by striking
46 out, in line 86 and 87, as so appearing, the words “fourteen A of chapter two hundred and sixty-
47 eight” and inserting in place thereof the following words:- 14B of chapter 268.

48 SECTION 11. Said section 3 of said chapter 258B is hereby further amended by inserting
49 after the word “interview”, in line 92, as so appearing, the following words:- ; provided,
50 however, that defense counsel may not seek to interview a victim or witness under the age of
51 majority, incompetent or cognitively impaired until the victim or witness has been informed, in
52 the presence of a parent, guardian or accompanying adult who is not the defendant, of the right to
53 submit to or decline the interview.

54 SECTION 12. Said section 3 of said chapter 258B is hereby further amended by striking
55 out, in line 111, as so appearing, the word “at” and inserting in place thereof the following
56 word:- before.

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

61 SECTION 14. Said section 3 of said chapter 258B is hereby further amended by inserting
62 after the word “crime”, in line 117, as so appearing, the following words:- ; provided, however,
63 that upon a showing by the prosecutor that a personal appearance by the victim shall cause an
64 unreasonable hardship on the victim, the court shall permit the victim to exercise the right to be
65 heard by submitting a statement through audio tape or videotape to be heard or viewed before the
66 sentence or disposition is imposed.

67 SECTION 15. Said section 3 of said chapter 258Bis hereby further amended by striking
68 out clause (t), as so appearing, and inserting in place thereof the following clause:-

69 (t) for victims and witnesses to be informed by the prosecutor about their notification
70 rights and the certification process required to access the criminal offender record information
71 files under sections 172C and 178A of chapter 6; provided, however, that individuals certified by
72 the criminal history systems board or, in the case of a juvenile defendant by the department of
73 youth services, shall be informed by the appropriate custodial authority if the offender escapes
74 from custody and shall receive advance notification when the offender receives a temporary,
75 provisional or final release from custody or is transferred from a secure facility to a less-secure
76 facility; and provided further, that certified individuals shall provide the criminal history systems
77 board or the department of youth services in the case of a juvenile defendant, with current
78 contact information;

79 SECTION 16. The first paragraph of said section 3 of said chapter 258B, as so appearing,
80 is hereby further amended by adding the following 5 clauses:-

81 (w) for victims and witnesses who are minor children or adults with disabilities to have
82 parents, a counselor, friend or other person having a supportive relationship with the victim or
83 witness, in addition to the victim witness advocate, remain in the courtroom during the child's or
84 adult's testimony unless, in written findings made and entered, the court finds that the
85 defendant's constitutional right to a fair trial shall be prejudiced;

86 (x) for victims and witnesses who are minor children or adults with disabilities to be
87 provided by prosecutors with an orientation to the courtroom setting, court personnel and rules of
88 the court, to the extent practicable under the circumstances;

89 (y) for victims to be notified by the prosecutor that they have the right, under
90 clause (k) of subsection 1 of section 178K of chapter 6 to provide the sex offender registry board
91 with a written impact statement for the board's consideration in determining a sex offender's
92 classification; provided, however, that upon the specific request of the victim to the sex offender
93 registry board, the sex offender registry board shall inform the victim of the sex offender's: (i)
94 registration and classification status; and (ii) the home, work and institution of higher education
95 addresses of the sex offender regardless of the classification level and registration status of the
96 offender;

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

100 (aa) for the victims to be notified by the responding officer who has determined that a
101 crime has been committed of the commission or attempted commission of violent acts and others
102 as deemed appropriate by the responding officer of their rights under this chapter; provided,
103 however, that unless the officer reasonably concludes that it is not practicable or safe to do so
104 under the circumstances, the officer shall present a card prepared by the Massachusetts office for
105 victim assistance in consultation with the victim and witness assistance board which shall
106 include, but not be limited to, a summary of their rights under this chapter, relevant referrals to
107 victim services and, under chapter 258C, referrals for victim compensation.

108 SECTION 17. Said section 3 of said chapter 258B, as so appearing, is hereby further
109 amended by adding the following paragraph:-

110 The prosecution shall confer with the victim before the acceptance of a plea of guilty or
111 admission to sufficient facts; provided, however, that before the judge accepts a plea of guilty, an
112 admission to sufficient facts, a disposition or an agreed-upon sentence recommendation, the
113 judge shall ask the prosecutor if the victim has been consulted regarding plea discussions,
114 whether or not the victim agrees or disagrees with the plea discussions and agreement, if the
115 victim was notified of the court date and is present and if the victim would like to assert their
116 right to offer a victim impact statement;

117 SECTION 18. Section 6 of said chapter 258B is hereby repealed.

118 SECTION 19. Said chapter 258B is hereby further amended by striking out section 7, as
119 appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

120 Section 7. The district attorney, law enforcement agencies, social service agencies and
121 court shall cooperate to afford victims and witnesses of crimes the rights and services described
122 in this chapter.

123 SECTION 20. The first paragraph of section 8 of said chapter 258B, as so appearing, is
124 hereby amended by striking out the fifth, sixth and seventh sentences and inserting in place
125 thereof the following sentence:- An assessment made under this section shall not be waived.

126 SECTION 21. Section 9 of said chapter 258B is hereby repealed.