

SENATE, NO. 2510

[Senate, June 23, 2010 - New draft of Senate, No. 1559 reported from the committee on the Judiciary.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND 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.** 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
5 by striking, in lines 12-14, the words “or found delinquent or against whom a finding of
6 sufficient facts for conviction or finding of delinquency is made” and inserting, in place thereof,
7 the 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
17 by striking, in line 25, the word “which”, and inserting, in place thereof, the following word:-
18 that;

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

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

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

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

31 **SECTION 10.** Subsection (d) of said section 3 of said chapter 258B, as so appearing, is
32 hereby amended by striking, in lines 31-34, the words “protection from local law enforcement
33 agencies from harm and threats of harm arising out of their cooperation with law enforcement
34 and prosecution efforts” and inserting, in place thereof, the following words:- assistance in
35 developing safety plans and appropriate referrals to address harm, threats of harm, or fears
36 arising out of their cooperation with law enforcement and prosecution efforts;

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

39 (i) for victims, family members, and witnesses, to be provided, by the court as outlined in
40 section 17 of chapter 211B, with a secure waiting area or room which is separate from the
41 waiting area of the defendant or the defendant’s family, friends, attorneys or witnesses, and
42 separate from any district attorney’s office. The court shall designate a waiting area at each
43 courthouse. Designation of said areas shall be made in accordance with the implementation plan
44 developed by the interagency task force as described in section 12 of chapter XXX of the acts of
45 2010.

46 **SECTION 12.** There shall be a task force established to conduct a court-by-court
47 assessment and develop an implementation plan regarding the designation or creation of separate
48 and secure waiting areas (SSWA) for victims and witnesses of crime in the commonwealth’s
49 district and superior courthouses, as required under subsection (i) of section 3 of chapter 258B
50 and section 17 of chapter 211B.

51 The task force shall be chaired by both the executive director of the Massachusetts office
52 for victim assistance and the chief justice for administration and management or their designees;
53 the task force shall include, but not be limited to: the chair of the victim and witness assistance
54 board or her designee; one (1) victim/public member of the victim and witness assistance board
55 chosen by the chair; one (1) community-based victim services provider chosen by the executive
56 director of the Massachusetts office for victim assistance; the commissioner of the department of
57 capital asset management or his designee; one (1) district attorney victim witness program

58 director to be chosen by the president of the Massachusetts district attorneys association; one (1)
59 representative from the court clerks chosen by the chief justice for administration and
60 management; one (1) representative of chief probation officers to be chosen by the commissioner
61 of probation; one (1) representative of the administrative office of the trial court fiscal
62 department chosen by the chief justice for administration and management; and one (1)
63 representative of the court facilities department chosen by the chief justice for administration and
64 management. Additional members may be appointed by the governor in consultation with the co-
65 chairs of the task force.

66 Within 180 days of the passage of this act, the task force shall convene and develop a
67 plan for conducting the court-by-court assessment and a timeline to guide the completion of the
68 implementation plan. The task force shall complete the implementation plan and file such plan
69 with the chairs of the house and senate ways and means committees, the chairs of the house and
70 senate judiciary committee, and the clerks of the house and the senate no later than 545 days
71 after the effective date of this act. The implementation plan shall include, but not be limited to:
72 (1) a definition of a separate and secure waiting area under subsection (i) of section 3 of chapter
73 258B; (2) a list of courthouses that do and do not have separate and secure waiting areas that
74 meet the definition; (3) the feasibility of allocating existing space for use as a separate and secure
75 waiting area in those courts that do not have one; (4) a comprehensive fact-based analysis of the
76 fiscal and operational impacts, if any, of such allocations; (5) a recommendation on who would
77 staff the SSWAs; (6) the fiscal impact of such staffing recommendations, if any; (7) a timeline
78 for designating or creating said spaces in those courthouses in which allocation of such space is
79 deemed feasible; (8) a declaration of the sequence in which separate and secure waiting areas
80 shall be designated or created in courthouses in which the task force has determined that such
81 allocation is feasible; and (9) a recommendation for interim accommodations, where allocation
82 of such space is not deemed immediately feasible and such interim accommodations are
83 practicable. For those district and superior courthouses undergoing new construction or
84 “substantial renovation,” as defined by the task force, the separate and secure waiting areas shall
85 be included in the final plans and completed construction. The task force chairs shall file an
86 implementation progress report every 365 days and a final plan to the chairs of the house and
87 senate ways and means committees, the chairs of the house and senate judiciary committee, and
88 the clerks of the house and the senate.

89 **SECTION 13.** Said section 17 of chapter 211B, as so appearing, is hereby amended by
90 striking out the words, “The chief justice for administration and management shall, subject to
91 appropriation and to available resources, provide a separate and secure waiting area or room in
92 each division or court within the superior, probate and family, juvenile, Boston municipal and
93 district court departments of the trial court for victims, family members and witnesses during
94 court proceedings, as provided by clause (i) of section three of chapter two hundred and fifty-
95 eight B. Said chief justice for administration and management shall, subject to appropriation and
96 to available resources, include provisions for a safe and secure waiting area or room for all new
97 construction and renovations of court facilities in said departments” and replacing it with the
98 following —

99 “The chief justice for administration and management shall provide a separate and secure
100 waiting area or room in each courthouse that houses a division of the superior, probate and
101 family, juvenile, Boston municipal and district court departments of the trial court for victims,
102 family members, and witnesses, which is separate from the waiting area of the defendant or the
103 defendant’s family, friends, attorneys or witnesses, and separate from any district attorney’s
104 office. Designation of said areas shall be made in accordance with the implementation plan
105 developed by the interagency task force as described in section 12 of chapter XXX of the acts of
106 2010. Said chief justice for administration and management shall include provisions for a safe
107 and secure waiting area or room for all new construction and renovations of court facilities in
108 said departments”

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

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

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

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

128 **SECTION 18.** Said section 3 of said chapter 258B, as so appearing, is hereby amended
129 by striking out subsection (t) in its entirety and replacing it with the following new subsection:-
130 (t) for victims and witnesses, to be informed by the prosecutor about notification rights
131 and the certification process required to access the criminal offender record information files
132 pursuant to sections 172(c) and 178A of chapter 6. Individuals certified by the criminal history
133 systems board, or, in the case of a juvenile defendant, certified by the department of youth
134 services, will be informed by the appropriate custodial authority if the offender escapes from
135 custody, receive advance notification when the offender receives a temporary, provisional or
136 final release from custody or is transferred from a secure facility to a less-secure facility.
137 Certified individuals shall provide the criminal history systems board, or the department of youth
138 services in the case of a juvenile defendant, with current contact information;

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

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

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

151 (y) for victims and witnesses, to have a summary of the rights afforded under this section
152 conspicuously posted in all courthouses and police stations. The victim and witness assistance
153 board, pursuant to section 4 of this chapter, shall devise and provide posters to satisfy this
154 requirement to court officials and police station personnel, and, upon request and at the
155 discretion of the office and board, to any other institution or organization to post and maintain in
156 space accessible to the general public. The board shall develop the posters in a variety of
157 languages as determined by the Massachusetts office for victim assistance. Upon request, the
158 board will respond, to the extent possible, to any requests for additional language translations of
159 the posters;

160 (z) for victims, to confer with the prosecution prior to the acceptance of a plea of guilty or
161 admission to sufficient facts. Before the judge accepts a plea of guilty, an admission to sufficient
162 facts, a disposition, or an agreed-upon sentence recommendation, the judge shall ask the
163 prosecutor if the victim has been consulted regarding plea discussions, whether or not the victim

164 agrees or disagrees with the plea discussions and agreement, if the victim was notified of the
165 court date and is present, and if the victim would like to assert their right to offer a victim impact
166 statement;

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

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

177 (cc) for victims of the commission or attempted commission of violent acts, and others as
178 deemed appropriate by the responding officer, to be notified by said officer who has determined
179 that a crime has been committed, of their rights under this act. Unless the officer reasonably
180 concludes that it is not practicable or safe to do so under the circumstances, he or she shall
181 present a card prepared by the Massachusetts office for victim assistance in consultation with the
182 victim and witness assistance board which includes, but is not limited to, a summary of their
183 rights under this chapter, relevant referrals to victim services and, pursuant to MGL 258C,
184 referrals for victim compensation;

185 **SECTION 20.** Section 6 of said chapter 258B, as so appearing, is hereby amended by
186 striking out Section 6 in its entirety;

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

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

192 **SECTION 23.** Said section 8 of said chapter 258B, as so appearing, is hereby further
193 amended by striking out, in lines 21-31, the words “In the discretion of the court or the clerk
194 magistrate in the case of a civil motor vehicle infraction that has not been heard by or brought
195 before a justice, a civil motor vehicle assessment imposed pursuant to this section which would
196 cause the person against whom the assessment is imposed severe financial hardship, may be
197 reduced or waived. An assessment other than for a civil motor vehicle infraction imposed
198 pursuant to this section may be reduced or waived only upon a written finding of fact that such
199 payment would cause the person against whom the assessment is imposed severe financial
200 hardship. Such a finding shall be made independently of a finding of indigency for purposes of
201 appointing counsel” and inserting, in place thereof, the following sentence:- Any assessment
202 made pursuant to this section shall not be subject to waiver by any court for any reason;

203 **SECTION 24.** Section 9 of said chapter 258B, as so appearing, is hereby amended by
204 striking out Section 9 in its entirety;