

# VICTIM/WITNESS ASSISTANCE

POLICY & PROCEDURE NO.  <b>4.43</b>	ISSUE DATE: _05/09/16
	EFFECTIVE DATE: _05/09/16
MASSACHUSETTS POLICE ACCREDITATION STANDARDS  REFERENCED: <b>55.1.1; 55.1.3,                  55.2.1; 55.2.2, 55.2.3; 55.2.4;                  55.2.5</b>	REVISION DATE:

## I. GENERAL CONSIDERATIONS AND GUIDELINES

Throughout history, police departments have traditionally been primarily concerned with apprehending and prosecuting offenders. They often overlook the victim or witness and are unaware of his/her needs and concerns until [s]he is needed to testify at the trial. This lack of concern on the part of the police department can (and probably will) lead to only half-hearted cooperation on the part of the victim or witness when called upon to follow through in the system.

This policy aims to ensure that the victim or witness receives the same quality of care we often give the offender. By increasing awareness of this situation, our goal is to foster a better relationship between the police and the victims and witnesses of crime. This will ensure their full and complete cooperation in matters being investigated and prosecuted. It will also ensure the victim and witness that their concerns will be heard, and that the confidentiality of records and files, in so far as Massachusetts Law permits, will be upheld.

## II. POLICY

It is the policy of the department that:

- A. All employees of the police department treat any victim or witness of a crime with fairness, compassion and dignity; and,
- B. The department shall work in partnership with the District Attorney's Office and its Victim/Witness Assistance Program.

### **III. PROCEDURE**

#### ***A. Summary of Victim Bill of Rights [55.1.1]***

1. **GENERALLY:** In 1984, the Massachusetts Victim Bill of Rights, Massachusetts General Law, Chapter 258B, was enacted into law, creating, at that time, the most comprehensive rights for victims of crime in any state in the United States. The bill applies to victims of crimes or, if a victim is deceased, to family members. Portions of the bill apply to witnesses of crimes as well. Except where noted, the rights are provided by the prosecutor.
2. **VICTIM RIGHTS:** Victims of crime have the right to information and assistance regarding:
  - a. Their rights in the criminal process: <sup>1</sup>
    - 1) How a case progresses through the criminal justice system;
    - 2) What the victim's role is in the process;
    - 3) What the system may expect from the victim; and
    - 4) Why the system requires this.
  - b. Level of protection available and ability to receive protection from police, from harm and threats of harm, for cooperating with police and prosecution.<sup>2</sup>
  - c. Right to request confidentiality in the criminal justice system from the court.<sup>3</sup> [55.1.3(b)]
  - d. Being present at all court proceedings.<sup>4</sup>
  - e. Allowing one family member of a victim of homicide to possess a photo of the victim in the courtroom, with certain restrictions.<sup>5</sup>
  - f. A secure waiting room, to the extent available, apart from the defendant, defendant's friends, family, witnesses and counsel.<sup>6</sup>
  - g. Timely notification of changes in the schedule of court proceedings.<sup>7</sup>
  - h. Right to confer with the prosecutor before:<sup>8</sup>
    - 1) The commencement of the trial;
    - 2) Any hearing on motions by the defense to obtain psychiatric or other confidential records;
    - 3) Any act by the Commonwealth terminating the prosecution; and
    - 4) Submission of proposed sentence recommendations to the court.

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- i. Upon request, periodic appraisal of significant developments in the case.<sup>9</sup>
  - j. Prompt disposition of the case.<sup>10</sup>
  - k. Conferring with the probation officer prior to the filing of a full pre-sentence report.<sup>11</sup>
  - l. Victim Impact Statement: the opportunity to inform the court, orally or in writing, of the impact of the crime.<sup>12</sup>
  - m. Being informed of the final disposition of the case, conditions of probation and contact information for the probation officer, if any, assigned to the defendant.<sup>13</sup>
  - n. Being informed regarding the defendant's parole eligibility and status in the criminal justice system.<sup>14</sup>
  - o. Notification rights and certification process to obtain, from the custodial facility, prior notice of release from custody, movement to a less secure facility, or prompt notification of escape.<sup>15</sup>
  - p. Victim of Violent Crime Compensation.<sup>16</sup>
  - q. Financial Assistance and other social services, and how to apply for them.<sup>17</sup>
  - r. Restitution, documenting the loss and a payment schedule from the Probation Department.<sup>18</sup>
  - s. Right to pursue a civil action.<sup>19</sup>
  - t. Freedom from employer sanctions for being absent from work to testify after receiving a subpoena.<sup>20</sup>
  - u. Witness fees.<sup>21</sup>
  - v. Employer and creditor intercession services.<sup>22</sup>
  - w. Prompt return of property from the court, prosecutor or police, within ten days, if not contraband, or evidence for prosecution.<sup>23</sup>
3. WITNESS RIGHTS: Witnesses of crimes have the following rights pursuant to General Law Chapter 258B:
- a. Timely notification of changes in the schedule of court proceedings.<sup>24</sup>
  - b. Prompt disposition of the case.<sup>25</sup>
  - c. To be free from employer sanctions for being absent from work to testify after receiving a subpoena.<sup>26</sup>
  - d. Information and assistance regarding:

- 1) Level of protection available and ability to receive protection from police, from harm and threats of harm, for cooperating with police and prosecution.<sup>27</sup>
- 2) Right to request confidentiality in the criminal justice system from the court.<sup>28</sup> [55.1.3(b)]
- e. A secure waiting room, to the extent available, apart from the defendant, defendant's friends, family, witnesses and counsel.<sup>29</sup>
- f. Witness fees.<sup>30</sup>
- g. Employer and creditor intercession services.<sup>31</sup>
- h. Submitting or declining an interview with defense counsel, except when responding to lawful process.<sup>32</sup>

### ***B. Police Department Role [55.1.3(a)]***

1. POLICE LIAISON: It shall be the responsibility of the department case detective to:
  - a. Act as liaison between the police department and the victims and witnesses of crime, as well as the District Attorney's Office, regarding victim and witness rights;
  - b. Administer and coordinate the role of the police department in victim and witness assistance services;
  - c. Ensure that records and files of victims and witnesses are held in confidential files, subject to release only under the requirements of Massachusetts Public Records Law – Chapter 4, Section 7(26); and [55.1.3(b)]
  - d. Advise the prosecutor of the need to have a victim/witness advocate from the Victim/Witness Service Bureau of the Court/County District Attorney's office assigned to the case and to maintain contact with the court advocate during the course of events which follow.
2. SERVICES PROVIDED [55.2.1(A)]
  - a. 24 Hour Access to Victim/Witness Services
    - 1) A victim or witness of a crime may call the police department dispatcher at any time for twenty-four hour information/referral purposes. [55.2.1]
    - 2) When the dispatcher is contacted by a victim or witness for assistance or services beyond the scope of those the police provide, [s]he shall refer to the victim/witness resource directory located in the dispatch area to provide the name and telephone number of agencies within the county or regional service area that can provide the needed service. [55.2.1]

- 3) EVAPorate is a domestic task force partnered with Malden and other neighboring communities working to end domestic violence. It may be utilized through the Portal to Hope Office at the Everett Police Headquarters.

For incidents involving domestic violence, see the department policy on ***Domestic Violence***.

- b. Status of Suspect/Arrestee.: Upon the request of a victim or witness, or when, in the opinion of the case officer or supervisor, a victim or witness should be notified, officers who arrest a suspect for the commission of the crime shall notify the victim or witnesses on the following: [55.2.5]
  - 1) An arrest being made;
  - 2) The charges being brought against the arrestee; and
  - 3) The arrestee's status (out on bail or incarcerated).
  - 4) Should the arrestee's status change, the involved officers should keep the victim or witness informed of such a change.
- c. Preliminary Investigations
  - 1) Patrol officers and detectives conducting preliminary investigations shall be prepared to render assistance, including the following:
    - a) Provide information to victim/witness regarding services available through the police department, such as medical attention and referrals for counseling. [55.2.3(a)]
    - b) Advise that additional resources are available through the District Attorney's Office, such as victim advocacy and financial assistance. [55.2.3(a)]
    - c) Advise the victim/witness on procedures to follow should the suspect, companions of suspect, or family of suspect, intimidate the victim/witness. [55.2.3(b)]
    - d) Inform victim/witness of the case number assigned to the complaint and the steps that will follow the preliminary investigation. [55.2.3(c)]
    - e) Provide victim/witness with a business card or telephone number to call should the victim or witness have additional information to report or wish to check on the status of the investigation. [55.2.3(d)]
  - 2) Officers assigned to domestic violence cases shall give the victim a copy of the notice of domestic violence rights form. The rights shall be provided in the victim's native language whenever possible.<sup>33</sup>

- d. Follow-Up Investigations: Investigators or patrol officers assigned to conduct the follow-up investigation shall be prepared to offer the victim or witness assistance during the course of their involvement with the case.
  - 1) If the impact of the crime has been unusually severe and has resulted in providing victim or witness assistance beyond the standard, the investigator shall, within twenty-four hours of initial contact, check with the victim or witness to determine if his/her needs are being met. A second contact shall be made within ten days. [55.2.4(a)]
  - 2) The investigator shall explain to the victim or witness the procedures involved in the prosecution of the case and his/her role in that process. [55.2.4(b)]
  - 3) If feasible, investigators shall schedule all line ups, interviews or other required appearances of the victim or witness at such person's convenience and, if necessary, provide transportation to and from the site of such appearance. [55.2.4(c)]
  - 4) Whenever possible, the investigator shall arrange for the prompt return of the property of the victim or witness as permitted by law or rule of evidence. Property may be held if it is: [55.2.4(d)]
    - a) Contraband;
    - b) Evidence needed for prosecution; or
    - c) Property with ownership in dispute.
    - d) For further information, see the department policy on ***Evidence and Property Control***.

### 3. THREATS AND INTIMIDATION [55.2.2]

#### a. Evaluating Threats

- 1) In the event that a police officer becomes aware that a victim of or a witness to a crime has been threatened or intimidated by the suspect or suspect's friends, family, attorney or other associates:
  - a) The case officer shall be notified.
  - b) The officer shall consider the nature of the threat and potential for its being acted upon.
  - c) If, in the opinion of the investigating officer or supervisor, the threat appears credible, it should be further investigated.
  - d) Appropriate action should be taken.
- 2) If, in the opinion of the investigating officer or supervisor, there exists an express specific, credible reason for fearing

intimidation or further intimidation, appropriate action should be taken.

- b. Statutes Addressing Threats and Intimidation of Victims or Witnesses:
  - 1) M.G.L. c. 268, §13B; Intimidation of Witnesses. A felony.
  - 2) M.G.L. c. 209A, § 7; Abuse Prevention Orders: A misdemeanor with statutory right to arrest.
  - 3) M.G.L. c. 275, §2; Threat to Commit a Crime: Misdemeanor, no statutory right of arrest.
  - 4) M.G.L. c. 265.43; Stalking: Felony.
- c. Police Response
  - 1) Police response should be appropriate given the circumstances known at the time and may include:
    - a) Immediate arrest for appropriate charge;
    - b) Application for an arrest warrant;
    - c) Summons (may request an expedited hearing date);
    - d) Show cause hearing; and
    - e) Conferring with District Attorney's Office regarding appropriate action, including:
      - i. Arrest or prosecution of appropriate person(s);
      - ii. Security for victim or witness; and
      - iii. Relocation of victim or witness.
  - 2) In cases of an immediate, credible threat, a supervisor may confer with DA'S Office regarding emergency measures to provide protection for the victim or witness.
  - 3) In the event that a victim or witness is located outside of the department's jurisdiction, the agency having jurisdiction where the victim or witness is located shall be notified.
4. SERVICES PROVIDED, OTHER THAN POLICE DEPARTMENT [55.2.1(B)]: Additional victim and witness services are available from sources other the department.
  - 1) District Attorney's Office (see Victim Bill Of Rights in this policy).
  - 2) Portal to Hope -- in-house advocate.

## 5. TRAINING OF DEPARTMENT PERSONNEL

- a. Upon hiring, as part of initial in-house training, all employees shall receive a copy of and training regarding the Victim Bill of Rights. Employees shall be trained in regard to department and other programs and procedures designed to offer assistance to victims and witnesses of a crime, as specified in this policy.
- b. Training documentation shall be filed with the training unit and entered into Crime-track.

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<sup>1</sup> M.G.L. c. 258C, § 3(a).

<sup>2</sup> M.G.L. c. 258C, §3(d).

<sup>3</sup> M.G.L. c. 258C, §3(h).

<sup>4</sup>M.G.L. c. 258C, §3(b).

<sup>5</sup> M.G.L. c. 258C, §3(v).

<sup>6</sup> M.G.L. c. 258C, §3(i).

<sup>7</sup> M.G.L. c. 258C, §3(c).

<sup>8</sup> M.G.L. c. 258C, §3(g).

<sup>9</sup> M.G.L. c. 258C, §3(a).

<sup>10</sup> M.G.L. c. 258C, §3(f).

<sup>11</sup> M.G.L. c. 258C, §3(n).

<sup>12</sup> M.G.L. c. 258C, § 3(p).

<sup>13</sup> M.G.L. c. 258C, §3(q).

<sup>14</sup> M.G.L. c. 258C, §3(s).

<sup>15</sup> M.G.L. c. 258C, §3(t).

<sup>16</sup> Chapter 258C.

<sup>17</sup> M.G.L. c. 258C, §3(e).

<sup>18</sup> M.G.L. c. 258C, §3(o).

<sup>19</sup>M.G.L. c. 258C, §3(u).

<sup>20</sup> M.G.L. c. 258C, §3(l).

<sup>21</sup> M.G.L. c. 258C, §3(j).

<sup>22</sup> M.G.L. c. 258C, §3(k).

<sup>23</sup>M.G.L. c. 258C, § 3(r).

<sup>24</sup> M.G.L. c. 258C, §3(c).

<sup>25</sup> M.G.L. c. 258C, §3(f).

<sup>26</sup> M.G.L. c. 258C, §3(l).

<sup>27</sup> M.G.L. c. 258C, §3(d).

<sup>28</sup> M.G.L. c. 258C, §3(h).



<sup>29</sup> M.G.L. c. 258C, §3(i).

<sup>30</sup> M.G.L. c. 258C, §3(j).

<sup>31</sup> M.G.L. c. 258C, §3(k).

<sup>32</sup> M.G.L. c. 258C, §3(m).

<sup>33</sup> M.G.L. c. 209A, §6.