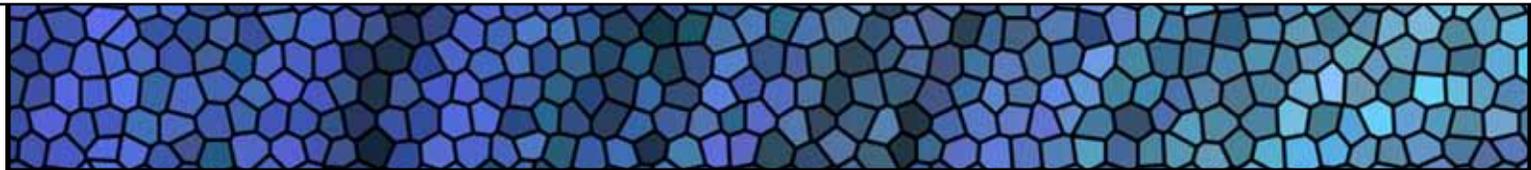


In the Aftermath of Crime:

A Guide to Victim Rights and Services in Massachusetts



Introduction

The Massachusetts Office for Victim Assistance (MOVA) and the Victim Witness Assistance Board are pleased to present this comprehensive update to *In the Aftermath of Crime: a Guide to Victim Rights and Services in Massachusetts*. First published by this office in 1997, this Guide has been utilized and relied upon by victims and survivors and Victim Advocates across the Commonwealth for over a decade. Within these pages, we have endeavored to update the first publication with new and enhanced information to assist and support those impacted by crime and those committed to serving them. We dedicate this publication to all victims and survivors of crime whose experiences educate us and whose courage inspires us.

The primary goal of the Guide is to provide basic information to victims and survivors, and those who support and assist them, as they embark on their journeys toward healing

and justice. The content focuses on the emotional and psychological impact of crime, the complexities of navigating the criminal justice system and the rights to which victims, witnesses and families are entitled under Massachusetts law. We hope this Guide will answer many of your questions and help you consider next steps and the range of resources and services available to you. We encourage you to reach out directly to those Advocates who can assist you with more detailed information specific to your case and needs.

For victim service providers, many of whom graciously gave their time to ensure that the information contained here is accurate and clear, our goal is to offer you a readily available, comprehensive and user-friendly resource as you assist victims and survivors.

MOVA and the Victim Witness Assistance Board dedicated resources to this update as part of its mandate under the Massachusetts Victim Bill of Rights to ensure that victims, witnesses and families have necessary

information related to the court process and to their rights. As you will read, the Victim Bill of Rights sets forth the procedural rights of victims during the prosecution of a case and the post-conviction process and outlines the services to be provided to them by the Commonwealth, including the Victim Witness Assistance Programs in each District Attorney's Office and in a number of other criminal justice agencies. The Guide is intended to provide an updated, comprehensive overview of victims' rights and services within the Commonwealth. Since new legislation, court decisions, and services change over time, this new Guide's format will enable us to make updates more easily and swiftly.

Finally, there are a few practical points about the Guide that are important to highlight. Most of the information contained in the Guide, with the exception of Chapters Six and Seven, are directed to victims and survivors. Chapters Six and Seven are specific to victim service providers, but they may be useful for victims and survivors as well. You will note

that some legal language used in this Guide may not be familiar. We have bolded those terms upon first usage and then provided a definition within that paragraph. Those terms will also be included in the glossary. Overall, it is important to note that "prosecutor" and "Assistant District Attorney" are used interchangeably and that the term "Advocate" is used to mean any victim service provider working with a victim of crime whether in a criminal justice-based or community-based capacity.

We recognize that this Guide cannot possibly cover all of the unique issues or "exceptions to the rule" that may arise in the course of a criminal case. It is important to always discuss your specific questions with the prosecutor and Victim Witness Advocate handling your case to ensure that the information you have is accurate and relevant to you and your experience. We simply hope that this Guide may be a useful and empowering tool in your journey toward healing and justice and in participating fully and meaningfully in the court process.

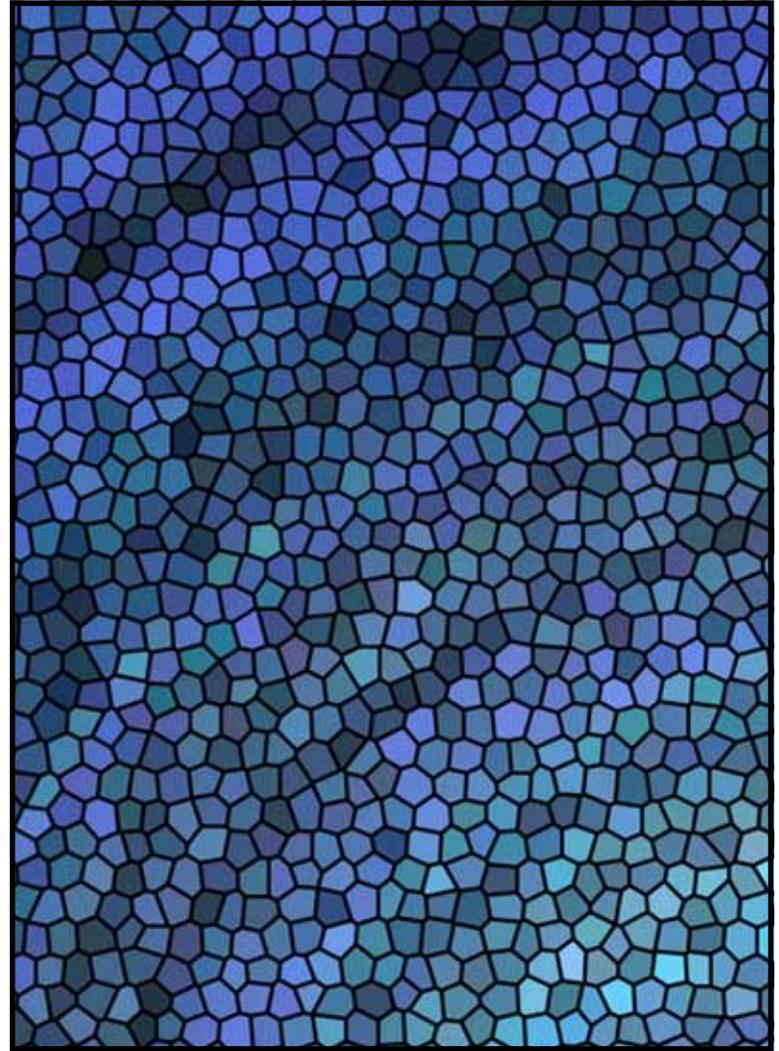


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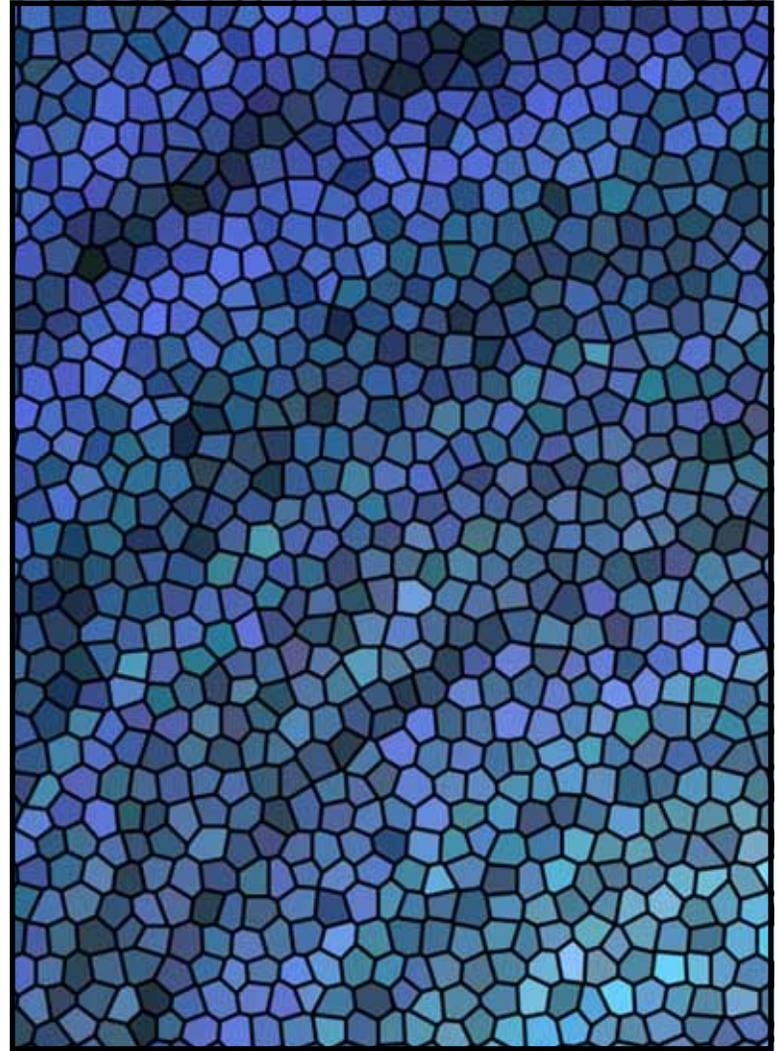
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Trauma and
the Healing Process

Trauma and the Healing Process

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For many people, life is simply not the same after a crime. You might find that the trauma of the crime itself and other people's reactions to the crime and the criminal justice process affect you in ways you could not have imagined.

The world can suddenly seem an unsafe and unpredictable place. Your relationships with other people and your view of yourself may change in unexpected, confusing ways.

To help you understand and cope with the emotional impact of a crime, this chapter explains some of the common responses to being a victim of a crime, gives an overview of counseling services available to victims and provides information on victim advocacy and related resources. Although people are often powerless in preventing their own

victimization, many victims find remarkable strength in determining the best course for themselves in crime's aftermath.

Brief Overview of Trauma

The emotional response to victimization can be overwhelming. Knowing that someone deliberately hurt you or a loved one can be devastating and almost impossible to comprehend. Grief, shame, self-blame, anger, guilt, helplessness — these are just a few examples of the feelings victims may have after a crime. Crime can continue to impact victims' lives for months or even years, and the different circumstances of victimization can influence how you experience the trauma.

There are no simple answers to a victim's most immediate questions in the aftermath of crime — there is no "right or wrong" response to crime.

Even with strong family support and the commitment of the criminal justice system, many people experience a difficult period of adjustment after a crime. Emotional and psychological reactions are different for

every victim. There are no simple answers to a victim's most immediate questions in the aftermath of crime — there is no “right or wrong” response to crime.

Post-Traumatic Stress

“Post-traumatic stress” describes the reactions that many people have after a crime. “Post-traumatic stress *disorder*” is a diagnosis that therapists and counselors use to talk about these effects if they continue over a long period of time.

Many victims of crime and survivors of homicide experience some post-traumatic stress. Rage, sadness, fear, apathy, regret, guilt, disbelief, depression, confusion and desire for revenge are just some feelings victims commonly experience and that are associated with post-traumatic stress. You may experience some, none or all of these feelings, which can vary tremendously in degree and intensity. These feelings are normal responses to abnormal events, and

Feelings of guilt or self-blame may surface as you attempt to make sense of the experience and regain a sense of control in your life.

they may come and go unpredictably. In some circumstances, however, victimization can lead to emotional, biological and behavioral changes that result in post-traumatic stress disorder (PTSD).

Post-traumatic stress disorder is a set of feelings and behaviors experienced by some survivors of trauma. Symptoms vary from person to person, and sometimes return even after a period of feeling “better.”

Reactions to trauma might include:

- a re-experiencing of the trauma through lifelike flashbacks
- intrusive thoughts or dreams
- feelings of numbness and/or withdrawal from others
- an overwhelming feeling of powerlessness
- sleep disturbances

- impaired memory and concentration
- changes in eating habits
- hyper-alertness or an exaggerated response when startled
- avoidance of events related to or discussion of the crime
- a sense of guilt about surviving or constant fear that something bad will happen

Every person has a unique response to victimization for reasons including:

- the circumstances of the crime
- the victim's personal resources
- the age or developmental stage of the victim
- the relationship of the victim to the offender
- the severity, frequency and duration of the crime
- the amount of support from the victim's family and friends

As a crime victim, you might feel isolated from your family and friends and believe that no one understands what you are going through emotionally. You might have a strong need to talk about the crime and find that friends and family don't know what to say to comfort you — even those who love you and wish they could show their support.

“Why me?”

Many crime victims question what they or others could have done differently to have prevented the crime. Searching for reasons about why the crime happened, and why it happened to you or a loved one, is a natural reaction. Under these circumstances, you may blame others or even yourself for the crime. Even though you are not to blame for your victimization, feelings of guilt or self-blame may surface as you attempt to make sense of the experience and regain a sense of control in your life.

Mental Health Counseling

Because the emotional response to crime can sometimes interfere with a victim's day-to-day life and relationships, you might seek the help of a counselor or therapist to talk through and learn more about your feelings and regain a sense of control in your life. Many victims find that they cope better when they can talk about their thoughts, feelings and fears with someone who is knowledgeable about trauma and who has no personal connection to you or the crime.

Sometimes the unpredictable and sudden nature of crime can cause a victim to mistrust other people. Counseling can be an effective way to help a victim reestablish trusting relationships with other people.

For many victims, the support of a counselor has been critical to "picking up the pieces," restoring a sense of balance and control in their lives and looking ahead to a positive

future.

Different types of mental health counseling

If you choose to seek counseling, your needs may be different from others who have experienced crime – and your needs are likely to change over time. Counseling can happen in different ways:

Your Advocate can provide referrals to counseling programs specific to your needs or to therapists specializing in trauma-related issues.

Individual counseling allows you to talk one-on-one with a therapist. You can discuss what happened, how it is affecting your life and ways to cope in private, at your own pace.

Couples or family counseling might help you address, with the people you love, the ways that the crime has affected how you relate to each other. For example, couples counseling might help an adult survivor of childhood sexual abuse and her partner work through their reactions and responses and better relate to one another. After a homicide, the

victim's family members might find that family counseling helps them to be together without their lost loved one and understand the unique ways each family member grieves the loss in his or her own way.

Group counseling, or support groups, can help you feel less alone after a crime. Being with others who have been victimized is important when a victim's friends and family do not understand what a victim goes through, or feel that a victim should "just get over it" or "forget about" the crime. Participating in group counseling or support groups with other survivors may help you to connect with other people dealing with similar issues and to share ways of handling them.

All of these types of counseling might be covered by medical insurance or through the Victim of Violent Crime Compensation & Assistance Division ("Victim of Violent Crime Compensation") of the Attorney General's Office (described in greater detail in Chapter Five) or might be available to you

free through Victims of Crime Act (VOCA) providers — providers specially trained in victimization who offer counseling. **Please see later in the chapter for more details about paying for counseling.**

Finding a Therapist

You may be uncertain whether counseling could really help, or you may feel uncomfortable or embarrassed by the idea of talking to a therapist or counselor. These are common reactions to the idea of going to therapy. It is helpful to discuss them openly with any therapist you may be considering. You can ask for an initial consultation to help you determine whether there is a good fit between you and a particular therapist. Although some therapists will charge for this consultation, many therapists do not, especially those who provide free services.

If you decide to start counseling to help you deal with the emotional and psychological impact of the crime, there are several things you should be aware of before deciding on

a therapist. Choosing a qualified therapist is one of the most important decisions a crime victim can make in the recovery process. Your Advocate can provide referrals to counseling programs specific to your needs or to therapists specializing in trauma-related issues.

If you prefer to find a therapist on your own, you have every right to “interview” therapists. The backgrounds of therapists can vary widely; some are psychiatrists or psychologists, others are social workers or mental health counselors. You should ask all therapists you may be considering what kind of training and education they have had, whether they are licensed, and whether they have had prior experience working with people confronting the same issues you face. A good therapist will be happy to answer these questions for you.

You should also ask a potential therapist what kind of therapy he or she practices. There are many kinds of therapy and treatments, working styles and areas of specialization.

Although many therapists are qualified to provide effective counseling in general, there are some therapists who do not have sufficient training or clinical experience with the unique needs of crime victims. For instance, while many therapists may be trained to help a client work through issues of grief and loss, few have experience dealing with the additional complexities of grief in homicide cases. It is important that the therapist you see has had prior experience dealing with trauma.

The therapist you choose should be someone *you* feel comfortable working with.

Paying for Mental Health Counseling

In selecting a mental health professional, you might first consider the services available free of charge. In exploring other options, you should always ask potential therapists about their fee structures. Most therapists accept insurance, many others are willing to provide their services on a sliding fee basis or to

defer billing if you request it, and others will accept payment from Victim of Violent Crime Compensation if your claim for compensation is accepted.

Victims of Crime Act (VOCA) Programs Providing Services for Victims of Crime

The federal **Victims of Crime Act** helps support free services to crime victims across the country with funds that come from fines against convicted offenders. In Massachusetts, VOCA-funded programs provide specialized counseling and advocacy services to victims and survivors of various types of crime, such as sexual assault, domestic violence, child abuse and homicide. Funded services include crisis intervention, short and long term counseling, legal advocacy, support groups and community crisis response.

The Massachusetts Office for Victim Assistance (MOVA) distributes VOCA funding (received from the U.S. Department of Justice,

Office for Victims of Crime) through grants to community-based non-profit and public agencies.

All of these programs exist to help victims in the aftermath of crime and safeguard their rights in the criminal justice system.

Private Insurance

If you have private insurance or belong to a health maintenance organization (HMO), you should ask how mental health counseling is covered. Typically, it is covered in one of two ways – one, a total allowable sum or payment limitation or two, a set number of allowable sessions. You will also want to find out whether the therapist accepts your insurance or is a designated provider covered by your HMO. Your health insurance company may guide you in finding a therapist who accepts your particular coverage and specializes in crime-related trauma. If your HMO does not have a therapist who specializes in crime-related trauma, you should ask whether the policy of your HMO will allow you to choose

out-of-network providers. Many HMO mental health guidelines require the victim to pay a higher co-payment in such situations. These co-payments can be reimbursed by the state if you qualify for benefits through the **Victim of Violent Crime Compensation program of the Attorney General's Office.**

Victim of Violent Crime Compensation Program

Some victims qualify for funds for counseling for amounts not covered by insurance. These funds are provided through the Victim of Violent Crime Compensation and Assistance Division of the Massachusetts Attorney General's Office. Victim of Violent Crime Compensation is a "fund of last resort" and can be used for mental health counseling expenses that are not covered by insurance and are incurred *as a direct result of the crime*. No compensation is awarded for pre-existing mental health conditions unless they have been exacerbated by the crime.

Your Advocate can help you determine whether you may be eligible for Victim of Violent Crime Compensation to pay for counseling.

Your provider must be licensed to practice (or supervised by a clinician who is licensed) by one of the state boards for medical doctors, psychologists, social workers or allied mental health professionals, and the fees charged must be within the range of normal and customary rates for the services provided. Finally, although there are no dollar or time limitations on the amount of counseling for which a victim can be compensated (beyond the \$25,000 maximum total per victim), the Victim of Violent Crime Compensation Division requires your mental health provider to submit an updated treatment plan as a condition of further payment when treatment extends beyond six months or 30 sessions. **See Chapter Five for more details on the Victim of Violent Crime Compensation & Assistance Division program and whether you are eligible for this assistance.**

Drunk Driving Trust Fund (DDTF) Programs Serving Victims of Operating Under the Influence Crashes

In Massachusetts, the **DDTF** is made up of fines from offenders convicted of operating under the influence. MOVA distributes these funds through grants to community agencies which provide counseling, advocacy and support services across the Commonwealth.

Victim Activism and the Victim Rights Movement

Some crime victims feel a strong desire to become activists — to prevent crimes from happening to others, or to change the way society and the criminal justice system respond to crime and crime victims' needs. In fact, much of the progress made in responding to crime and serving crime victims over the past several decades has been due to the passionate work of crime victims themselves.

There are many ways a victim or survivor can become involved as an activist, and there are reasons that doing so might be helpful to you at different points in your life. This is a very individual decision and it is important to consider whether becoming an activist will help your own healing process or not. You can always revisit this decision; it is completely up to you if, when, and how you work as an activist in your community.

Ways to Become Involved

In the aftermath of crime, many victims become involved in the Victim Rights Movement to strengthen the rights of victims in the criminal justice system, to push for new laws to hold offenders accountable and punish offenders, and to promote violence prevention efforts in their communities. The Victim Rights Movement in Massachusetts has an active network of grassroots activist organizations, including chapters of national organizations like Parents of Murdered Children and Mothers Against Drunk Driving and others described in the resource section.

The lobbying efforts of some of these groups were critical over the years to the passage of legislative reforms, including the Victim Rights Law among others. These laws have produced major changes in the way the criminal justice system in Massachusetts responds to issues affecting crime victims on a daily basis.

Many victims find that getting involved with grassroots organizations helps them to connect with other victims of crime who share similar experiences while doing something positive for their community. The changes that can be achieved through legislative and community activism may result in preventing someone else from becoming a victim. Activism has helped many victims regain a sense of control and meaning in their lives. Sometimes victims who become activists can ignore their own needs in their desire to help others. If you want to become involved as a victim rights activist, it is important that you make your own emotional needs the first priority before trying to help others.

Victim Rights Week Commemoration

Since 1981, the last week in April has been designated **“National Victim Rights Week.”** During this week, victims of crimes and their families, Advocates, victim service providers and others in the criminal justice system organize a variety of activities to commemorate those who have been killed, harmed and affected by crimes and to generate public awareness on the impact of violence.

As part of Victim Rights Week in Massachusetts, MOVA sponsors an annual **Victim Rights Event** at the State House in Boston. The day-long program is free and open to the public. Historically, about 600 individuals participate, many of whom have been victims of crime or lost a family member as a result of violence. The event provides a unique opportunity for victim service providers and victims to gather together to learn from one another and to support victims’ rights. If you are interested in attending the event, please contact [MOVA](#).

Violence Transformed: More recently, the Violence Transformed art exhibits have been planned in concert with MOVA's Victim Rights Event and Victim Rights Week. Violence Transformed is a unique collaboration among artists, victim activists, museum professionals, educators and community service providers who share a belief in the healing power of art. From shrines to peace gardens, murals to performance art, quilts to video installations, **Violence Transformed** commemorates victims and promotes the healing process.

For Friends and Family of Victims: When Someone You Love has been Hurt...

A traumatic event has occurred to your loved one. Such events affect not only the victim but can have far-reaching effects on the victim's family, friends, neighbors, coworkers and community as well. Secondary Traumatic Stress, Vicarious Trauma and Indirect Trauma are all names for the "natural behaviors and emotions that arise from knowing about a

traumatizing event ...the stress resulting from helping or wanting to help a traumatized person." (Charles Figley in *Compassion Fatigue*, 1995)

The impact of a traumatic event on the victim is expressed in many ways. You may notice the victim experiencing not only emotional or psychological reactions, but also physical changes, forgetfulness or distractibility, or changes to your relationship. The victim might need you to stay closer, or might be drawing away.

While you are struggling to cope and support your loved one, you may be having your own reactions to their victimization. You may be feeling more afraid yourself, and suspicious or jumpy. You may have difficulty sleeping, eating or carrying out your daily tasks. You may feel angry at the perpetrator or others for letting this happen to your loved one. You may feel guilty that there wasn't something you could do to prevent it from occurring at all. And you may feel helpless: helpless to make it better, to take away the pain, to "fix

it” for your loved one. Sometimes you may even feel angry at the victim for not “getting better” quicker, perhaps simply because you want the victim’s pain to stop.

It is important to take care of yourself while also responding to your loved one’s needs. What are some of the ways you can help your loved one? How can you maintain your emotional and physical health so you can continue to be a resource to your loved one?

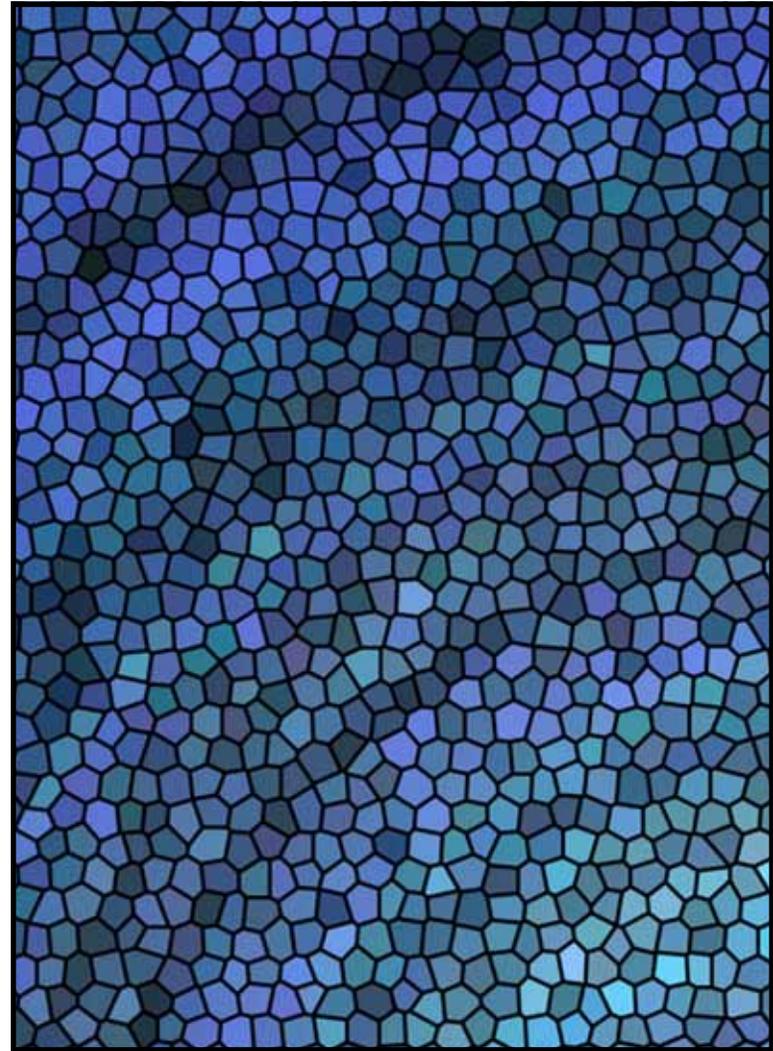
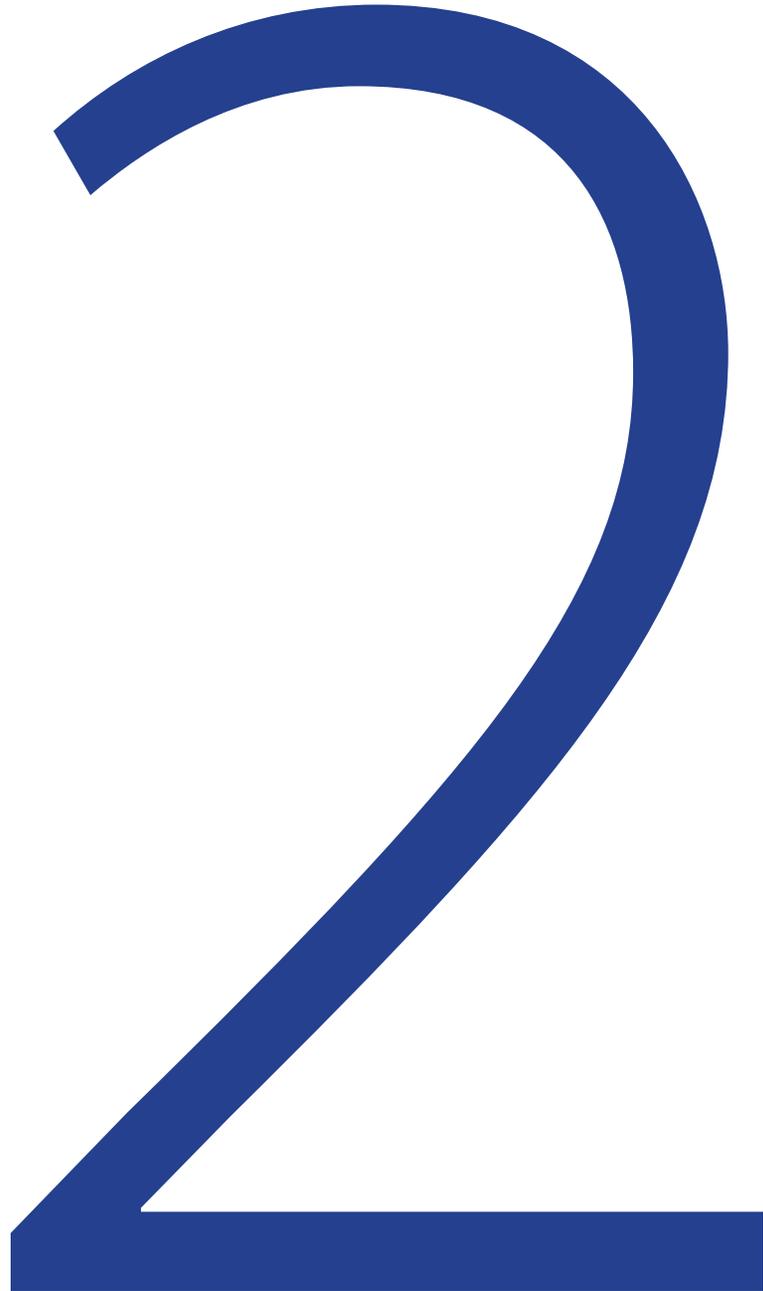
How to Support Your Loved One

- Listen without judging.
- Be patient — the healing process is just that, a process.
- Let your loved one know the crime was not his or her fault.
- The victim may feel responsible and may need to be reminded that this is not true and that he or she did what was necessary to prevent further harm.
- Reassure the victim that he or she is cared for, loved and believed.

- Encourage the victim to seek medical attention.
- Suggest the victim to talk with an Advocate, therapist or counselor.
- Help your loved one to access resources, when he or she is ready.
- Remember that those experiencing traumatic stress may not have the energy to reach out for help.
- Be present and attentive to your loved one when you are able.
- Know that you cannot remain available at all hours, indefinitely.
- Remember that it is okay to set limits when you are overwhelmed or have other commitments.
- Identify others the victim trusts who can help step in to provide support when you are not available or need your own time and support.

How to Take Care of Yourself

- Recognize the impact of the traumatic event on you, whether you witnessed the assault or learned about it from your loved one.
- Pay attention to your reactions; do not dismiss or minimize the impact of the experience on you.
- Take steps to respond to your own feelings and reactions such as sleeplessness, distractibility, irritability, hyper-vigilance, and anger.
- Try not to let this event take over your life — maintain your routines as much as possible.
- Take “time off” to recharge your batteries so you can be a more effective support person.
- Stay in touch with friends and family not affected by this event and ask for their support.
- Ask for help.



Seeking Justice through the
Criminal Justice System

Seeking Justice through the Criminal Justice System

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If you are a victim of crime, you are entitled to many rights and services in the Commonwealth of Massachusetts. Many of these rights and services involve your experience with the criminal justice system and are detailed in the **Victim Bill of Rights**. This chapter discusses those rights and services. Reading about these rights and services and discussing them with an Advocate can help you to understand what to expect from the criminal justice system if you are involved with a criminal case. An Advocate is an individual from a community based agency or criminal justice agency whose role is to assist victims of crime and educate them about victim rights and services.

The Massachusetts Victim Bill of Rights outlines all of the rights and services you are entitled to as a victim or witness of crime in the Commonwealth.

This chapter also contains important information about safety planning, including details about applying for a restraining order. Whether you are involved in a criminal case or not, Advocates can help you take steps to stay safe after a crime.

If the crime against you has not yet been reported to the police, talking with an Advocate might also help you make an informed decision about reporting the crime.

Reporting a Crime to the Police

Anyone who is physically, emotionally, psychologically or financially harmed or threatened with harm as a result of a crime or attempted crime is a victim. In Massachusetts, once a crime is reported to the police, they conduct an investigation into the victim's report. Depending on the crime reported and circumstances, investigations can be brief and involve only a few questions, or

long and include interviewing the offender and witnesses to the crime and collecting evidence.

Police must conduct investigations to determine whether they can file for criminal charges. If the police find that **probable cause** exists — that is, a reasonable person would believe a crime was committed — the police will file for criminal charges. Once criminal charges are filed, cases are handled by the District Attorney’s Office in the area where the crime happened (with a few exceptions for more minor or traffic offenses).

As further explained in Chapter Three, during the court process a victim may also be referred to as the *complainant, witness or alleged victim*. Although the victim is the person most directly affected by the defendant’s crime, when criminal charges are brought as a result of that crime, the victim is not a formal “party” to the criminal

case; rather the state (the Commonwealth of Massachusetts) and the defendant (the accused) are the two main parties in the case. This is because a crime is considered a crime against society, even if it is against one individual, so the government represents the interests of its people against those

who break society’s laws. The victim is typically considered the primary witness in the criminal case against the defendant though the prosecutor is not the victim’s lawyer.

Victim Witness Advocates provide victims and witnesses with information and support to ease many of the difficulties a crime victim may experience throughout the criminal justice process.

The Victim Bill of Rights and the Victim Witness Advocate Program

In 1984, the Massachusetts Legislature enacted M.G.L.c.258B, the Massachusetts **Victim Bill of Rights**. This critical statute provides rights and services to ensure a meaningful role in the criminal justice system for crime victims and for family members of deceased victims, victims who are minors,

and victims with special needs.

Every District Attorney's Office has a Victim Witness Assistance Program, staffed by **Victim Witness Advocates (VWA)**, in order to guarantee these rights.

These rights generally fall into the following categories:

- The right to be informed about victim rights and services in the criminal justice system.
- The right to receive specific information about your criminal case.
- The right to be heard and present at court proceedings.
- The right to confer with prosecutors at major stages in the court process and about major decisions.
- The right to financial assistance.
- The right to be notified of an offender's release or status in custody, jail or prison.

Many other important provisions are included in this bill. The bill aims to help

a victim participate in a system that can be complicated, confusing and frustrating.

Victim Witness Advocates work as a team with prosecutors to be a consistent link for the victim to the system and to serve as personal contacts during the court process. They provide victims and witnesses with information and support to ease many of the difficulties a crime victim may experience throughout the criminal justice process.

The following describes many of the rights and services provided by Victim Witness Advocates during the court process.

Protection of Victims' Rights: Ensure that victims and witnesses receive notice of their rights as established under the Victim Bill of Rights, MGL Ch 258B.

Crisis Intervention: Help victims and their families deal with their immediate needs following a crime.

Court Appearance Notification: Notify all victims and witnesses when they need to appear in court and to prevent unnecessary court appearances whenever possible when there are postponements.

Financial Information: Help determine whether victims may be eligible for restitution and/or Victim of Violent Crime Compensation.

Transportation: When possible and necessary, may assist in making travel arrangements for victims and witnesses to get to court.

Case Process Notification Services: Explain various stages of the criminal justice system to victims and witnesses and keep them informed of progress and next steps in the case.

Employer/Creditor Intercession Services: Through correspondence or direct contact, work with employers/creditors on behalf of victims and witnesses to avoid any problems

that may come from taking time off from work or school to come to court, or in paying bills associated with the crime.

Social Service Referrals: Provide victims and witnesses with referrals, such as referrals to emergency housing, crisis counseling, therapy, support groups and medical care.

Expedited Property Return: Assist victims and witnesses in making arrangements for the return of their property or the return of the personal belongings of a deceased family member (note that some property may be needed as evidence in the trial and will not be returned until after the case is over).

Protection Services: Help victims and witnesses with obtaining restraining orders; provide information and options if victims and witnesses are threatened; assist with safety planning.

Confidentiality Protection: Inform victims and witnesses of their right to request that their address, telephone number, place of

employment or school is kept confidential in the court record and in open court.

Secure Waiting Facilities: Provide a separate and secure waiting area in courthouses to minimize the contact between victims and witnesses and the defendant and the defendant’s relatives and witnesses.

Potential Challenges Encountered in the Criminal Justice System

Understanding all of the ways in which the criminal justice system operates is often difficult. Some of the challenges you’ll encounter are likely issues that neither you nor the prosecutor or Victim Witness Advocate are able to control.

It may seem that the case is taking too long and that court dates keep changing. The prosecution or defense may need additional time to prepare their cases and meet with witnesses, or to file motions related to the evidence that will be presented. There may

also be scheduling conflicts as the court works to assign additional hearing dates. Stay in contact with your Victim Witness Advocate and be sure to express concerns if the repeated court appearances are presenting problems for you. Please note that it is also important to ensure that your VWA has your current contact information so that they are able to keep you up to date on what is happening with your case.

It is possible that the media will contact you about the crime and seek more information about your experience. Though the media can be an important partner in the effort to effect positive change for the system’s response to victims, it can also serve as another way to further traumatize you at a time when you are uniquely vulnerable and unable to predict how you will feel or respond to questions or news about your experience. Stay in contact with your Victim Witness Advocate about any media contact as she or he will be able to help you deal with and respond to attention from the media.

Emotional Impact of Participating in the Justice System

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For some victims, the emotional reaction to victimization can be complicated by their involvement with the justice system. Because so much of the criminal process is beyond the victim's control and may require the victim to re-live what happened, victims may feel the process prolongs feelings of victimization. In addition, other events in the criminal justice system, like an appeal of the defendant's conviction or notification of an offender's release from prison may trigger emotional reactions in crime victims all over again.

Despite the stress that goes along with participating in the court system, many victims also feel empowered and satisfied by their participation in the criminal justice system. Reporting a crime, assisting in the prosecution of the case and bringing the offender to justice can be courageous first steps in a person's recovery

from victimization. Some victims have also said that they felt supported and believed regardless of the outcome of their case; they thought feeling proud of doing everything they could to hold the offender accountable was a measure of success in and of itself.

Planning for Your Safety After Crime

A Restraining Order or "209A order" is an order by a judge that the abuser stop abusing you, have no contact with you and/or stay away from you.

It is common for a crime victim to feel unsafe or to fear retaliation by the offender. Safety plans

are valuable tools if you are in an abusive relationship or are planning on leaving an abusive relationship, or if you worry about coming into contact with your offender again.

Safety plans may need adjusting as new situations arise. Talking with an Advocate can help you assess your current situation and create an individualized safety plan. Not every suggestion will fit your situation; use your judgment and what you know about the abuser and the abuser's patterns of behavior

when deciding how to respond.

Restraining Orders

Part of your safety planning might include seeking a **Restraining Order** from the courts. A Restraining Order or 209A order is an order by a judge that the abuser stop abusing you, have no contact with you and/or stay away from you. A judge may also make other related decisions to include in the order, such as child custody, child support and whether your address is impounded and/or if your abuser must surrender any firearms. It is often helpful to talk with an Advocate to discuss your specific circumstances and explore your options. It is an important decision and you deserve to have whatever assistance you need to be informed fully and get your questions answered. The information contained in this resource guide is a general discussion only and is not legal advice but may help you as you prepare to talk with your Advocate or attorney about restraining orders. It is not necessary to hire an attorney when you are applying for a

restraining order. However, some victims do rely on help from an attorney in these situations; for example, if the case is in family court and involves a divorce and/or custody arrangements or when a victim is not sure whether the definitions below apply to his or her situation.

Massachusetts law, under Chapter 209A, defines **abuse** as the occurrence of one or more of the following acts:

- attempting to cause or causing physical harm
- placing another in fear of imminent serious physical harm, and/or
- causing another to engage in sexual relations by force, threat of force or duress

“Family or household members” are defined as those who:

- are or were married to each other
- are or were residing together in the same household

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- are or were related by blood or marriage
- have a child in common
- are or have been in a substantive dating or engagement relationship

A restraining order can order the abuser to:

- refrain from abuse
- not to contact the victim or children, if any
- stay away from a residence, workplace, child's school or wherever the victim may be

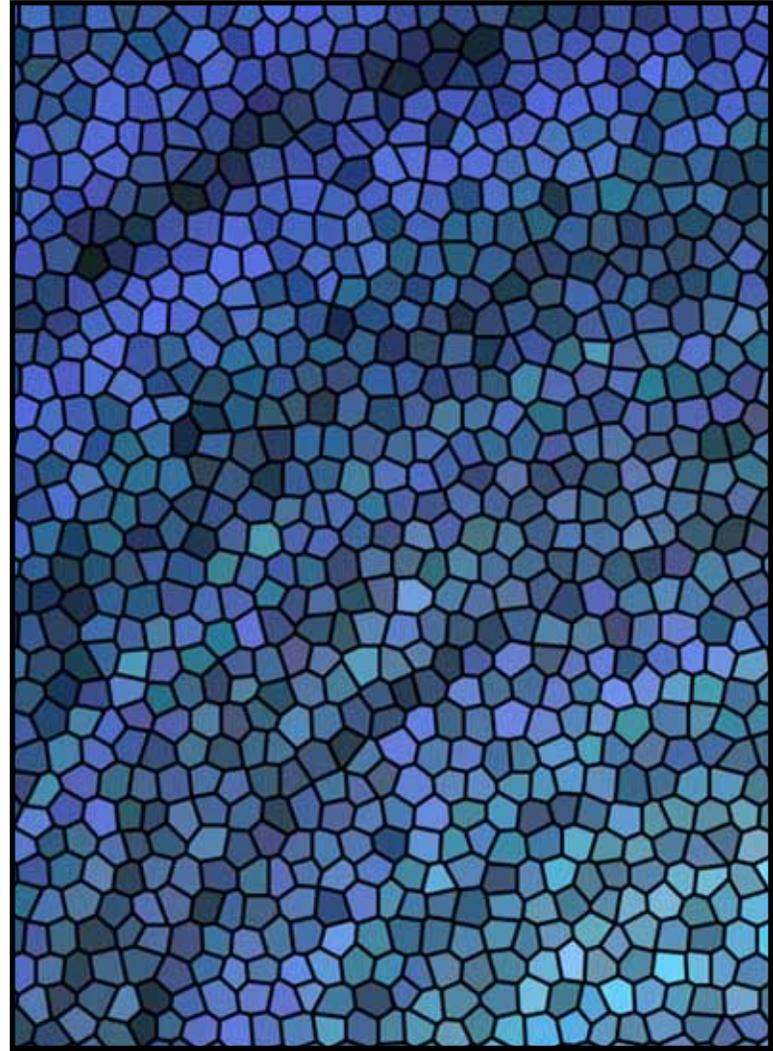
A restraining order may also determine whether:

- victim's address is impounded
- custody of the children will be awarded and to whom
- abuser will pay support — spousal and/or child
- abuser must surrender FID and/or firearms

Restraining orders can be a combination of some or all of the above options, depending on what terms you request and whether the judge agrees. If you do decide to seek a restraining order, you need to go to the district court in the area where you live or the probate and family court in your county with jurisdiction over your residence. If you have children in common and are looking for a restraining order with a visitation schedule you also have the option to request one from the court. In the event that you are looking for a restraining order after court hours the police department near your residence can contact a judge by phone for an emergency order.

Once you have a restraining order, it is important that you contact the police immediately to report any violation of the order. Although restraining orders or 209A orders are civil matters, violations may result in an arrest and criminal charges against the defendant if the defendant has been "served" with (legally notified of) the order.

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Victims and the
Prosecution Process

Victims and the Prosecution Process

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Being involved in the court process can be an empowering experience when the offender is held accountable for his or her actions — and even sometimes when the outcome is different.

But despite the potential benefits of participating in the criminal justice system, it can also be a frustrating, confusing and difficult experience for a few reasons. Courthouses can be overwhelming, constantly full of busy attorneys, judges and police officers with their various workloads. Also, the court system seems to have its own language not easily understood by an outsider, and its size, pace and complexity can make a person feel unsure, lost and even intimidated. Sometimes, victims of crime and their families are the only people involved with the case who have never been in court before and are left feeling like strangers in the system.

This chapter provides information to help

you better understand what to expect from the court process and to help make your involvement with the system less confusing. The following presents an overview of the criminal court process, the prosecution and your role in it, and describes certain rights and services available to you as a victim or witness of a crime.

The chapter is organized into sections because of the amount of complicated information presented.

Part One

Initiating a criminal case: clerk magistrate hearings, grand jury proceedings, arraignments and bail

Part Two

Further court proceedings: conferences, hearings, dismissals, pleas and trials

Part Three

Sentencing, Victim Impact Statements, and appeals

Part Four

Cases involving juveniles and youthful offenders

Part Five

Questions of competency and criminal responsibility as a defense, including verdicts of not guilty by reason of insanity

Part One, Initiating a criminal case

Cases come into the criminal justice system in several ways, including through arrests, police complaints, individual complaints, and indictments.

Police responding to the report of a crime might make an arrest based on the evidence available to them. At other times, when the police don't have probable cause to make an arrest on the scene of a crime, they can ask for a Clerk Magistrate Hearing. A **Clerk Magistrate Hearing**, also called a "show cause hearing," can be one of the first stages of the criminal justice system. The police or an individual can request a Clerk Magistrate Hearing. Clerk Magistrate Hearings usually happen for misdemeanor charges, and if police initiated the process, the police officer will attend and testify about the incident. Both the victim and the

offender can be summonsed to testify. After hearing the testimony, the Clerk Magistrate will decide whether there is probable cause, the legal basis for bringing charges against an individual which begins the prosecution of a case. Victims themselves may also pursue Clerk Magistrate Hearings by filing an individual complaint in the absence of a police-initiated complaint.

Criminal cases are handled either in **District Court** or Superior Court. District Court has authority over all misdemeanor criminal offenses and certain felony offenses.

Misdemeanors are defined by law as less serious offenses and are punished by a House of Correction or county jail sentence. For crimes handled in the District Court, judges can sentence a defendant to no more than 2 1/2 years in the House of Correction (per charge).

Superior Court has authority over all crimes but generally exercises that authority over the most serious **felony** matters or criminal offenses of a more serious nature that are punishable by harsher penalties. Judges in Superior Court have broad discretion in

sentencing and can sentence a defendant from probation to the maximum sentence allowed by law for a particular crime, including serving time in State Prison.

To be handled in Superior Court, cases must first go through the grand jury process. A **grand jury** is a group of no more than 23 citizens whose duty is to hear evidence in criminal cases as presented by the prosecutor and decide simply whether there is enough evidence to charge an individual with a crime. Victims and witnesses, including police officers, are usually asked by the prosecutor to testify to a grand jury. If a majority of the grand jurors believe that **probable cause** has been established — that is, that there is reasonable cause to believe that the person accused committed a crime, then the grand jury will issue an indictment against the defendant. An **indictment**, like a complaint, is a formal written statement issued by the grand jury indicating that there is sufficient evidence to charge a person with committing a particular crime(s). Judges, defendants and defendants' attorneys are not present for grand jury proceedings and they are closed to the public.

Criminal Court Proceedings

Once a suspect is charged with a crime, the District Attorney's Office is responsible for prosecuting the case. The **District Attorney** is an elected public official in each county who prosecutes crimes on behalf of the Commonwealth. Each District Attorney has **Assistant District Attorneys (ADAs)** or **prosecutors**, who are attorneys with the primary responsibility for handling criminal cases against individuals accused of committing criminal offenses. They are hired and paid for by the state and are not the victim's attorney. However, they are responsible for the interests of the individual victim in the case and of the public's safety in general. The District Attorney's Office also has **Victim Witness Advocates (VWA)** who inform crime victims of their rights and available services and to provide support and assistance through the criminal justice system.

The length of the court process varies, depending on the type of crime charged, the type of evidence to be presented and whether a defendant pleads guilty (discussed

later in this chapter) or goes to trial. Cases in which a defendant pleads guilty generally take a shorter period of time. Cases in which the defendant wants a trial can take much longer. It is the defendant's choice whether he or she will want a trial or plead guilty.

Each District Attorney's Office typically sends case status letters to victims to inform them of the progress of the case and the ADA and Victim Witness Advocate may call you as well. Be sure to talk with the ADA and Victim Witness Advocate to provide information about the case, ask questions and to provide your input into some of the important decisions. It is extremely important that you maintain an updated address and telephone number with the Victim Witness Advocate assigned to your case so that you can be informed of important developments in your case.

The sections that follow describe the different stages of the court process and the victim's role during court proceedings.

Arraignment

The **arraignment** is the first public court

proceeding in which the defendant is formally charged with a crime. During the arraignment, the defendant appears before a judge, is told what the charges are, and is asked to plead guilty or not guilty to those charges. The defendant is also advised of certain rights, including the right to an attorney. Almost all defendants, regardless of their guilt or innocence, plead "not guilty" at arraignment to allow them to thoroughly discuss their case with their attorney before making important decisions. The defendant's plea is the first step in the prosecution; a plea of "not guilty" at the arraignment does not mean the defendant might not plead guilty at some point later in the process.

The **Victim Bill of Rights** gives you the right to request that personal information about you and your family, such as home address, telephone number, and place of employment or school, remains confidential or is withheld from public view. It is important that you make this request before the arraignment since much information about the case will otherwise become part of the public record at this time. Please note that any statements you make during the investigation must be given to the defense attorney, the lawyer

representing the defendant, and that conversations with Victim Witness Advocates are not confidential — that is, certain information discussed with the ADA or Victim Witness Advocate must be shared with the defense attorney.

Determination of Bail

Most defendants are released at arraignment if they are able to meet the bail requirement.

Bail is an amount of money or property a judge sometimes requires a defendant to pay to ensure that he or she shows up in court for future court dates. Sometimes at arraignment, judges can order that a defendant be released on “**personal recognizance**,” which means that the defendant signs a promise to appear in court whenever notified to do so and is not required to post bail. This kind of release is common for defendants who have strong ties to the community (such as family and work), are considered unlikely to flee before trial and who do not have a history of failing to appear in court when ordered to do so.

If a judge decides to release the defendant

while the case is in process, he or she may impose other requirements on the defendant. If you feel threatened by the potential release of the defendant on bail or personal recognizance, it is extremely important that you tell the prosecutor or Victim Witness Advocate assigned to the case before the arraignment. Providing this information allows the prosecutor to ask the judge to order the defendant to stay away from you until the case is over. It is important to know that the judge makes the final decision on any conditions of a defendant’s release.

Although the main purpose of bail is to make sure the defendant returns to court, judges are also allowed by Massachusetts law to consider a defendant’s dangerousness in deciding bail. For some felonies, Assistant District Attorneys can request a dangerousness hearing, where the judge can hear testimony on whether the defendant is such a threat to society that he or she should be held without bail (meaning that he or she must stay in jail pending trial). This hearing is sometimes referred to as a “58A” because of the particular law that allows for this type of hearing to happen. If the prosecution requests a **dangerousness hearing**, the

court schedules the hearing within three business days of the arraignment. After considering testimony presented by the prosecutor and defense attorney, if the judge finds that the defendant is dangerous to himself, to the victim or to society, he or she can order the defendant be held without bail for up to sixty days. The burden of proof on the prosecutor is high in a dangerousness hearing, and judges make such decisions only in rare circumstances. It is critical that you provide to the Assistant District Attorney and Victim Witness Advocate whatever information you have about your concerns for your own and others' safety regarding the defendant's release.

Defendants are entitled to **bail review hearings** if they believe the amount of bail set by the judge is too high. The hearing can occur at any time after bail has been set, but usually occurs within a few days of the arraignment. Many District Attorneys' Offices and County Houses of Correction have developed ways to provide notice of a defendant's release on bail when victims request it. If you want to be notified of a defendant's release, you should let the Assistant District Attorney or Victim Witness

Advocate handling the case know right away.

Part Two, Further court proceedings: Conferences, Hearings, Dismissals, Pleas and Trials

Pre-trial Conferences and Hearings

The defendant's arraignment is usually followed by a **pre-trial conference** and one or more pre-trial hearings. A pre-trial conference is held between the arraignment and the **pre-trial hearing** to allow the Assistant District Attorney and the defense attorney to exchange required information and discuss how the case may proceed. This process, called "**discovery**," includes certain types of information, or evidence, about the case, including police reports. The pre-trial conference and discovery process typically take place outside of court, not with a formal hearing, and victims are not usually present. The prosecutor might ask you to attend the pre-trial hearing, or you might want to consider attending if the prosecutor expects any significant changes or developments to

occur. You can talk with the Assistant District Attorney and Victim Witness Advocate beforehand about whether you are expected or would like to attend, especially if they find out there is a chance the defendant may plead guilty on a pre-trial court date.

At the pre-trial hearing, which does take place in court, the prosecutor and the defense attorney give the judge the information that was shared at the pre-trial conference. There are a few possible results of the pre-trial conference and hearing:

- The District Attorney's Office may file a document with the court stating that they decided not to prosecute the defendant ("dismissal").
- An Assistant District Attorney may decide that he or she needs to reduce the charges to be more consistent with the evidence in the case and their ability to prove the charges.
- The defendant may decide to change a "not guilty" plea to "guilty", or "admitting to sufficient facts" (explained below).
- The Assistant District Attorney and defense

attorney may continue to disagree and the judge will set another pre-trial hearing date or trial date.

The Assistant District Attorney and Victim Witness Advocate can help explain the information that is specific to your case, answer your questions and get your input.

Dismissals and Guilty Pleas

The District Attorney's Office may consider dismissing or reducing charges for several reasons:

- The evidence may be insufficient to prosecute if the judge excludes critical evidence or witnesses are unavailable or uncooperative.
- New evidence may emerge that weakens their ability to prove the charges and convict the defendant.
- The defense attorney may make a motion, a legal request, to dismiss the case for various legal reasons.

Depending on the circumstances of the case,

the Assistant District Attorney can ask the judge to dismiss the case in one of two ways: “with prejudice” or “without prejudice.” Cases that are “dismissed with prejudice” cannot be brought back into the court system at a later date. Cases that are “**dismissed without prejudice**” allow a prosecutor to bring the charges against the defendant again at a later date if, for example, new information or evidence comes to light. Before your case is dismissed, however, the **Victim Bill of Rights** requires that the Assistant District Attorney talk with you about why the case is being dismissed.

In other circumstances, the evidence of the defendant’s guilt may be so strong that the defendant decides to change his or her plea to guilty of the crime as charged. The defendant may also plead guilty to one or more of the charges or to less serious charges.

The defendant may also agree to a **continuance without a finding (CWOFF)**. With a CWOFF, the judge will typically order the defendant to be on probation with certain conditions (for example, to stay away from the victim, pay restitution, attend

counseling or other court-based programs, or complete community service). When the defendant has successfully completed probation, the continuance without a finding means that the defendant will not have a conviction on his record.

These outcomes are often part of a process called **plea negotiations**, which refer to the discussions the defense attorney and Assistant District Attorney have regarding the outcome of a case without having a trial. If an agreement is reached, both parties return to court to request the judge’s approval of the proposed plea agreement. The judge may accept or reject the agreement. The parties do not have to agree to the sentence; sometimes, the prosecutor and defense attorney may request different sentences. If the judge wishes to give a heavier sentence than proposed by the prosecutor in the plea, the defendant has the right to take back his guilty plea and move toward a trial. The defendant has the right to change his or her plea to guilty at any time. By doing so, he or she gives up his or her right to a trial. According to the **Victim Bill of Rights**, you have the right to have input into the sentence by discussing it with the Assistant

District Attorney and by providing a **Victim Impact Statement**, described later in this chapter, when the judge needs to make a sentencing decision.

Many criminal cases are resolved through pleading guilty or by “**admitting to sufficient facts**,” which means the accused admits that there is enough evidence that would likely make a jury or judge find him or her guilty. In pleading guilty, sometimes the defense benefits because the defendant may be convicted of a less serious offense and is spared the legal expenses of a trial.

Sometimes, the prosecution benefits from plea negotiations because the **conviction** of the defendant is then guaranteed, which is not the case if a judge or jury decides. Prosecuting a criminal case always involves a level of uncertainty. Even a case that appears to be very strong may not result in a conviction at trial. In some cases, there is a possibility that key evidence may not be allowed at trial if the judge decides that it was obtained in violation of the law or for other reasons.

In many circumstances, the victim also

benefits if a defendant pleads guilty. Plea agreements may spare a victim from having to experience the emotional stress of testifying and minimize the time and inconvenience victims often experience in the criminal justice system. Pleas also make a conviction certain and often final since defendants give up their right to a trial and typically their right to appeal their conviction as well. Pleas also often give the prosecutor more options to negotiate for the victim. For instance, the prosecutor may be able to arrange for the voluntary return of property that was stolen from the victim, require that the defendant participate in a counseling program or require that the defendant pay **restitution** to the victim as part of the plea agreement. The prosecutor may not be able to assure the victim of the same results if the case were to go to trial.

Despite these benefits, the concept of plea agreements is still upsetting to some victims because a plea agreement may result in a conviction for a less serious offense or in a lighter sentence. Some victims believe that reducing the charges minimizes what the defendant did to them. And yet plea agreements are a common and often

effective way of resolving cases. You are encouraged to discuss your thoughts and feelings with the Assistant District Attorney and Victim Witness Advocate to make sure your input is heard and that you understand the reasons for a particular decision and outcome.

Motion Hearings

During the pre-trial period, the Assistant District Attorney and defense attorney may file motions with the court about certain pieces of evidence or points of law related to the case. Motions are formal legal ways in which the lawyers ask judges to make legal decisions in the case, like whether a piece of evidence or a witness can be used at trial. The judge may hold a hearing with arguments from the prosecution and the defense or may simply decide based on the papers submitted. Defense attorneys and Assistant District Attorneys routinely make motions to postpone the case to a later date if they need additional time to prepare. For the most part, you do not need to be present at hearings on motions unless you are called as a witness, but you have a right to attend all the proceedings if you would like to do so.

In certain cases, a defense attorney may make a motion to obtain confidential information about a victim, like psychiatric counseling records. Such motions or requests are often made for the records of victims of sexual assault or domestic violence. If the defense attorney makes a motion to obtain your confidential information, the **Victim Bill of Rights** requires that the Assistant District Attorney discuss the matter with you before a hearing is held. The judge is required to follow specific procedures to determine whether and how such records can be used at trial. The thought of having one's private records exposed in a court setting can be extremely upsetting. You have every right to discuss the types of confidential records that concern you with the Assistant District Attorney and Victim Witness Advocate assigned to the case.

Postponements and Continuances

Despite a clause in the **Victim Bill of Rights** which provides for a victim's right to a prompt disposition of a criminal case, the court process often takes much longer than victims expect. Unfortunately, court hearings

and trials sometimes cannot take place as planned. Scheduling conflicts among the judge, prosecutor and defense attorney are likely, and the unavailability of key witnesses on certain days may require court proceedings to be postponed to a later date. In addition, scientific testing of evidence, like DNA, may be necessary or there may be a need for additional investigation. These are all legitimate, though frustrating, reasons for a judge to grant a continuance or postponement. It does not mean that the case is unimportant or being ignored.

If a court proceeding has been postponed, and the postponement is known in advance, your Victim Witness Advocate will inform you of the change in schedule and hopefully prevent unnecessary appearances in court. It is a good idea to call the Victim Witness Advocate the day before any court event to confirm the date and time or to be placed on telephone standby if that is possible. If having to come to court creates problems with your work or school, you should let your Victim Witness Advocate know so that she or he can work with you to help address these concerns.

Trial Proceedings

The **Victim Bill of Rights** requires that the Assistant District Attorney discuss the case and trial with you before it happens. Typically, the Assistant District Attorney or Victim Witness Advocate will review the case and the trial process with you, answer your questions and hopefully help ease your stress and fears.

The defendant has the right to choose whether he or she wants to be tried before a judge or jury. A trial before a judge is also referred to as a jury-waived trial. If the defendant chooses a trial by jury, **jurors** must be chosen from a pool of ordinary citizens who have been summonsed for jury duty. All potential jurors are required to complete questionnaires that assist prosecutors and defense attorneys in making decisions about which jurors to accept. Both sides have the right to request that a juror be dismissed if they feel that a person has a bias which could unfairly influence the jury. Superior Court criminal trials are heard by a twelve-member jury and District Court criminal trials are heard by a six-member jury (usually with a few additional jurors as alternates in case one

of the jurors unexpectedly needs to leave).

Once the jury has been selected and the trial begins, the Assistant District Attorney and, in most cases, the defense attorney, make opening statements to explain what they expect the evidence will prove during the trial. The prosecution makes his or her opening statement first because the prosecution has the responsibility or burden of proving that a crime was committed and that the defendant is the perpetrator. The defense then has the option of making an opening statement following the prosecutor.

Evidence can be presented in the form of physical items that may be relevant to the case, such as a weapon recovered at the crime scene, or as witness testimony. During the trial, various witnesses are called to testify by answering questions by both the prosecutor and the defense attorney. The prosecution and the defense may also call expert witnesses to provide testimony. An **expert witness** is someone such as a medical examiner, doctor, criminologist, psychologist or psychiatrist.

After the prosecution and the defense have

had the opportunity to offer their evidence to the court, each side summarizes its view of the case during closing arguments. No new evidence may be presented at this stage. Once closing arguments have been made, the judge will give instructions to the jury on the law and what they need to consider in order to convict the defendant of that particular crime. Based on the evidence presented and the judge's instructions on the law, the jury then discusses or deliberates in private on whether the Commonwealth (the prosecution) presented enough evidence to prove the defendant is guilty of the crime charged "beyond a reasonable doubt". Most people have heard the expression "guilt beyond a reasonable doubt," but this language can be confusing and misleading. In criminal cases, the judge instructs the jury on what "reasonable doubt" means and you can discuss this with the Assistant District Attorney and Victim Witness Advocate as well.

It is often validating for the victim to hear the Assistant District Attorney's closing argument because it usually presents the victim's side. On the other hand, it can be very distressing to hear the defense attorney's

closing argument as he or she will be trying to convince the jury that the defendant is not responsible for committing the crime. It is best to talk with the Assistant District Attorney and Victim Witness Advocate in advance to prepare for what you might hear and the stress and upset you may feel as a result.

The **Victim Bill of Rights** gives the victim the right to be present during court proceedings unless a judge decides otherwise for legal reasons. If you wish, you can bring friends or family members with you to court to provide emotional support during the trial. In homicide cases, unless the judge decides otherwise, one family member of the victim may be able to bring a photograph (not be larger than 8 x 10 inches) of the deceased into the courtroom. The photograph may not be displayed in the presence of any jury members.

Victims or family members may only be excluded from the trial when they are scheduled to testify as a witness *and* the judge determines that hearing the testimony of other witnesses could influence their own. The judge may then order that the

witness (the victim or family member) wait outside and not be allowed to observe the trial. This is called a “**sequestration order**” of witnesses and may apply to any or all witnesses for the prosecution and the defense. The defendant, however, always has the right to be present to hear and see all the witnesses and evidence presented against him or her. The judge will also order that witnesses not discuss their testimony with each other. If the prosecution and defense do not expect to call the witness to the stand again, the judge may allow the witness to return to the courtroom once he or she has completed his or her testimony.

Virtually anyone with direct or personal knowledge of a crime, direct victim or witness, may be called to testify as a witness. If you are a witness, you will be notified by a written summons or subpoena given to you, which tells you when and where you are required to appear in court. Witnesses who fail to appear in court as indicated on a subpoena may be subject to a fine or have a warrant issued for their arrest. Witnesses are entitled to receive a small witness fee of \$6.00 plus a mileage allowance for each day that they are subpoenaed to appear in court.

Testifying at Trial

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As mentioned, you may be called to testify at the trial as a witness for the prosecution.

The Assistant District Attorney and Victim Witness Advocate will help you prepare for testifying in court and help you understand what to expect when you testify. Once you are in court, when the clerk calls your name, you will take an oath to tell the truth and then you will take the witness stand. At some point in your testimony, the prosecutor will most likely ask you if you see the defendant in the courtroom and if you can identify him or her.

Because the evidence heard by the judge and jury must follow certain legal procedures, witnesses tell what they know about the crime through a question and answer format. First, you will be asked to answer specific questions asked by the prosecutor – this portion of your testimony is called “**direct examination.**” After the prosecutor has finished questioning you, the defense attorney has the right to ask you further questions, also known as “**cross-examination.**” Then both attorneys have

another opportunity for “**redirect or re-cross examination,**” where he or she can ask you further questions in order to clarify your responses.

You may feel afraid or nervous about testifying in court. Although you want to see justice done and do not want the charges dropped, you may have concerns and fears about testifying, including making a mistake or not remembering things on the witness stand, or fear of being cross-examined by the defense attorney. When testifying, there may be times when you don’t understand a question, are uncomfortable answering a question or simply don’t remember. The ADA and Victim Witness Advocate will provide you with guidance about testifying. You should be honest with them about your concerns and discuss the suggestions they have to assist you.

Guidelines for Witnesses

Availability

You should be available as needed for the duration of the trial. You may be put on call if the prosecutor is not sure when the case will go to trial. The Assistant District Attorney and

Victim Witness Advocate will let you know what date and time to be in court. Be sure to arrive on time. Sometimes employers or schools will want a letter documenting your attendance in court in addition to a copy of the summons. The Victim Witness Advocate can assist you with this letter and help explain your absence from work or school.

Personal Appearance

A trial is a formal proceeding, and it is important to dress neatly and conservatively, but comfortably. Try to avoid distracting mannerisms such as yawning, nail biting, laughing, or facial expressions like eye rolling, etc.

The Oath

You will take an oath of truth before taking the witness stand. Lying under oath is a serious and punishable offense.

Cross Examination

The defense attorney is an advocate for the defendant and may ask questions that upset you or imply that you are lying. Testifying is difficult and can be emotionally exhausting. Do your best to remain calm and focused in order to answer the questions to the best

of your ability. If you feel a serious need for a break, you can let the judge know. It is important to take your time, make sure you understand the questions asked and ask for them to be repeated if necessary or explained if the questions include confusing words. If you don't understand a question, it is always best to say so and if you're not sure of the answer, it is best to say that as well. It is very important that you do not guess. The best you can do is tell the truth to the best of your memory and knowledge.

Addressing the jury

When you testify, you should address your testimony to the jurors rather than to the attorney asking the questions and speak in a loud clear voice.

Defense Attorneys

A **defense attorney** represents a defendant in criminal or civil proceedings. It is the defense attorney's legal responsibility to provide a strong defense for the accused. To do so, the defense attorney may say things that you find extremely upsetting. Being cross-examined by the defense can be a difficult experience for any witness, but

particularly for a victim. Although there are rules limiting how the defense attorney can question you and about what, he or she is allowed to ask the victim about information covered during the victim's direct testimony by the Assistant District Attorney and about things that the judge says are relevant to believing a witness, known as a witness' credibility. Discuss your concerns about possible questions with the ADA and Victim Witness Advocate when they help prepare you for your testimony and the entire trial experience.

Findings and Verdicts

When all testimony has been heard at trial and the Assistant District Attorney and defense attorney have presented their closing arguments, the judge or jury will privately discuss or deliberate on the evidence presented during the trial and return a finding, known as a verdict. All members of the jury must agree on the verdict. A finding of "guilty" must be "**beyond a reasonable doubt**", which is the legal term used to describe the level of certainty a juror must have in order to find a defendant guilty of the crime. The judge defines "reasonable doubt"

for the jury in his or her jury instructions at the conclusion of the trial.

When a criminal case goes to trial, there is always the risk that the defendant will be acquitted. An **acquittal** is the legal and formal determination — by either judge or jury — that there is not enough evidence to prove that the defendant committed the crimes charged beyond a reasonable doubt.

Hearing that a defendant has been acquitted at a trial can be devastating to victims and survivors. For a variety of reasons, and despite everyone's best efforts, the evidence in the case may not be strong enough for a judge or jury to convict. It is important to remember that a "not guilty" verdict does not necessarily mean that a defendant is innocent of the crime or that the jury did not believe you. It means only that the jury felt that the evidence presented was not enough to prove beyond a reasonable doubt that the defendant was guilty of the crime.

Sometimes jurors may not be able to agree on a verdict and become deadlocked in their deliberations. If they cannot all agree and reach a unanimous verdict, the judge will

declare a **mistrial**. The prosecutor then must decide whether to have another trial against the defendant at a later date before a new jury. The prosecutor and VWA will discuss this outcome and next steps with you.

Part Three: Sentencing, Victim Impact Statements, and Appeals

Sentencing

If a defendant is found guilty, the judge can sentence him or her immediately or set a future date for sentencing. The judge may ask for a pre-sentence investigation by the probation department. Before the Assistant District Attorney submits a sentencing recommendation, victims have the right to talk with both the prosecutor and the probation officer, who supervises a convicted offender, about the impact of the crime on you as a victim and about the proposed sentence recommendation. The prosecutor is required to tell the judge what you think of the sentence recommendation, and if the probation officer is unable to talk with you, he or she must tell the judge why in his or her report.

In Massachusetts, the judge is the person who decides what sentence to give the defendant. At the sentencing hearing, the defendant and his or her attorney have the right to present any mitigating circumstances that might cause the judge to lessen the punishment. **Mitigating circumstances** are factors that do not excuse a criminal act but which may reduce the severity of the sentence. Some crimes, including first and second degree murder convictions are punishable by mandatory sentences set by law.

In most crimes, the judge has a wide range of sentencing options to consider, including:

- placing a defendant on probation
- ordering the defendant to be jailed or imprisoned
- imposing a fine and/or restitution, or both
- requiring participation in rehabilitation and/or treatment programs
- issuing a sentence involving some combination of these sanctions

Where there is more than one criminal charge in a single case, the judge can order that sentences for each crime be served at the same time (known as **concurrent**) or one after the other (known as **consecutive**).

Victim Impact Statement

The **Victim Bill of Rights** entitles all victims of crimes to present a Victim Impact Statement to the judge at the sentencing hearing in court. The Victim Impact Statement is a written and/or oral statement describing the physical, emotional, psychological and financial injuries victims have suffered as a result of the crime committed by the defendant. In the Victim Impact Statement, you also have the right to express your views to the judge about what you feel is an appropriate sentence, including any request for restitution or no contact. The judge will hear and/or read the Victim Impact Statement before sentencing is imposed. A victim can read it aloud, have the prosecutor read it for him or her, or submit it to the judge in writing and make an additional verbal statement in court. Different judges may handle this process in different ways; the

Assistant District Attorney and Victim Witness Advocate can give you more information about what to expect.

A few suggestions to keep in mind when preparing a Victim Impact Statement:

- Write a rough draft and consider whether you want to discuss it with someone you trust. Your Victim Witness Advocate can address questions you may have.
- Try to express your anger and upset in ways that the judge will hear and better understand. Avoid using offensive or harassing language.
- Include details about how you and your family were hurt as a result of the crime, not how the crime happened. This is your opportunity to talk about the impact of the crime, not the specific facts that the judge heard at length during the trial or through court records.
- Focus your Victim Impact Statement on any or all of these categories: emotional/psychological impact, physical impact, financial impact and sentencing recommendation.

- Personal feelings and memories you have are important for the judge to hear, including how your quality of life and relationships have changed as a result of the crime.
- Remember that you are making this important statement to the judge who is responsible for deciding on the sentence. Therefore, do not speak directly to the defendant but know that a copy of the written statement is provided to the defense attorney and defendant, and the defendant will be present in court to hear your verbal statement.

Questions to guide you in preparing your Victim Impact Statement

The following questions are simply to give you an idea of the type of information you may want to include in your statement. The Victim Impact Statement is a way for you as a victim to address the judge and let him or her know how the crime affected you. When preparing your statement, it is okay to seek help from family members, your counselor or your Victim Witness Advocate. Victim Impact

Statements are provided to defense counsel prior to sentencing and become part of the defendant's record.

Emotional impact:

- How has your life and the lives of those close to you changed as a result of the crime?
- What are some of the feelings you have experienced?
- What are some of the reactions you have to cope with now? Do you have trouble eating, sleeping, etc?
- Has there been a change in how you are able to relate to others like your family and friends?
- Have you been to a doctor or a counselor to get support or counseling? It is up to you how much of this information you want to share.

Physical impact:

- What are some of the physical injuries you or your family suffered?

- How long did these injuries take to heal or how long does the doctor say it will take to heal?
- What medical treatment did you get or will you need in the future?
- How have the injuries changed your lifestyle such as going to school, work or playing sports?

Financial impact:

- How has the crime affected you or your family's ability to work or the number of days you missed from work?
- What bills have you paid or do you owe because of the crime?
- What are the costs for dental, medical, or psychological treatment?
- What are the costs for prescription medication or physical therapy?

Revised and Revoked Sentences

Within sixty days after a judge decides a sentence or final appeals of a conviction

have been heard (as described below), a defendant has the right to make a motion to **“revise and revoke”** the sentence. This means that the defendant is seeking to have the sentence reviewed by the trial court. In most instances, these requests are made for the purpose of reducing the sentence. If a motion to revise and revoke is filed, a hearing may be held where the prosecution and the defense argue their positions on the issues before a judge (not necessarily the same judge who heard the case at trial). If the judge determines the sentence is too harsh or unjust, he or she has the authority to change the original sentence. Speak to your Victim Witness Advocate about being notified of these motions.

An offender seeking to have a sentence revised in some way or to have a sentence completely revoked must formally ask the court for a hearing. The court notifies the District Attorney's Office if a request for such a hearing is granted.

Appeals

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The Appellate Division of the Trial Court

If a defendant receives a sentence to State Prison (for more information on the correctional system please see Chapter Four), the defendant has a right to file an appeal within 10 days seeking review of the sentence by a panel of three Superior Court Judges. This panel, known as the Appellate Division of the Superior Court, sits once or twice a year to hear requests for sentence review. The Appellate Division has the power to raise or lower the sentence, or to leave it the same. In the great majority of cases, no formal hearing is scheduled and the sentence is left unchanged. You should let the Assistant District Attorney and Victim Witness Advocate assigned to your case know if you would like to be notified if the defendant makes this type of request for review of his or her sentence.

The Massachusetts Court of Appeals

Every defendant has the right to appeal a conviction to the state Appeals Court to determine whether he or she received a fair

trial. In some instances, those decisions may be further appealed the state's highest court, the Supreme Judicial Court.

In deciding an appeal, the Appeals Court will determine whether the trial was conducted in accordance with legal and procedural rules. In response to the defendant's appeal, the District Attorney's Office files a legal brief opposing the defendant's arguments. Appeals are filed and decided based only on legal decisions made by the trial judge; it is not an opportunity to have appeals judges hear factual testimony all over again. This is why only lawyers make legal arguments to the Appellate judges and no testimony by witnesses is required. It is important to note that only defendants can appeal a conviction; the prosecutor cannot.

The Appeals Process and Victims

Witnesses do not testify before an Appellate Court. The victim does not have a role in the appeals process but may attend the court proceedings in which oral arguments by the defendant's appellate counsel and the state's appellate counsel are presented. The Commonwealth cannot appeal a verdict.

Although appeals are common, most guilty verdicts remain unchanged. The policy to notify victims of appeals varies from county to county. You should speak with your Victim Witness Advocate if you would like to be notified of an appeal. If an appellate court decides to overturn a defendant's conviction and grant a new trial, victims and witnesses are entitled to all the rights and services during the second trial that are provided in the **Victim Bill of Rights**.

If a serious case such as homicide is overturned on appeal, the DA's Office will make every effort to contact you before the news is in the media. In some circumstances, despite best efforts, the news media receive notice of a reversal from the Appeals Court before or at the same time that notice is given to the District Attorney's Office. If the case involving you is appealed, it is important that you maintain current addresses and telephone information with your Victim Witness Advocate to help ensure timely notification.

Part Four: Proceedings Involving Juveniles and Youthful Offenders

Although cases involving juveniles under the age of seventeen may be handled differently by the criminal justice system, you are still entitled to rights as a crime victim as outlined in the Victim Bill of Rights.

Individuals who are younger than 17 are considered **juveniles** by the justice system. Different types of prosecutions are possible when a juvenile delinquent is under the age of 17. Some may be prosecuted as juveniles or as youthful offenders, depending on the nature of the offense or the juvenile's offense history.

Juvenile Court

For trials involving delinquency offenses, the term used in juvenile court, juveniles are entitled to only one trial and must choose between a trial before a judge or a jury in the same manner as adult offenders. A jury automatically hears trials involving juveniles unless the juvenile files a written waiver and consents to be tried by a judge without a

jury. Such waivers are not accepted unless the juvenile is represented by an attorney or it is provided through his or her parent or guardian.

Juvenile proceedings remain closed to the general public; however, victims and their family members have a right to attend all juvenile proceedings as outlined in the Victim **Bill of Rights**.

Youthful Offender cases

A **youthful offender** is defined as a juvenile between the ages of fourteen and seventeen who has been charged with a felony and:

- has previously been committed to the Department of Youth Services (DYS), the juvenile correction system, or
- is charged with threatening or inflicting serious bodily harm, or
- is charged with one of certain firearms offenses.

The District Attorney's Office decides whether or not to proceed by complaint or indict a juvenile as a youthful offender.

Youthful offender cases are tried in Juvenile Court or District Court. In these cases, the judge has all the powers that a judge sitting in the Superior Court would have including the option of imposing an adult sentence.

Indicting a Youthful Offender

To seek an adult sentence for a youthful offender, the prosecutor must obtain an indictment by a Grand Jury. The indictment means that the youthful offender, if convicted, may receive an adult sentence.

Open Court Proceedings for Youthful Offenders

Juvenile court proceedings have historically been closed to all those who do not have a direct interest in the case. However, the Juvenile Justice Reform Act, a law passed in 1996, allows court proceedings in which juveniles have been indicted as a youthful offender to be open to the public. In addition, it allows court records to be open to the public in the same manner as adult criminal records.

Youthful Offender Sentencing

If a youthful offender is convicted, a sentencing hearing must be held if the prosecutor is seeking an adult sentence. At the sentencing hearing, the judge has three options:

- Commit the juvenile defendant to the Department of Youth Services until the age of 21.
- Commit the juvenile defendant to the Department of Youth services until the age of 21 with a consecutive suspended adult sentence.
- Impose any adult sentence provided by law for the offense.

The law requires the judge to examine several factors in deciding a sentence. These are:

- the nature, circumstance and seriousness of the offense
- the Victim Impact Statement
- a report by the probation officer about the

history of the youthful offender

- the youthful offender's previous court and delinquency records
- the success or lack of success of any past rehabilitation efforts or treatments regarding the youthful offender
- the type of services available through the juvenile justice system
- the youthful offender's age and maturity
- the likelihood of future criminal conduct

Juveniles Charged with First or Second Degree Murder

Juveniles charged with murder are automatically charged as adults and, if convicted, will be sentenced as adults. This means a sentence of life without parole for murder in the first degree, and life with the possibility of parole after fifteen years for murder in the second degree. Juveniles under the age of seventeen who are sentenced to adult prison for murder are held at the DYS Plymouth Secure Unit separate from adult offenders. These offenders cannot be

classified or held in adult prison facilities before age seventeen.

Part Five, Questions of competency and criminal responsibility as a defense, and verdicts of not guilty by reason of insanity

In order for a defendant to be prosecuted it must be clear that he or she is competent to stand trial. Massachusetts law defines competency as the defendant being aware of the purpose of the legal proceedings, the roles of all the players in the court proceedings, and how such a proceeding is conducted. Most importantly, the defendant must be able to participate in his or her defense and be able to communicate effectively and assist his attorney in his defense.

If a judge determines that a defendant is incompetent to stand trial, the prosecutor can ask that the defendant be committed to a mental hospital. After a court hearing, if it is found that the defendant is mentally ill,

and his or her release could result in serious harm, the defendant can be hospitalized with periodic reviews, for competency. Be sure to let the District Attorney's Office know if you want to be notified of updates of such reviews.

If the court finds the defendant mentally ill and incompetent to stand trial, but not dangerous, the court may release the defendant back into the community. The court has no power to hold mentally ill defendants who are not considered dangerous to others.

Criminal Responsibility

The law states that the prosecutor must prove beyond a reasonable doubt that the offender committed the crime and that he or she can be held responsible for his or her criminal behavior. Some defendants will argue that they are not "criminally responsible" for their behavior.

In order to prove that a defendant is not **criminally responsible**, the defense must prove four things:

- the defendant is suffering from a mental disease or defect
- such mental disease or defect existed at the time the crime was committed
- the defendant could not appreciate the wrongfulness of his/her act or conform his/her behavior to the law, AND
- a specific mental disease or defect results in the defendant's inability to appreciate the wrongfulness of the act or conform the behavior to the law

Not Guilty by Reason of Insanity

If a defendant is found **not guilty by reason of insanity**, that defendant is legally acquitted despite having committed the acts with which he or she has been charged. This result means that a judge or jury was not convinced beyond a reasonable doubt that the defendant understood that his or her acts were against the law, or had the ability to conform his or her conduct to the law because of mental defect or illness.

If the defendant in your case is arguing

that he is not guilty by reason of insanity, the judge will order a commitment hearing to determine if the defendant is to be committed to a state mental hospital. The Victim Witness Advocate and Assistant District Attorney should talk with you about what this means for you and for the criminal case.

Defendants who have been civilly committed by the court to a mental hospital are in the custody of the state Department of Mental Health (DMH) or Bridgewater State Hospital, which is a facility of the Department of Correction. Male offenders who are committed to a mental health facility and require a high level of security are committed to Bridgewater State Hospital. Other offenders, including all females, are committed to DMH and are placed in locked secure facilities. In addition, offenders who have been committed to Bridgewater State Hospital may be transferred to a Department of Mental Health facility at any time after a judge determines that they are no longer in need of Bridgewater's strict security.

Information regarding these offenders is deemed confidential by the Department of

Mental Health and Bridgewater State Hospital unless it clearly impacts the victim's safety and well-being. Therefore, victims in these cases do not have the same notification rights as they do in other cases. Speak to your Victim Witness Advocate about your rights in these cases and other steps you can take to keep yourself safe.

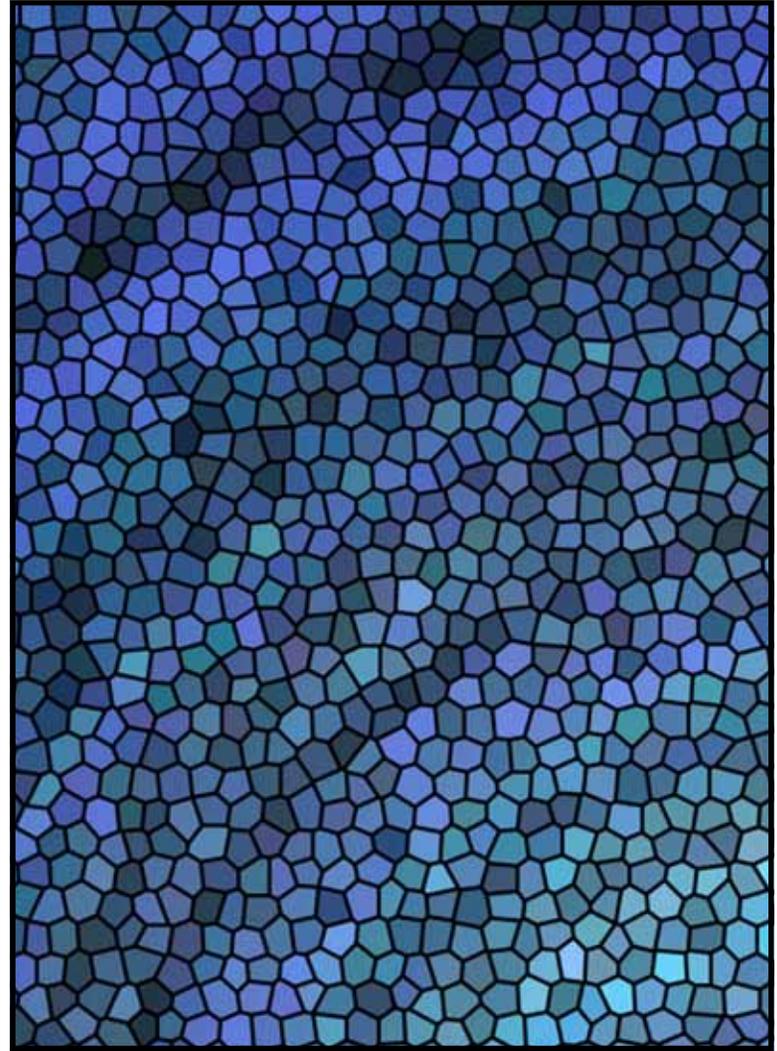
In Massachusetts, offenders found not guilty by reason of mental illness can be released once it is determined they no longer pose a likelihood of serious harm to themselves or others as a result of mental illness.

Massachusetts law requires licensed mental health professionals to warn and take precautions to protect any identified person, such as the victim in the original criminal case, if the offender makes an explicit threat during therapy or if the professional believes the offender has the ability to carry out those threats.

Prior to an offender's discharge from a mental health facility, the facility must notify the court and the District Attorney's Office that handled the case. Confidentiality laws prevent these facilities from notifying victims

directly of an offender's discharge. However, some District Attorneys' Offices do have procedures for notifying victims in these cases. Speak to your Victim Witness Advocate about this possibility.

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Post Disposition
Services for Victims

Post Disposition Services for Victims

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In the previous chapter we discussed your involvement in the criminal justice system and how cases move through the system. In those cases where a defendant is convicted or has admitted to sufficient facts, the victim's ability to participate may continue. Some victims may want to be informed of post-conviction proceedings and decisions regarding the offender. This chapter will briefly discuss some of these options and provide resource information so that you may inquire further.

Massachusetts has a number of state agencies involved in the punishment, incarceration and rehabilitation of criminal offenders. Recognizing the needs of crime victims, these agencies have instituted programs and policies to meet those needs.

For offenders on probation, victims' concerns may focus on restitution and other conditions of probation such as stay away orders. For

offenders sentenced to prison or a house of correction, victims' concerns may center on the offender's eventual release from custody. The **Victim Bill of Rights** mandates that all victims and family members of deceased, incompetent or minor victims have the right "upon request to advance notice when an offender is moved from a secure to a less secure facility, has received temporary, provisional or final release from custody, or escapes." In order to be notified of release or obtain information about an offender from post-conviction agencies, victims must apply for certification from the Criminal History Systems Board.

In Massachusetts, there are three different types of correctional facilities — jail, the house of correction and state prison. The Assistant District Attorney and Victim Witness Advocate will be able to tell you to which facility the defendant or defendants in your case will likely be sentenced. This information is discussed in more detail later in this chapter.

**Criminal History Systems Board
Victim Service Unit**
200 Arlington Street, Suite 2200
Chelsea, MA 02150
617-660-4690
617-660-5973 fax
TTY: 617-660-4606
Mass.gov/chsb

The **Criminal History Systems Board** (CHSB) manages the Criminal Offender Record Information (CORI) process, which allows for certain information about offenders to be shared with the criminal justice community, crime victims and the general public. Any member of the public can request information about the status of an inmate and certain information about the offender’s criminal record. On certain situations victims of previous crimes can file a citizen initiated petition to be notified when the offenders is going to be released.

Victims have the right to be notified of an offender’s release from custody and the right to get additional criminal record

*Your Victim
Witness Advocate
can help you request
a Notification of
Offender’s Release
from the Criminal
History Systems
Board as soon as
the offender is
sentenced.*

information about an offender. These rights to notification and information are not automatic; they are provided only upon request. When victims request this petition and if it is granted, they become certified petitioners. Victims must be certified to receive this notification and information by the Criminal History Systems Board. The **Victim Services Unit** of CHSB is responsible for processing these certification applications from crime victims. All applications are kept confidential and it is up to the victim to keep CHSB notified of changes in contact information so that CHSB can provide the requested inmate status notifications.

Probation Department
Office of the Commissioner of Probation
One Ashburton Place Room 405
Boston, MA 02108
617-727-5300

Probation is one type of sentence that, instead of incarceration, allows the offender to be released into the community under

certain conditions. Throughout the probation period, the offender is required to follow these conditions and may be under the supervision of a probation officer. In the majority of criminal cases where the offender is convicted or **admits to sufficient facts**, the offender is placed on probation for part of or for the entire sentence imposed.

A victim's involvement with the probation department usually relates to probation conditions affecting the victim. Under the Victim Bill of Rights, crime victims are entitled to receive a copy of the conditions of probation, the restitution payment schedule, if any, and the name and telephone number of the probation officer assigned to supervise the offender. Your Victim Witness Advocate can help you obtain this information.

Supervision

Most offenders, once sentenced to probation, are assigned a probation officer for supervision. Probation officers monitor the

offender's compliance with the conditions of probation, direct the offender to appropriate counseling programs and assist the offender in obtaining a job. These offenders are required to follow the conditions of probation, for the period of time determined by a judge. Conditions may include an order to stay away from the victim, though – unlike a restraining order – such an order is not criminally enforceable.

Surrender and Revocation

A probation officer who believes an offender has violated conditions of probation may try to **surrender** the defendant — that is, ask the judge to order the defendant to court for a hearing. The court then holds a surrender hearing to decide whether the violations warrant a probation revocation. During a surrender hearing the probation officer presents information to the judge and may recommend that the offender serve the remaining sentence in a correctional institution or to continue with probation. The judge

Victims are asked occasionally to testify at surrender hearings if the identified violations pertain to them such as the offender violating a no contact order. While the District Attorney's Office may not be involved in this hearing process, you may seek assistance from your Victim Witness Advocate.

determines if a violation has occurred and whether the offender should be incarcerated as a result. The judge may order additional conditions or sanctions other than incarceration at this hearing. If the violation of probation is based on a new criminal charge, it is likely the Assistant District Attorney will be involved in this process. An offender can seek to have his or her revocation status changed or reversed by making a formal request of the court. The District Attorney's Office is not usually involved in this process.

Duties to Victims

The Victim Bill of Rights outlines a Probation Officer's responsibilities to victims. These rights include:

- The right to consult with the probation officer prior to the filing of a report to the judge with sentence recommendations (called a **presentence report**).
- The right to receive a copy of the schedule of restitution payments and the name and

phone number of the probation officer responsible for supervising the offender's payment.

- The right to receive notice from the probation officer and be heard at any hearing about possible changes to the restitution order.
- The right to request confidentiality of victim information such as home address, telephone number, place of employment or school.
- The right to expect a probation officer to assure that victims are afforded these rights.

Access to any other probation information is limited and controlled by law. Please contact the probation department if you are seeking access to this confidential information.

Probation officers are responsible for monitoring an offender's payments, which are made to the probation department, and for ensuring that the victim then receives a check for any restitution paid by the offender.

If you would like to receive information such as whether the defendant finds employment, or completes certified batterers intervention program, you should contact the probation officer.

If you are scheduled to receive restitution but have not received it, contact the probation officer supervising the offender. Also, if the offender is seeking to modify a restitution order, the **Victim Bill of Rights** mandates that the supervising probation officer notify you of the proposed change. The law also gives you the right to be heard at any hearing on this issue.

For victims whose offender is incarcerated

In Massachusetts, offenders are held in one of three types of correctional facilities. If an adult is sentenced to a term of incarceration, the severity of the offense and the length of the sentence will be significant in determining where the inmate is incarcerated.

A **Jail** is usually run by the County Sheriff and holds defendants awaiting trials. A **House of Correction** is a county correctional facility also run by the County Sheriff to house convicted offenders who are sentenced for less than 2 1/2 years per charge or for

crimes which the law considers less serious, misdemeanor crimes. A **State Prison** is the correctional facility run by the Department of Correction to house convicted offenders who are sentenced to terms of 2 1/2 years or longer per charge or for crimes which the law determines to be more serious, usually a felony. In some cases, if a defendant is sentenced to less than 2 1/2 years but has previously served time for a felony, that defendant will be housed in the state prison rather than the house of correction. Sentences to state prison do not have a minimum and the maximum is life without the possibility of parole (the mandatory sentence for First Degree Murder).

Your Victim Witness Advocate should be able to tell you if the defendant will be held at a House of Correction or a State Prison.

County Houses of Correction

The **House of Correction** system in Massachusetts is operated on the county level by the local Sheriff's Department. The Sheriff is responsible for housing inmates sentenced to the County House of Correction, transporting prisoners and housing offenders on bail who are awaiting trial.

Release Notification

The House of Correction in each county has a designated contact person to provide notification of an offender's release from a county correctional facility. Some Sheriff's Departments have a Victim Advocate who responds to victims' concerns, assists with safety planning and other resources and provides notification of an offender's release. The **Victim Bill of Rights** entitles all CORI-certified victims to receive advance notification whenever an offender is moved from a secure facility to a less secure facility, has been given a temporary, provisional or final release from custody, or escapes. If you are CORI-certified, the contact person at the county correctional facility where the offender is serving a sentence will provide this information to you.

When an inmate is to be released, the County Houses of Correction are required to notify victims in writing and by telephone in advance of the release. Because calculating the actual release date is complicated and can change with "good time" credits, and because the date often comes much sooner than a victim expects, victims who want to

know an offender's release date must get certified immediately and maintain current contact information with the Criminal History Systems Board.

Department of Correction

Victim Service Unit

999 Barretts Mill Road

West Concord, MA 01742

978-368-3618 or Toll Free 866-684-2846

The **Massachusetts Department of Correction (DOC)** oversees numerous adult correctional facilities throughout the state. The DOC's mission is to promote public safety by incarcerating offenders while providing program opportunities designed to reduce recidivism, or further criminal behavior. These two goals help determine which correctional facility is most appropriate for the offender. Within the Department of Correction is the **Victim Services Unit (VSU)**, which provides information, assistance and support to victims of crime and other concerned individuals whose offenders are in Department of Correction custody.

An important aspect of the Department

of Correction's role through the VSU is to provide victims with information about the correctional system and notification of an inmate's custody status. The **Victim Bill of Rights** entitles CORI-certified victims to receive advance notification whenever an inmate is transferred to an institution that is lower than medium security, receives a final release date or receives an emergency escorted release. Victims will also be notified if the inmate dies. While extremely rare, escapes are the highest priority and properly certified victims are notified immediately. The DOC is able to notify victims as long as the victim has provided them with updated contact information throughout the inmate's incarceration.

Inmate Classification Procedures

When a male offender receives a state prison sentence, he is transported directly from court to the Massachusetts Correctional Institution MCI-Cedar Junction

in Walpole for booking, admission and an initial classification review. Once the inmate has been reviewed and his security risk and program needs have been evaluated, he is transferred to a correctional facility appropriate to his needs and risk level. Maximum security is the most secure facility in the state and generally houses those inmates who have demonstrated disruptive behavior while incarcerated.

Female offenders who receive state prison sentences are transported directly from court to MCI-Framingham. Female offenders undergo the same classification process as male offenders and may also be transferred to another correctional facility.

All inmates are reviewed by the classification board at least once a year. The DOC uses an objective point-based classification system to determine which level of security the inmate requires. There are four security designations which correspond to the type of facility in which an offender is incarcerated:

You are encouraged to contact the VSU to ask questions, express concerns or ask for assistance. It is also important that you update your information with CHSB or the DOC every time it changes. This is the only way to ensure you will be notified in a timely way.

maximum, medium, minimum and pre-release. Each security level has structural barriers to prevent inmate escape and otherwise control the behavior of inmates. Inmates may be transferred between similarly secure facilities. If an offender is to be moved from a medium facility to a minimum or pre-release facility or returned to a higher security, the Department of Correction will notify any CORI-certified victims. In pre-release, inmates may leave the facility daily for education or work in the community to better prepare them to re-enter society as they near the end of their prison sentence. Inmates may be moved from one medium security facility to another for various reasons; because these moves do not result in lower security, victims are not automatically notified of these changes. However, if notification is desired, certified petitioners may register for the DOC's VINE service.

VINE

VINE or Victim Information and Notification Everyday, is a free, anonymous, computer-based telephone service that is provided by the Department of Correction. Once a victim is CORI-certified and has registered for VINE,

the victim will receive automatic notification through a computerized service if an offender is released, transferred, escapes or dies while in the custody of the Department of Correction. The victim will also be able to call a toll-free number, which is available 24 hours a day, to check on an offender's custody status. For more information, call the Massachusetts Department of Correction Victim Service Unit or the toll free VINE line at 877-421-8463. Additionally, VINELink is the web-based extension of the VINE service www.vinelink.com.

Sentence Computation

Calculating an offender's actual release date is a complicated process. Offenders can get credit for time they served while awaiting trial and may also be eligible for "statutory" credits and earned credits. Both types of credits are explained below. Victims who wish to know a general time frame or specific release date must remain in contact with the Department of Correction to ensure they receive the most up-to-date information concerning an offender's release date.

Statutory Credits vs. Earned Credits

State law allows most inmates to reduce their sentence by participating in approved programs. The Department of Correction is responsible for recording and calculating such credits.

Most inmates serving time for an offense committed before July 1, 1994 are entitled to statutory credit. Exceptions include inmates serving a life sentence or those convicted of certain sex offenses. **Statutory credit** is based on the maximum term of sentence and ranges from 2.5 days to 12.5 days per month, which is determined by the maximum term imposed.

Inmates who committed an offense after July 1, 1994 are not entitled to statutory credit, as result of the **Truth in Sentencing Law**. The maximum term imposed will be added to the effective date of sentence, resulting in the maximum release date and can only be reduced if the inmate earns credit while incarcerated. "Good time" credits may be earned for participation in work, education and other approved programs. Credit is awarded at the rate of 2.5 days per category,

up to 7.5 days per month.

**Massachusetts Parole Board
Victim Services Unit
12 Mercer Road
Natick, MA 01760
508-650-4543**

The Massachusetts Parole Board is an agency within the Executive Office of Public Safety authorized to grant paroles, supervise the parolees, and make recommendations to the Governor in regard to pardons and commutations. Annually the agency conducts approximately over 10,000 face-to-face parole release hearings; supervises 8,000 parolees; provides reentry services to approximately 700 state offenders leaving custody with no post release supervision; and provides more than 19,000 notifications and assistance to thousands of victims.

The Parole Board is composed of seven members appointed by the Governor to serve staggered, five year terms. The mission of the Parole Board is to make decisions about whether to release an inmate on parole, taking into account input from

victims, members of law enforcement, District Attorneys, correctional staff, treatment providers and the public. If a decision is made to release an inmate, Parole Board members set conditions of parole intended to safely and effectively guide the offender from a correctional setting to the community in such a way that he or she can become a productive, law-abiding citizen. The agency supervises the individual in the community and the Parole Board may modify the conditions at any time based on the changing needs of the parolee. The Parole Board also serves as the Governor's Advisory Board of Pardons and makes recommendations on all pardon and commutation petitions filed.

The Parole Board established a Victim Service Unit to assist crime victims through the parole process. Working to ensure victim rights, Victim Service Coordinators provide services to victims, including collecting victim input for the Parole Board; providing notification of parole hearings and board decisions; providing information about parole and the CORI process; assisting victims in completing impact statements; providing referrals to other criminal justice agencies

and community-based service providers; and enhancing the community's knowledge and understanding of the parole process through community outreach, education and training.

Parole Eligibility

Parole eligibility is determined by the crime and the type and length of sentence imposed. The date on which an offender becomes eligible for parole is set by statutes and regulations. For all offenders, the parole eligibility date is tentatively calculated at the start of the offender's incarceration. As a result of the Truth in Sentencing Law enacted July 1, 1994, the formula for determining parole eligibility dates changed for offenders who committed crimes after July 1, 1994.

Offenders serving state prison sentences for crimes against a person (i.e. violent crimes) committed before July 1, 1994, are generally required to serve at least two-thirds of their minimum sentences, minus the amount of time accumulated through earned credits. Offenders serving state prison sentences for committing other crimes (i.e. property crimes) are generally required to serve at least one-third of their minimum sentence, minus the

Chapter 4

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amount of time accumulated through earned credits. Offenders sentenced after July 1, 1994 are required to serve at least the minimum term of the sentence (for example 7-10 years), minus the amount of time accumulated through earned credits. Offenders serving House of Correction sentences of 60 days or longer are eligible for parole after serving one-half of their sentence.

Offenders serving life sentences for first degree murder convictions are not eligible for parole. Offenders serving life sentence for all other crimes (i.e. 2nd degree murder, armed robbery, aggravated rape) are eligible for parole after serving a mandatory minimum of fifteen years. Offenders serving other mandatory sentences are not eligible for parole.

The Parole Board Victim Services Unit sends a written notice of the offender's parole eligibility date to CORI-certified petitioners. The victims may also contact the Victim Services Unit to determine the parole release status of the offender.

Parole Hearings

There are two types of Parole hearings that victims may attend: Lifer Hearings and Victim Access Hearings. Up to 60 days prior to an offender's parole eligibility date, a parole hearing is scheduled to consider whether the offender is suitable for parole release. The criteria used to assess suitability for parole release is defined by statute. Massachusetts General Laws (M.G.L. c. 127§130) states that "no prisoner shall be granted a parole permit merely as a reward for good conduct but only if the Parole Board is of the opinion that there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society." Parole hearings focus on the offender's prior criminal record, the particulars of the offense, the degree to which the offender has participated in rehabilitation programs, the inmates behavior while incarcerated, the continuing impact of the crime on the victim or surviving family members, the transition plan and structure proposed by the inmate and other relevant factors. The Parole Board's decision to release an offender on parole is made by a majority

vote.

Lifer Hearings

In Massachusetts, inmates sentenced to life for second degree murder (and other crimes such as aggravated rape and armed robbery) are eligible for parole after they have served 15 years. Parole hearings for offenders serving second degree life sentences are open to the public, including the victim, the victim's family and friends and community members. The inmate has a right to counsel and to present witnesses in support of parole. The Parole Board Victim Services Unit will notify CORI certified petitioners of the parole hearing date and inform them of their rights to attend and offer a victim impact statement at the hearing. It is important to maintain current address information to ensure timely notification.

Victim Access Hearings

Parole hearings for offenders serving state prison sentences for conviction of crimes in which a death resulted may be attended by the surviving family members. These parole hearings are not open to the public.

CORI-certified petitioners will be notified by the Parole Board Victim Services Unit of the parole hearing and informed of their right to attend and provide a victim impact statement at the hearing.

Legislation enacted in 2001 expanded the Victim Access Hearing to allow victims and parents or legal guardians of minor victims of a sex offense or a violent crime (where a sentence of one year or more was imposed) to attend and provide a victim impact statement at the parole hearing.

Parole hearings for offenders serving House of Correction sentences are held before a Parole Board panel at a correctional facility. These parole hearings are not open to the public; however, victims or parents/guardians of minor aged victims of certain violent crimes as defined by statute may attend and provide testimony.

All victims have a right to provide written input whether or not they are allowed to attend.

Victim Rights in the Parole Process

Regardless of the nature of the crime, victims have the right to participate in the parole decision-making process. Massachusetts law states that:

- A victim (CORI certified) must be notified of a parole hearing in writing, 30 days prior to the hearing date.
- A deceased victim's family member – including parent, stepparent, guardian, spouse or person living as spouse, child, stepchild, grandchild, sibling, aunt, uncle, niece, nephew, and or guardian of victim's minor child or stepchild, may represent the victim at a parole hearing.
- A victim has the right to submit a Victim Impact Statement to the Board for inclusion in the offender's parole records.

The Parole Board encourages victims and their family members to provide a Victim Impact Statement in a format which is most comfortable. For example, some victims have elected to submit videotaped statements, poems and photographs of a

deceased victim, while others have preferred to make a formal written statement to the Parole Board. The statement may include a brief description of the crime, any fears or concerns about the offender or the possible release, and the long-term impact of the crime. If you have questions about preparing a Victim Impact Statement, please contact the Victim Services Unit.

Notification of Parole Board Decisions

CORI-certified petitioners will be notified of the outcome of the hearing. If an offender is granted parole, victims will be informed of the release date and any special conditions of parole that have been placed on the offender, such as a condition of no contact. The Victim Services Unit can also assist with safety planning and counseling referrals.

If an offender is denied parole, the Parole Board Victim Services Unit will inform the victim of the offender's next parole hearing date.

Parole Supervision and Revocation

The Parole Board has eight regional parole offices, also known as “Regional Reentry Centers,” located across the Commonwealth. Field Parole Officers, who are commissioned with special state police powers, supervise parolees in the community. Parolees are required to follow the conditions of parole, including any special conditions imposed by the Board. Parole may be revoked if the parolee is found to be in violation of any condition of parole. The parole officer can immediately return the offender to custody if there is reason to believe the parolee is a danger to themselves or others. Revocation hearings are conducted by the Parole Board to determine if a violation occurred and whether the offender should remain in custody or be re-paroled.

Commutation Proceedings

In addition to the parole release process, an incarcerated offender may seek to reduce the amount of time to be served in prison by petitioning the Governor for clemency through the commutation process. If granted, a commutation could provide, for example,

an earlier parole eligibility date or allow an offender previously ineligible for parole to become eligible for parole (i.e. first degree murder).

The commutation process begins when the offender submits a petition to the Governor’s Council. The Council is an independently elected eight member council. The Council submits the petition for commutation to the Parole Board, acting in its capacity as the ‘Advisory Board of Pardons’. If the Advisory Board of Pardons determines the petition merits further consideration, a public hearing is held by the Board after a comprehensive investigation is conducted and a report is generated. The victim, the victim’s family and others are able to testify at the hearing about their views on the petition, or they may submit written, audiotape or videotaped statements.

After the public hearing, the recommendation of the Advisory Board is forwarded to the Governor. If the Governor approves the petition, the matter is referred to the Governor’s Council which may hold another public hearing at which the victim and the victim’s family may testify. The

Governor’s Council then votes on whether to give their consent to the commutation.

Pardon Proceedings

Individuals who have a criminal record and are not currently incarcerated may also petition for clemency in the form of a pardon. The granting of a pardon relieves the individual of the barriers associated with a criminal record. Pardon requests follow a similar procedure as a commutation petition. Hearings held for pardon requests are public and victims and their families are allowed to attend and testify.

Department of Youth Services
Tower Point
27 Wormwood Street, Suite 400
Boston, MA 02210-1613
617-727-7575

The **Department of Youth Services** is the state’s juvenile justice agency. Its mission is to protect the public and prevent crime by promoting positive change in the lives of youth committed to its custody, and by

partnering with communities, families, and government and provider agencies toward this end.

The Massachusetts **Victim Bill of Rights** mandates that victims of crimes committed by juveniles or youthful offenders be notified by the custodial authority, upon request, whenever the juvenile is transferred from a secure facility to less secure facility, receives

a temporary, provisional or final release from custody, or escapes. If the offender is adjudicated in court and committed as a juvenile, an application for Juvenile Offender Notification and Information is filed with the DYS Victim Services Unit. If the offender is adjudicated in court and committed as a youthful offender, as described in detail in Chapter Three, an application for Notice of an Offender’s Release is filed with the Criminal History and

Systems Board Victim Services Unit. Once certified, the **DYS Victim Services Unit** provides verbal and written notification of changes in the juvenile’s status or placement. Beyond this basic mandate, DYS has discretion over the release of all other

DYS is responsible for operating programs and providing rehabilitative services for juveniles who commit offenses between the ages of 7 and 17.

information and evaluates information requests on a case by case basis.

If a juvenile is adjudicated and committed to DYS, the Department retains authority (physical custody) over the juvenile until age 18. If a juvenile is committed as youthful offender, The Department of Youth Services retains authority over the juvenile until age 21. In both instances, DYS uses a “continuum of care” model of services and supervision. The continuum consists of 93 programs, including 62 facilities, ranging from staff secure group homes to highly secure locked units, and 29 programs to serve youth living in the community. DYS divides the state geographically into five regions; Central, Metropolitan, Northeast, Southeast and Western. Each region operates its own continuum of services and supervision.

The difficulties victims often face in obtaining information about an offender in the adult system can be magnified for victims dealing with the juvenile justice system. This is due in large part to the fact that the juvenile justice system protects a juvenile offender’s legal right to confidentiality. Also, juvenile records can be sealed if the offender has had no

further record three years after release from supervision. If the juvenile is prosecuted as a youthful offender, the process for obtaining criminal offender record information (CORI) through the Criminal History Systems Board is the same as it is for adults because the offender is treated as an adult for purposes of prosecution.

The Commitment and Placement Process

Upon commitment to DYS, a regionally based caseworker is assigned to the juvenile and assessments are done to help determine where the juvenile is placed and for how long. This decision is based on the nature and type of offense and the results of the assessment that evaluates the juvenile’s behavioral, social, educational and family background.

Youthful offenders sentenced as adults may serve their sentences in adult correctional facilities. Some adult correctional facilities utilize the DYS’s Plymouth Secure Unit located at the Plymouth County House of Correction to hold youthful offenders under the age of 17. Youthful offenders convicted

in Juvenile Court can either be committed to DYS custody until the age of twenty-one, committed to DYS custody until the age of twenty-one with a concurrent suspended adult sentence (as described in detail in Chapter Three) or given a straight adult sentence. Youthful offenders with adult sentences are transferred to the appropriate custodial authority (House of Correction or State Prison) at age 17.

**Sex Offender Registry Board
Victim Services Unit
P.O. Box 4547
Salem, Massachusetts 01970**

The **Sex Offender Registry Board (SORB)** is a public safety agency responsible for determining if persons convicted (or adjudicated if a juvenile offender) of sex offenses who are living, working or attending an institution of higher learning in Massachusetts have a duty to register. If so, the SORB is responsible for assessing the risk of reoffense and the degree of dangerousness sex offenders pose to the public. The primary goal of the SORB is to enhance public safety by providing the

public with accurate information about sex offenders so they can make better decisions to protect themselves and their families.

The Sex Offender Registry Law (SORL) creates the SORB which is composed of Board members who are appointed by the Governor to serve specific terms. The SORL requires that the Board include experts in the areas of victim services, criminal justice and the assessment and treatment of juvenile and adult sex offenders.

Victim Inclusion

The **Sex Offender Registry Board has a Victim Services Unit (VSU)** to provide victims with assistance, information and notification as the offender progresses through the registration and classification processes. The Victim Services Unit assists victims with writing Victim Impact Statements (VIS) and also provides safety planning, crisis intervention, and referrals for resources as needed.

The Sex Offender Registry Law requires the Board to consider a Victim Impact Statement as part of the classification process. Through

the written statement, the victim is given the opportunity to describe the harm the offender has caused. Understanding the devastating, often long-term impact of sex offenses on victims is critical to assessing the consequences of the offender's criminal behavior.

In order for a victim or a parent/guardian of a child victim to participate in the Sex Offender Registry Board process, there must be an adjudication or a conviction for a sex offense committed against the victim. Typically, victim referrals are submitted to the Sex Offender Registry Board through a form entitled, "Victim Participation and Notification" by the District Attorney's Office at the time of the offender's sex offense conviction or adjudication. This form is also accessible on the Sex Offender Registry Board's website at www.mass.gov/sorb. A victim or parent/guardian must enroll with the SORB's Victim Services Unit in order to be included in the offender's classification process.

Sex Offender Registration

The SORL requires registration for any

sex offender who: (1) lives, works or attends an institution of higher learning in Massachusetts; and (2) was also convicted or adjudicated a delinquent or youthful offender, incarcerated, on probation, on parole, or was released from a civil commitment for a sex offense on or after August 1, 1981.

Unclassified sex offenders must first register with the Sex Offender Registry Board via mail and not with the police. Sex offenders are required by the Sex Offender Registry Law to provide their current residential, secondary, employment and school addresses. Offenders who fail to register with the SORB or to update address information may be subject to arrest as such failure is a crime.

Length of Registration

The length of registration required for sex offenders can vary depending upon the type of sex offense conviction. A classification level does not affect the length of registration. The SORL requires that those persons convicted of a sexually violent offense or 2 or more sex offenses against a child must register for life. The Sex Offender Registry Law requires for certain other sex offenses that the duty

to register shall end 20 years after such sex offender has been convicted or adjudicated or has been released from all custody or supervision (whichever occurs last). Juveniles adjudicated of sex offenses may request relief from their duty to register. Persons convicted or adjudicated of sex offenses other than sexually violent offenses or a single sex crime against a child may also request early relief from their duty to register. Such requests are not automatically granted by the Board and are reviewed on a case by case basis.

Preliminary Classification

After an unclassified sex offender registers with the Sex Offender Registry Board, he or she is assigned for classification review. Victims, if enrolled with the SORB, are notified that the offender's classification has begun. The offender is given 30 days to submit information to the Sex Offender Registry Board regarding sex offender specific treatment, current lifestyle, employment and living situation, alcohol/drug abuse treatment and any other information the offender seeks to have considered. During this time, the Board gathers critical information, such as Victim Impacts Statements, police reports,

court records, probation and parole records, state and national criminal records, and other criminal justice records that identify the details of the offender's past behaviors and criminal activities.

A single Board member examines all of the above described materials obtained as part of the classification process and considers a number of factors in reaching a decision. These factors are defined in the SORL and serve as a guide in assessing the current dangerousness and risk of reoffense presented by each offender. Upon completion of the review, the Board member issues a preliminary classification level recommending the offender be a Level 1 (low risk), Level 2 (moderate risk), or Level 3 (high risk). The level speaks to the degree of dangerousness and risk to reoffend. It is important to note that the preliminary classification level is not accessible to the public as it is not the offender's final classification.

The offender is notified in writing of his *preliminary* classification and has 20 days either to: (1) accept the preliminary classification and waive his right to a hearing

and an appeal, or (2) request a hearing to challenge the preliminary classification. Acceptance in writing or failure to respond on time makes a preliminary classification a final classification.

Classification Hearing

A hearing is scheduled following the receipt of a written request from the offender. The offender is given copies of all of the materials reviewed as part of the offender's preliminary classification; this includes Victim Impact Statements provided by victims. For safety reasons, the Sex Offender Registry Board asks victims not to put any identifying contact information on Victim Impact Statement submissions. The hearing is conducted by a single hearing examiner (who may also be a Board member), responsible for making an independent review of all the materials and factors to be considered.

At the hearing, the Sex Offender Registry Board has an attorney who represents the interests of the public. The offender can have an attorney or representative or can represent himself. Unlike the criminal trial process,

the SORB hearing by law is not open to the public, including victims. However, if enrolled with the SORB, victims are notified whether or not the offender requests a hearing.

Final Classification

After the hearing, the examiner issues a comprehensive written decision determining: (1) the offender's duty to register as a sex offender, and (2) the current risk level he or she poses to the public. The SORB notifies the offender in writing of his final classification level. Offenders classified as Level 2 (moderate risk) or Level 3 (high risk) are required to register with the local police department where they live.

The offender has the right to appeal the final classification level within 30 days in Superior Court. The offender may also seek a court order to prevent the dissemination of his or her information to the public pending the appeal.

Victims, if enrolled with the Sex Offender Registry Board, are notified in writing of the offender's final classification level. If a Superior Court issues an order that changes

the offender's final registration and/or classification level, the victim is notified of this change.

Final Registration

The SORB notifies appropriate law enforcement, probation and parole officials when an offender is finally classified respective to their jurisdictions. This notification allows the police to monitor an offender's compliance with Sex Offender Registry Law requirements. The following are the various requirements of the three classification categories:

Level 1 (Low Risk): Sex offenders are not required to register with the police and his/her information is *not* accessible to the public. Offenders are required to re-register with the SORB on an annual basis during their birth month.

Level 2 (Moderate Risk): Sex offenders are required to register with the police departments where they live within 48 hours of receiving notice of their Level 2 designation. Information about Level 2 offenders is accessible to members of the

public who request it at their local police department. This information includes the offender's name, identifying data, residential, secondary, employment and school addresses, sex offense conviction data, physical description and a photograph. Level 2 offenders are required to re-register with the police on an annual basis during their birth month.

Level 3 (High Risk): Sex offenders are required to register with the police departments where they live within 48 hours of receiving notice of their Level 3 designation. Information about Level 3 sex offenders is posted on the Sex Offender Registry Board's website at www.mass.gov/sorb for review. In addition, members of the public can request information at their local police department. This information includes the offender's name, identifying data, residential, secondary, employment and school addresses, sex offense conviction data, physical description and a photograph. Level 3 offenders are required to re-register with the police on an annual basis during their birth month.

In addition, Level 3 sex offenders are subject

to active community notification conducted by the police since they are considered to have the highest risk to reoffend. To enhance public safety, the police are required to notify organizations and the public who are likely to encounter Level 3 offenders, including all schools.

Incarcerated Offenders

All incarcerated sex offenders are also required to register with the SORB (via mail) two days prior to release from custody. In addition, any sex offender who is already classified as a Level 2 or Level 3 offender at the time of release is required to register within 2 days with the local police where he or she intends to live.

Level 3 sex offenders who are incarcerated in county or state correctional facilities are posted on the SORB's website as well.

Reclassification

The Sex Offender Registry Board may, at any time, seek to initiate a reclassification review to possibly increase an offender's level should new information suggest the

offender poses a higher risk to reoffend. Likewise, offenders may make a request to the SORB to be re-classified to a lower level every three years, but reclassification is not automatic. In addition, offenders must be free from custody for five years before they can seek a reclassification review. Victims, if enrolled with the SORB, will be notified of any offender or SORB initiated reclassification reviews. Victims may submit a new Victim Impact Statement for the review.

Offenders in Violation

Sex offenders may be subject to arrest and prosecution for violating the Sex Offender Registry Law if they knowingly fail to register, fail to verify registration information, fail to provide notice of any changes in their addresses or provide false registration information. Please contact the victim services unit at the SORB with any questions regarding violations of the Sex Offender Registry Law.

**Department of Mental Health and
Bridgewater State Hospital
20 Administration Road
Bridgewater, MA 02324**

The Massachusetts **Department of Mental Health** acts as the state's Mental Health Authority, assuring and providing access to services and supports to meet the mental health needs of individuals of all ages, enabling them to live, work and participate in their communities. When a criminal offender is thought or is known to suffer from a mental illness, the Department of Mental Health will be contacted to evaluate him or her. When an offender requires specialized treatment from the Department of Mental Health, and the court deems that the offender requires strict security because of the potential for endangering themselves or others, the offender will be sent to Bridgewater State Hospital. **Bridgewater State Hospital** provides medium security level to all persons requiring specialized care and treatment. Offenders who are charged with or convicted of crimes (felonies or misdemeanors), can be admitted there. Once an offender is admitted he or she will have

a court-ordered evaluation that can range from twenty to forty days, depending on its purpose. Such evaluation is mandated by Massachusetts law.

The evaluation is completed in the effort to determine:

- competency to stand trial
- criminal responsibility
- ability to await trial in a penal environment
- ability to serve a sentence in a penal environment
- need for further treatment and/or strict security following a finding of not guilty by reason of insanity
- sentencing evaluation

After completing the evaluation if the psychiatrist or psychologist determines that the offender needs further treatment or evaluation, he or she may be committed. Some of the offenders who are committed to Bridgewater State Hospital are those who are deemed Sexually Dangerous Persons, Not Guilty by Reason of Insanity, and Incompetent

to Stand Trial.

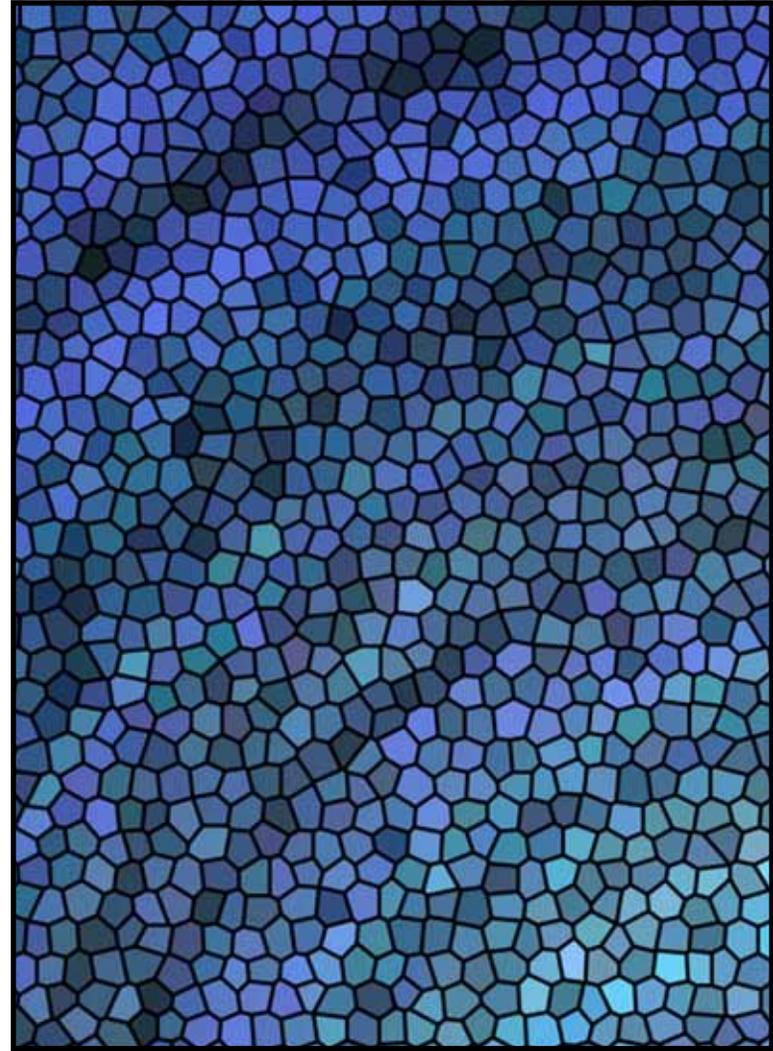
Sexually Dangerous Persons

For convicted sex offenders that the prosecution believes will continue as sexual predators after the completion of their sentence, the District Attorney's (DA) Office can request a Sexually Dangerous Person Hearing. A **Sexually Dangerous Person Petition** or SDP is a civil proceeding during which the District Attorney's Office presents evidence through police reports, trial transcripts, and experts who can offer testimony with regards to the defendant's current state of mind. If a jury unanimously believes that the defendant is guilty, the defendant will be committed to the Massachusetts Treatment Center indefinitely. The Massachusetts Treatment center is located within the Bridgewater Correctional Complex under the law for the Care, Treatment, and Rehabilitation of Sexually Dangerous Persons.

The defendant has the option to petition the court every year for a release. Although it is a civil commitment, a prosecutor from the District Attorney's Office will handle the

matter. Discuss questions or concerns with the Assistant District Attorney or Victim Witness Advocate.

5



*Financial Remedies
for Victims of Crimes*

Financial Remedies for Victims of Crimes

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If you are a victim of a crime that occurred in Massachusetts, several financial remedies exist that might be available to you. This chapter outlines some of these options. The information can be confusing, but it is important. Your Victim Witness Advocate can help determine which programs you qualify for and when you would need to apply.

Victims of Violent Crime Compensation

Financial assistance for certain crime-related expenses is available to some **victims of violent crime through the Victim of Violent Crime Compensation and Assistance Division of the Attorney General's Office** www.mass.gov/ag. This program is funded by the federal Victims

of Crime Act (VOCA) and the state. Eligible victims and their families can receive compensation for medical, dental and mental health counseling expenses, funeral and burial expenses, lost wages resulting from crime-related injuries and the loss of financial support for the dependents of homicide victims.

Financial assistance for certain crime-related expenses is available to eligible victims of violent crime through the Victim of Violent Crime Compensation and Assistance Division of the Attorney General's Office.
www.mass.gov/ag

Eligibility Requirements

In order to be eligible for Victim of Violent Crime Compensation in Massachusetts, you must be the victim of a violent crime who suffers physical and/or psychological injury, a dependent or family member of a homicide victim, or a person who is responsible for paying funeral and burial expenses of a homicide victim. The crime must have occurred in Massachusetts, but you do not need to be a resident of the state. Also, unless there is good cause for delay, you must have reported the crime within five days of the date it happened. Generally, a claim for Victim of Violent Crime Compensation must be filed within three years of the date of the

crime. But if the victim is a child, the claim can be filed at any time before the victim's twenty-first birthday.

Victim of Violent Crime Compensation decisions are not based on whether someone has been arrested or convicted for the crime. However, victims must cooperate with law enforcement in the investigation and prosecution of that crime to be eligible for Victim of Violent Crime Compensation. If you are physically or psychologically unable to cooperate or believe that your safety is in jeopardy as a result of cooperating, this requirement may be waived.

If you have applied for or received Victim of Violent Crime Compensation, you may still pursue other financial remedies including **court-ordered restitution** from the offender or a civil lawsuit for crime-related damages. As discussed in more detail below, restitution is money that a judge may order an offender to pay to a victim of crime; it is part of the offender's sentence and is based on the victim's expenses resulting from the crime and the offender's ability to pay. Please note that the Victim of Violent Crime Compensation Program is "a fund

of last resort," which means it provides compensation only if no other options are available to the victim. If you were to later receive restitution or compensation through a civil lawsuit, Victim of Violent Crime Compensation would require that their funds be repaid. This is important to discuss with your Advocate or attorney.

As a general rule, it is still a good idea to seek restitution in addition to filing a claim for Victim of Violent Crime Compensation:

- Restitution can be ordered for expenses not covered by Victim of Violent Crime Compensation, such as property loss or damage, and for expenses over the \$25,000 limit of Victim of Violent Crime Compensation.
- Although the judge may order restitution at sentencing, payments are generally made in smaller amounts over a long period of time, and there is no guarantee that restitution will be collected at all or paid in full (this is also true of awards from civil lawsuits related to the crime).

Again, under the Victim of Violent Crime

Compensation statute, you are not allowed to collect twice for the same expense — you must notify the Victim of Violent Crime Compensation Program if you receive restitution or other payment for bills that you also submitted to the Victim of Violent Crime Compensation Program. If you have already received payment from Victim of Violent Crime Compensation, you are legally responsible for repaying any amount that has been paid by other sources, such as insurance, restitution, or proceeds from a civil lawsuit.

Court-Ordered Restitution

Restitution is money paid by criminal offenders to victims for losses, damages and other out-of-pocket expenses directly resulting from the crime. Examples might include the cost of damaged or stolen property, lost wages, uninsured counseling expenses or medical costs. Any victim who has suffered financial losses or property damage or loss should discuss the option for restitution with the Assistant District Attorney and Victim

Any victim who has suffered financial losses or property damage or loss should discuss the option for restitution with the Assistant District Attorney and Victim Witness Advocate as part of sentencing when a defendant pleads or is found guilty.

Witness Advocate as part of sentencing when a defendant pleads or is found guilty.

If you intend to seek restitution, you should discuss your losses with the Victim Witness Advocate or Assistant District Attorney as soon as possible. Be sure to keep copies of all receipts and bills to document your losses. Most District Attorneys' Offices have forms for victims to use in this situation. The Victim Witness Advocate can assist you with these forms and submit them to the probation department and prosecutor. You also have the opportunity to address financial losses as part of your Victim Impact Statement.

As mentioned earlier, there is no real guarantee that the offender will pay restitution ordered all at once, right away, or even at all. Offenders may delay paying restitution or seek pay extensions. Once they have finished probation there is no oversight to ensure payments are made.

Determination Process

Some restitution arrangements are made through the process of a plea agreement. In other cases, the probation department may evaluate a defendant's ability to pay as part of the pre-sentencing report submitted to the judge. A probation officer will present the offender's financial situation, employment history and current financial debts, including other court-ordered fines and assessments. From these reports and the Victim Impact Statement documenting losses, the judge determines whether the offender has the ability to pay. If there are multiple offenders convicted of the crime, or multiple victims who suffered financial losses and request restitution, the judge will determine the amounts and order of payment. If you know the offender and have some information about the offender's assets, you may want to provide that information to the prosecutor or probation officer to help them assess the offender's true ability to pay.

Restitution Hearings

If restitution is ordered by a judge, offenders are entitled to request a restitution hearing.

If the offender disagrees with the amount of restitution ordered by the judge at sentencing, or has other objections about the order, the offender must be granted a restitution hearing to dispute the issue. The hearing is limited to issues of restitution.

If such a hearing occurs, the prosecutor will ask you to submit proof of your damages if you have not already done so. Again, it is important to keep copies of all receipts and bills to document your losses and enable the judge to evaluate what expenses can be covered. You may be asked to testify at the restitution hearing.

Restitution Payments Schedule

If restitution is ordered, the **Victim Bill of Rights** requires the District Attorney's Office to give you the name and number of the probation officer assigned to supervise the offender. You are also entitled to receive a copy of the offender's restitution payment schedule from the supervising probation officer, who is responsible for making sure the offender pays restitution. **Offenders make their payments to the court, which**

should in turn send you the restitution check. Offenders do not and should not send payments directly to victims. To help ensure receipt of checks and hearing notices, you should keep the supervising probation officer informed of your current address.

If you do not receive a scheduled payment, you should contact the probation officer who is supervising the offender and report it. The probation officer generally contacts the offender to follow up. If the probation officer determines that the offender has an inability to pay, the offender can request another hearing to adjust the payment schedule. The U.S. Supreme Court has ruled that offenders who cannot reasonably pay restitution cannot have their probation revoked. However, if the probation officer determines that the offender *willfully* refuses to pay restitution, the probation officer may issue a violation of probation notice and, after a hearing, the judge may revoke the offender's probation and order the offender to serve a sentence in jail. In practice, however, probation is seldom revoked for non-payment of restitution alone. Sometimes the hearing will prompt the offender to make a payment or the judge may extend the period

of probation to give the offender more time to make restitution payments.

Changes or Modifications to Restitution Orders

If the offender cannot pay restitution as ordered, he or she can request a restitution modification hearing and ask the judge to dismiss, reduce or change the order. If the offender seeks such a change, the probation officer supervising the offender is required under the **Victim Bill of Rights** to notify you of the hearing. The **Victim Bill of Rights** also gives you the right to attend and be heard by the judge at this hearing.

Because restitution is imposed as part of the offender's criminal sentence, you are not allowed to request an increase in the amount of restitution at the restitution modification hearing even if you have incurred additional crime-related expenses. However, you may request that the judge extend the defendant's probation to allow for a longer period of time during which the offender can pay the restitution owed you.

Additional Ways for Possible Recoupment of Losses for Specific Crimes

Theft by an Attorney

Clients Security Board

www.mass.gov/ClientsSecurityBoard

Contractor Fraud

Home Improvement Guaranty Fund

www.mass.gov/oca

Investment Advisor Victimization

Securities Division of the
Secretary of State's Office

www.sec.state.ma.us/sct

Civil Lawsuits

The civil justice system is responsible for determining whether a defendant or a third party defendant is responsible, “civilly liable,” for injuries sustained as a result of a crime. Unlike in the criminal justice system where the criminal act must be proved beyond a reasonable doubt, liability in the civil courts must be proved by a “**preponderance of**

the evidence.” This means that one side’s evidence is more persuasive than the other. This standard is a lower standard of proof than “proof beyond a reasonable doubt.” Therefore, it is sometimes possible to find the defendant liable in a civil case even after a “not guilty” verdict in the criminal case or in cases where a prosecutor determined that the criminal charges would be extremely difficult to prove.

In some cases, a “third party” defendant may be held liable. **Third party defendants** did not actually commit the acts but may have contributed to or facilitated those acts.

Considering a Civil Lawsuit

There are several important factors to consider as you evaluate whether to pursue a civil lawsuit, and a private attorney with experience representing victims of crime can assist you in that evaluation. The first point of evaluation is whether civil litigation is possible in your case — that is, whether there is sufficient evidence of an illegal act or acts.

After a preliminary investigation of the facts of a case, an attorney who is experienced in

representing victims can generally provide an informed opinion as to whether a civil suit is possible and likely to have a successful outcome for you. If the legal basis for the lawsuit seems difficult to prove or there is little likelihood of collecting financial damages, you may not want to move forward with a lawsuit.

Factors that an attorney will evaluate and discuss with you will include:

- the nature and extent of the injuries
- the extent of the defendant’s responsibility for those injuries
- the likelihood of long term harm from the injuries
- the facts of the case
- the financial resources of the defendant
- the likelihood of collecting a judgment
- the availability of insurance coverage from the defendant or other responsible third party

Beyond these legal and practical

considerations, there are other concerns about the personal effects of the civil litigation process on victims which need to be evaluated before deciding whether to file a civil lawsuit. The civil court process will very likely make the period of time you are involved in the court system longer. This is an important factor to consider, particularly if you have already been through lengthy criminal court proceedings. The extensive civil procedures may require you to continue to re-experience events that were physically and emotionally traumatizing. Moreover, it may be difficult to confront the offender in civil proceedings.

Finding an Attorney

While more and more attorneys are gaining experience in representing victims of crime in civil proceedings, the number of attorneys with actual experience, sensitivity and specialized knowledge of victims’ issues remains small. In Massachusetts, however, there is a core of experienced civil attorneys who represent victims of crimes in lawsuits. Although any licensed private attorney can file a lawsuit on your behalf, your case would benefit greatly from the services of

an attorney who has previously represented crime victims or has had substantial experience in representing other individuals in civil and/or criminal cases.

If you already have a personal attorney or know someone who you trust who is an attorney, you can contact this person, describe your situation and ask for a referral.

If this attorney cannot provide you with legal assistance, he or she may be able to help you locate another attorney who is qualified to work on your case. Sometimes other victims of crimes whom you may know through support groups can recommend a civil attorney who was helpful to them. An Advocate may also be able to provide referrals for attorneys with this expertise.

If you have questions about a particular attorney, you can contact the Boston Bar Association or Massachusetts Bar Association for basic information, such as an attorney's area of specialty, the location of the practice, how long the attorney has practiced law and whether that attorney has been disciplined

for unethical practices. Bar associations also maintain general referral lists for attorneys who are looking for clients, categorized by their practice specialties.

Choosing an attorney is a very personal decision and one that needs to be based on the attorney's experience and your trust and comfort level with him or her. Do not hesitate

to meet and interview several attorneys before selecting one. If you are uncomfortable with an attorney or do not have confidence in the advice or responses you hear, look for another attorney or try to get "a second opinion" from another attorney. You can also ask an attorney for the names of other victims of crimes he or she has worked for to call as a reference. The attorney will need to get permission from those clients before giving you names or contact information.

In addition, you may want to ask a prospective attorney the following questions:

- How long have you been practicing law?

The Victim Litigation Unit of the National Center for Victims of Crime maintains a national list of civil attorneys who specialize in working with crime victims.

1-800-394-2255
www.ncvc.org

Chapter 5

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- What is your education and professional experience?
- Have you ever worked with victims of crimes before?
- Have you handled similar cases: if so, how many?
- Were you the lead attorney on those cases? If so, how many other attorneys worked with you? Do you work with those same attorneys? If not, have you ever been the lead attorney on a case? If so, how did the cases turn out? If not, would you be the lead attorney on this case or would another attorney be in charge?
- What kinds of judgments or settlements have you been able to obtain for clients with similar cases?
- Have any of those similar cases not been successful? What happened?
- Do you have any prior experience working as a prosecutor or a criminal defense attorney?
- Do you know any prosecutors or criminal defense attorneys?

- Do you work regularly with prosecutors and/or criminal defense attorneys?
- Who will be working on my case – you or other attorneys in your firm?
- Do you provide case status reports? If so, how often?
- What will my involvement be in the case? How will decisions be made? Will I be consulted about the direction or decisions in the case?
- Do you maintain malpractice insurance?
- Are you currently admitted to practice in the state of Massachusetts?
- Have you ever been disciplined or otherwise charged with a law practice violation?
- What fees and expenses will I be charged, and when?

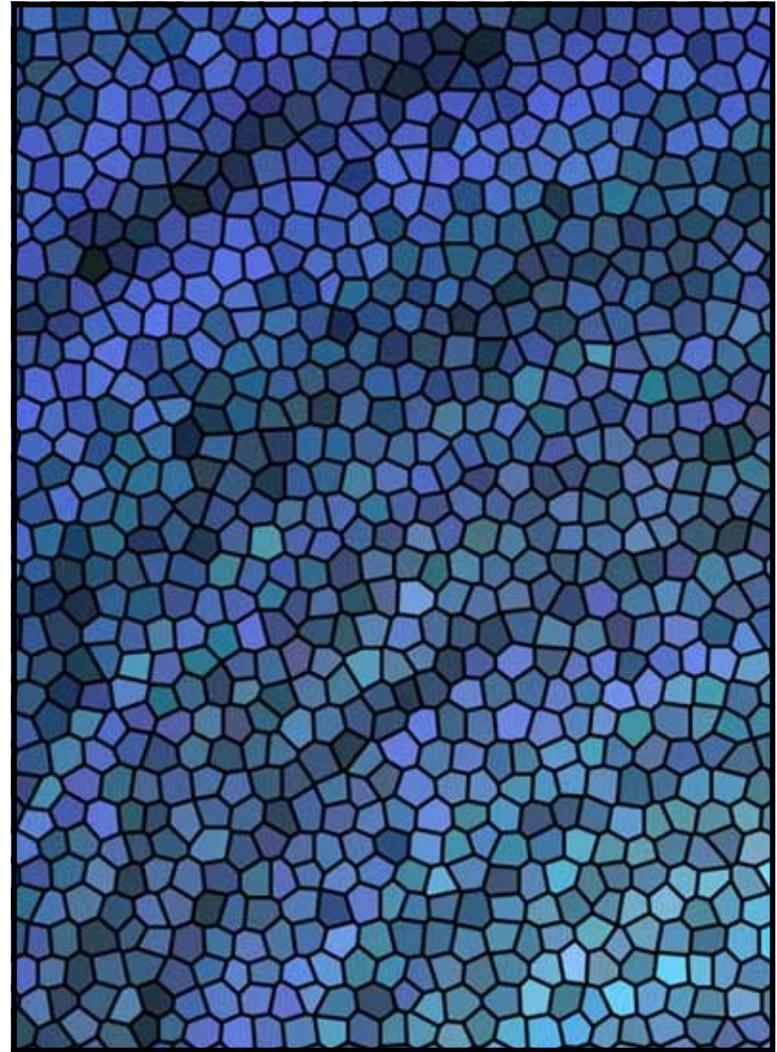
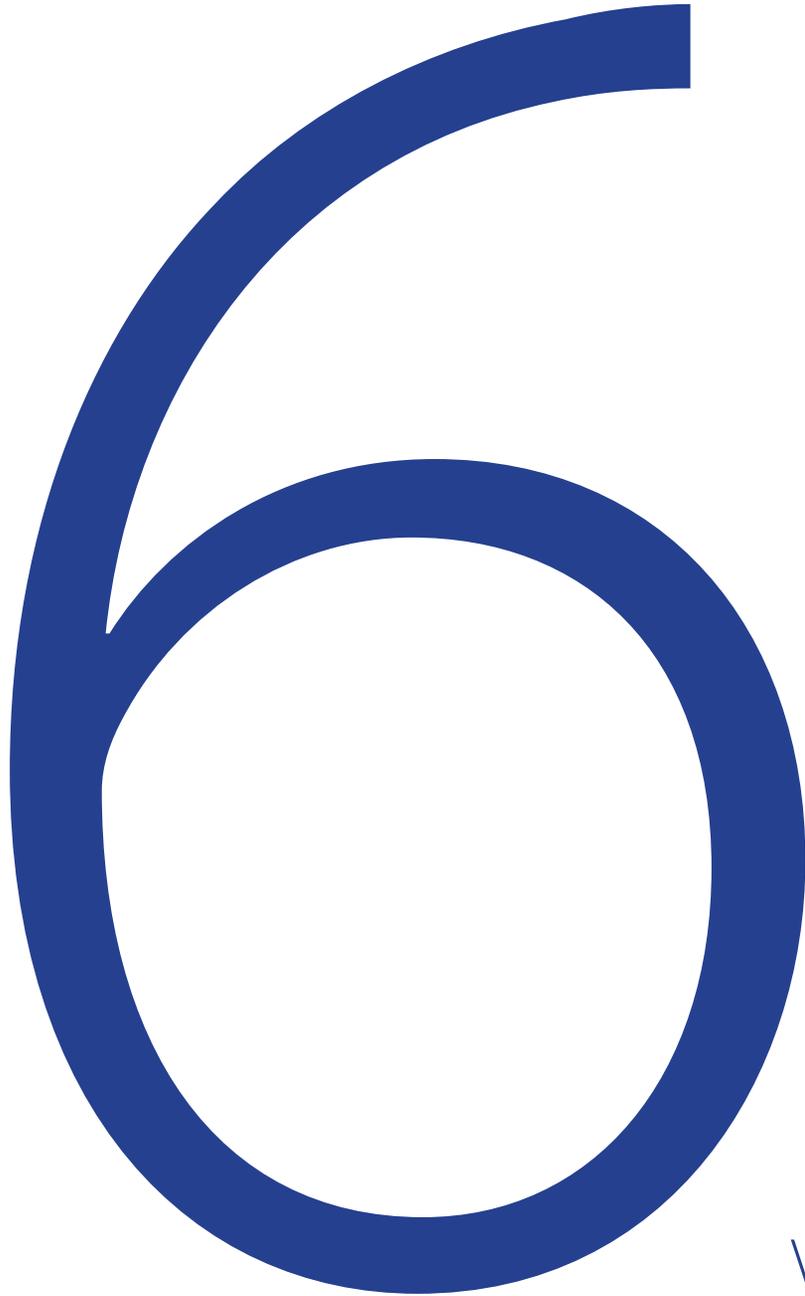
Most private attorneys who specialize in victim-related cases work on a **contingency fee basis**. This means that if the attorney accepts the case and you are not successful in recovering civil damages, you are not

required to pay attorney fees; the attorney's fee is contingent upon winning a judgment from the defendant. Despite the contingency fee arrangement (and outcome of your case), you will likely be required to pay for the attorney's out-of-pocket expenses related to the case, such as the costs of obtaining expert witnesses, court filing fees and depositions, and photocopying and mailing costs. It is important that you ask the attorney what those out-of-pocket expenses might cost you.

In contingency fee cases, if your lawsuit is successful, the attorney will receive a percentage of the settlement, usually between 25%-40%, for their fees. Because contingency arrangements vary, you should be sure that you fully understand the details of any agreement or contract before signing it. Finally, an experienced civil attorney will know how to identify an offender's assets and will seek to preserve them while a civil case is pending.

As a means of financial recovery, a civil lawsuit by a victim has particular strengths and weaknesses. It is important to talk with an attorney about the various advantages

and disadvantages of moving forward with a civil lawsuit. It is important to talk to both the civil attorney and the prosecutor about the pros and cons of the timing of bringing a civil lawsuit and what the impact is of doing one before the other or at the same time.



For Advocates:
Responding Effectively to All
Victims — Diverse Populations

For Advocates: Responding Effectively to All Victims — Diverse Populations

This section recognizes that crime victims' needs can be influenced by their identity, culture, background and experiences. Those differences in need can significantly impact crime victims' access to critical services.

Though this guide cannot comprehensively or expertly address every possible factor influencing a crime victim's individual needs, we hope it offers a starting point for Advocates to reflect on possible differences and consider carefully a crime victim's whole identity when providing services. This discussion may also help victims

This section recognizes that crime victims' needs can be influenced by their identity, culture, background and experiences. Those differences in need can significantly impact crime victims' access to critical services.

consider their individual responses to crime and its aftermath and identify issues they may want to discuss with their Advocates. For this discussion, diversity includes age, race, ethnicity, gender, religion, physical or mental disability, socioeconomic status, geography, language spoken, sexual

orientation and immigrant status. Because many of these diverse traits are not immediately "visible," it is crucial to never make assumptions about a victim's identity. Such assumptions can distance or even permanently harm relationships and prevent crime victims from obtaining relevant and appropriate help.

Discussion

Like most states, Massachusetts has seen an increase in diverse populations. Sensitivity to a victim's identity is critical to the victim's potential for recovery from victimization. Because of the broad spectrum of potential need, no one service

provider can have all the answers. Clients benefit when service providers reach out to other organizations to help meet victims' needs. *This sends an important message to victims: we will do all that we can to support you and to meet your individual needs.* Therefore, it is often vital for service providers in different agencies and systems to collaborate with each other to address victims' needs.

Reminding ourselves to be thoughtful about the diverse aspects of the victim's life and circumstances will help ensure that we do not overlook their best options and fail to help them realize their rights.

Service Provision

To provide the most effective and optimal services for any victim, it is important to always consider the diversity and complexity of crime victims and their communities. Service provider organizations should promote and provide ongoing training and conversations about services, policies and

protocols. Consider using individual and peer supervision or meetings to discuss cases or situations with clients and colleagues that present challenges related to the diverse backgrounds and needs of victims, witnesses, their families and communities. These forums help service providers to become more aware of their own biases and privileges based on backgrounds and life experiences, and to understand how those may inadvertently influence interactions with another person, and to help build bridges across differences.

The best place to begin understanding diversity and difference is not outward but inward. Providers, like victims, come from many parts of the world, speak many languages, have diverse values and beliefs, life experiences, backgrounds, and may struggle with various limitations or experience discrimination.

Considerations

Stereotypes are significant barriers to providing effective services to victims.

Reflecting and identifying our own biases and stereotypes will help to reduce potential barriers for victims in accessing the services and supports they need. One cannot assume that all victims who share a common background — race, language, ethnicity, sexual orientation, faith, class, disability, etc. — will behave and react in the same way.

Making generalizations is a part of our subconscious mind; we do it on a daily basis. However, it is possible to be aware of and ultimately change how we respond to those assumptions. Coming to understand our own stereotypes and prejudices is critical when trying to embrace practices that are inclusive and comprehensive as it relates to the victim’s whole identity. Because one can never know everything about all backgrounds and experiences, it is important to become comfortable asking questions and being open to learning from and about others who are different than ourselves.

Reflecting and identifying our own biases and stereotypes will help to reduce potential barriers for victims accessing the relevant services and supports they need.

Along with thinking about ways one might unintentionally generalize, it is important to reflect on our own **privileges**. Privilege, or the advantage that a person or group has over others, can affect how we perceive and respond to crime victims.

The questions below touch on issues that can impact a crime victim’s access to resources and safety. Responses to these questions may help us better understand the similarities and differences between our experiences and those of the crime victims we serve.

As an exercise, we should ask ourselves:

- Am I a citizen of the United States?
- Do I have access to a car?
- Can I open a bank account?
- Has anyone asked if I can speak English?
- Do I feel safe talking about my partner in

front of family members?

- Do I have family and friends nearby who could provide me with shelter?
- Did I graduate from college?
- Do I depend on someone else’s care to get ready in the morning?
- Am I able to work?
- Are there people who look like me in positions of influence/power in my community (ex. doctors, police officers, state representatives, etc.)?
- Do I have to hide parts of my identity in order to feel safe or respected?

These questions provide the beginnings of a framework for understanding systemic issues a crime victim may face in court, in a health care or mental health/ counseling setting, in school or at the workplace and elsewhere. Providers must take into account the balance of power in different situations and how that may

By asking thoughtful questions, avoiding assumptions and working to consider a victim’s entire situation, we can break through the isolation that can impact crime victims, promote their empowerment and protect their rights.

influence our interactions, communication and trust with others. By asking thoughtful questions, avoiding assumptions and working to consider a victim’s entire situation, we can break through the isolation that can impact crime victims, promote their empowerment and protect their rights.

Case Scenarios

The following case scenarios might help individuals and organizations discuss issues of diversity and inclusion. Each scenario is followed by questions to help guide in determining options and resources for different situations. These are just a few examples of the types of questions and exploration that can be helpful in furthering understanding.

Scenario One

You are about to meet with a crime victim and the prosecutor when the victim asks if you can pray with her before starting the

meeting.

- How can you respectfully respond if your culture/spirituality does not include prayer?
- Have issues of faith/spirituality been discussed within your agency before? Are there any guidelines developed for addressing these needs?
- Might you inquire about the victim's connection with his or her faith community or clergy?
- If you are not familiar with the crime victim's faith, might you seek out information about that faith before the next meeting or seek out a colleague who may share the crime victim's faith for guidance?

Scenario Two

A man in a wheelchair is the witness to a crime. He has been summonsed to court. The courthouse is wheelchair accessible; however the handicapped accessible restroom is closed for repairs.

- Is your agency wheelchair accessible?
- Do you know whom to contact at the

courthouse about services for people with disabilities? (Each courthouse should have an Americans with Disabilities Act Coordinator to facilitate services.)

- Could you suggest changing the court date?
- What other resources does your agency have for people with disabilities? (For example, does everyone on staff know how to use the TTY machine?)

Scenario Three

You are meeting with a victim for the first time and discover she is undocumented and without any formal citizenship papers. She would like a restraining order but is having difficulty understanding the language on the form because her first language is Khmer and she cannot read or write.

- You do not speak, read, or write in Khmer, how can you assist this woman with the restraining order? With other services?
- Are you familiar with your agency's options for translation services?

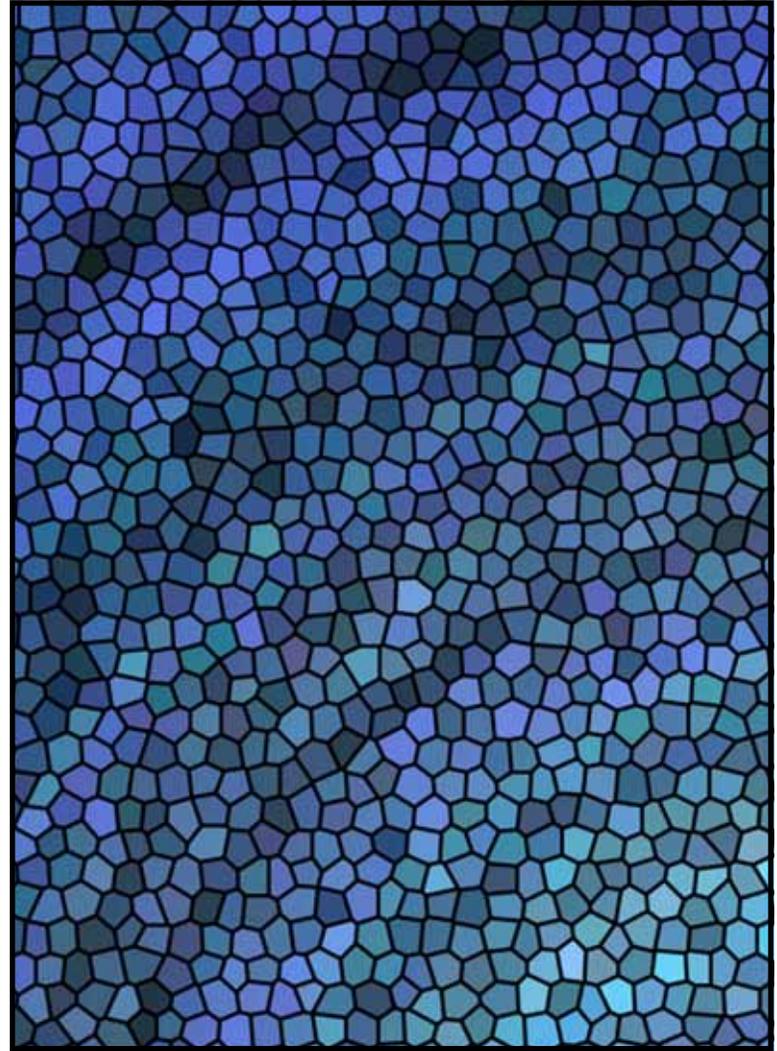
Chapter 6

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- Why might it sometimes be inappropriate to ask the victim's friend, family member or child to translate?
- What other services are available for this woman in her native language?
- How can your agency promote and encourage victims who have limited or no English proficiency to access victim services?
- Does your agency have a policy or guidelines regarding working with undocumented victims and witnesses?
- What types of referrals might you make given her status and language needs?

As you know, communication is critical between an Advocate and a victim or witness. To reduce any barrier posed by a language difficulty, agencies have responded by maintaining a list of certified interpreters and/or having a list of multi-lingual Advocates nearby. This is preferable to having a family member translate, particularly in cases of family violence. Loyalty, fear, humiliation, shame and other common

reactions to victimization may inhibit a family member's ability to accurately translate.



For Advocates: Secondary
Traumatic Stress and Self Care

For Advocates: Secondary Traumatic Stress and Self Care

Lillian loves her job as a Victim Witness Advocate in the district court. Working with victims of domestic violence and sexual assault became her passion during her senior year in college when she volunteered at the local rape crisis program. But now, a year into the work full-time, she is learning that it can be draining, if not traumatizing. She sometimes awakens at night terrified that a client's abuser is coming after her, too. It's just a nightmare, but she does wonder if someone will truly come after her one day. Running and going to the gym have always been great outlets for her, both building her stamina and releasing her tension. Now, Lillian is finding that she is simply too tired to pull herself out of bed in the morning to exercise. She also finds herself curt and frustrated with colleagues when so many calls and requests become overwhelming. Thinking about whether she should take a time management course or even if she is cut out for this work at all leaves*

her wondering if she is "burning out."

Burnout?

Burnout is a "state of physical, emotional and mental exhaustion caused by long term involvement in emotionally demanding situations."² Symptoms include depression, cynicism, boredom, loss of compassion and discouragement.

The term was first used in 1974 to describe physical and emotional depletion resulting from the conditions of work. Research in the early 1980's found that people working in the human service or "helping" professions are especially at risk for burnout because people working as psychologists, social workers, and crisis workers, for example, often assist clients in severe distress and experience both a real and felt responsibility to aid their clients. Often this sense of responsibility brings with

** Lillian is a composite of Advocates and direct service workers who have come into contact with the authors. Her story represents the experiences common to many Advocates working with victims of crime.*

2 Pines & Aronson, Career Burnout: Causes and cures, 1988.

it feelings of helplessness or anxiety.³

It is commonly understood by Advocates and supervisors that they are at great risk for burnout as a result of the crisis intervention they provide to survivors. Victim Advocates' work is emotionally trying, draining, and at times, dangerous. Furthermore, Advocates routinely work in settings with limited peer or supervisory interactions. Because Victim Advocates are often professionally isolated, they lack opportunities to "debrief" from the trauma that they routinely witness.⁴

Is it always burnout?

Not necessarily. Though the term is used freely, the condition is not quite as common

³ Kahill, S. (1988). *Interventions for Burnout in the helping Professions: a review of the empirical evidence. Canadian Journal of Counseling, 22(3), 162-169.* Bernier, 1998.

⁴ Della Porta, A.L. (1994). *Exploration of an integrative model of factors preventing burnout in shelter staff that treat battered women. Dissertation Abstracts International: Section B: the Sciences and Engineering, 55(4-B), 1664-1665.* Brown, C., O'Brien, K.M. (1998). *Understanding stress and burnout in shelter workers. Professional Psychology: Research and Practice, 29(4), 383-385.*

as one thinks and is often confused with feeling stressed by the work. Real burnout primarily has to do with one's work conditions or job requirements and develops gradually. It is a generalized physical and emotional exhaustion as well as a cynical, negative (even hostile) response to coworkers and the job. Burnout can occur to anyone in any kind of work and, most often, the only cure for true burnout is to leave the work for a time, or forever. Secondary Traumatic Stress comes on more quickly than burnout and is more responsive to solutions.

Secondary Traumatic Stress (STS)

STS is called by many names: Vicarious Trauma, Indirect Trauma and Compassion Fatigue. Each of these terms has a slightly different meaning, but the common definition for these terms is both physical and emotional stress responses to working with a highly traumatized population. It is a psychological phenomenon in which the caregiver experiences many of the common feelings and symptoms associated with

victimization.⁵

STS can affect all aspects of one's life: cognitive, emotional, behavioral, spiritual, interpersonal and physical.⁶ Lillian's situation offers an example of STS. Working with traumatized clients day in and day out, Lillian is beginning to experience the kinds of symptoms that her clients display. Lillian's nightmares, worries about her own safety, edginess at work and feelings of being overwhelmed by the experiences of her clients are all evidence of STS. Below are some of the ways that STS can show up in your life.

Personal Reactions

- **physical** – rapid heartbeat or breathing, aches and pains, dizziness, headache

⁵ McCann, L., Pearlman, L.A. (1990). *Vicarious Traumatization: a framework for understanding the psychological effects of work with victims*; *Journal of Traumatic Stress*, 3(1), 216-149.

⁶ Yassen, J. (1995). *Preventing secondary traumatic stress disorder*. In Figley, C.R. (Ed.): *Compassion fatigue: coping with secondary traumatic stress disorder in those who treat the traumatized*, 178-208.

- **emotional** – powerlessness, anxiety, guilt, anger, numbness, fear, helplessness, sadness
- **behavioral** – irritability, withdrawal, moodiness, sleep disturbances, appetite changes, nightmares, hypervigilance, elevated startle response, use of negative coping (smoking, alcohol or other substance misuse)
- **spiritual** – loss of purpose, pervasive hopelessness, anger and/or questioning of prior religious beliefs
- **interpersonal** – loss of purpose, pervasive hopelessness, questioning of prior spirituality or religious beliefs, for example, anger at God or higher power
- **cognitive** – withdrawal, decreased interest in intimacy or sex, mistrust, isolation from friends, diminished concentration, preoccupation with trauma, whirling thoughts, perfectionist standards, self doubt

Professional Reactions

- **job performance** – decrease in quality or quantity of work, low motivation, avoidance

of job tasks

- **morale** – decrease in confidence, loss of interest, dissatisfaction, negative attitude, apathy
- **relationships with peers** – impatience, decrease in quality of relationship, poor communication, staff conflicts
- **behavior** – absenteeism, exhaustion, faulty judgment, irritability, tardiness, overwork

What can I do about STS?

Evaluations of co-worker support programs have shown that increased interpersonal and organizational support generated through these groups decreases the stress experienced by workers, decreases symptoms of burnout, and enhances employees' ability to perform on the job.⁷ The burnout experienced by Advocates and the turnover

⁷ Heaney, CA., et.al., (1995). *The caregiver support program: an intervention to increase employee coping resources and enhance mental health*. Murphy, L.R. (Ed): Hurrell, J.J.Jr. (Ed) et.al. *Job Stress Interventions*, 93-108. Griffin, S. (1997). *The professional careers' group: supporting group work for young sexual abusers*. *Child Abuse and Neglect*, 21 (7), 681-690.

and absenteeism that often results pose a threat to services for victims of crimes. An intervention program to curtail the job related stress experienced by advocacy staff is necessary to protect their health and well-being. It is also necessary to safeguard the critical services they provide to survivors of violence.

Research has demonstrated that, while valuable, individual self-care strategies alone do not work.⁸ It is through sharing clinical material with others, moving out of isolation, and working on change at all levels that makes a difference in an Advocate's health and well-being.

Self-care at the individual, professional and organization levels needs to be an integral part of one's life if he or she is to thrive as an Advocate. Some examples follow:

⁸ Bober T, Regehr, C (2006). *Strategies for reducing secondary or vicarious trauma: do they work?*. *Brief Treatment and Crisis Intervention* 6(1), 1-9. Shinn, M., Rasario, M. Morch, H., chestnut, D.E. (1984). *Coping with job stress and burnout in the human services*. *Journal of Personality and Social Psychology*, 46(4), 864-876. Bernier, D. (1998). *A study of coping: successful recovery of severe burnout and other reactions to severe work-related stress*. *Work and Stress*, 12(1), 50-65.

Personal

- exercise
- maintaining medical appointments
- reading
- adequate rest
- creative projects
- socializing
- exposure to the arts/performance
- spa/wellness treatment
- healthy eating

Professional

- pursuing professional development opportunities
- taking a real lunch break (away from your desk!)
- maintaining regular supervision meetings
- arranging group lunches or other meetings with coworkers

Organizational

- attending regular staff and supervision meetings
- planning for staff retreat
- involvement in organizational policy development
- personalization of office space or work area

Community

- attendance at religious or spiritual services
- involvement in community effort such as a community clean up day or neighborhood gathering
- involvement in a chosen political activity or cause, such as writing a legislator or attending a rally

Further, research and practice are demonstrating the harm done by placing the responsibility of restoration on the individual Advocate. In essence, the system “blames the victim” in a way, parallel to the treatment we abhor in other systems. By individualizing the

problem, organizations do not and will not make the changes necessary to sustain their staff. Areas of workplace focus that can build resilience and decrease STS include: quality supervision, peer support, support of healthy work/life balance, training and consultation and decreasing the number of traumatized victims in one's case load.⁹

While this chapter has focused on Secondary or Vicarious Trauma, and ways to ameliorate the negative effects, it is important to recognize the myriad benefits that come with victim services work. Compassion Satisfaction¹⁰ and Vicarious Resilience¹¹ are two of the terms that have been coined that embrace the significant benefits of this

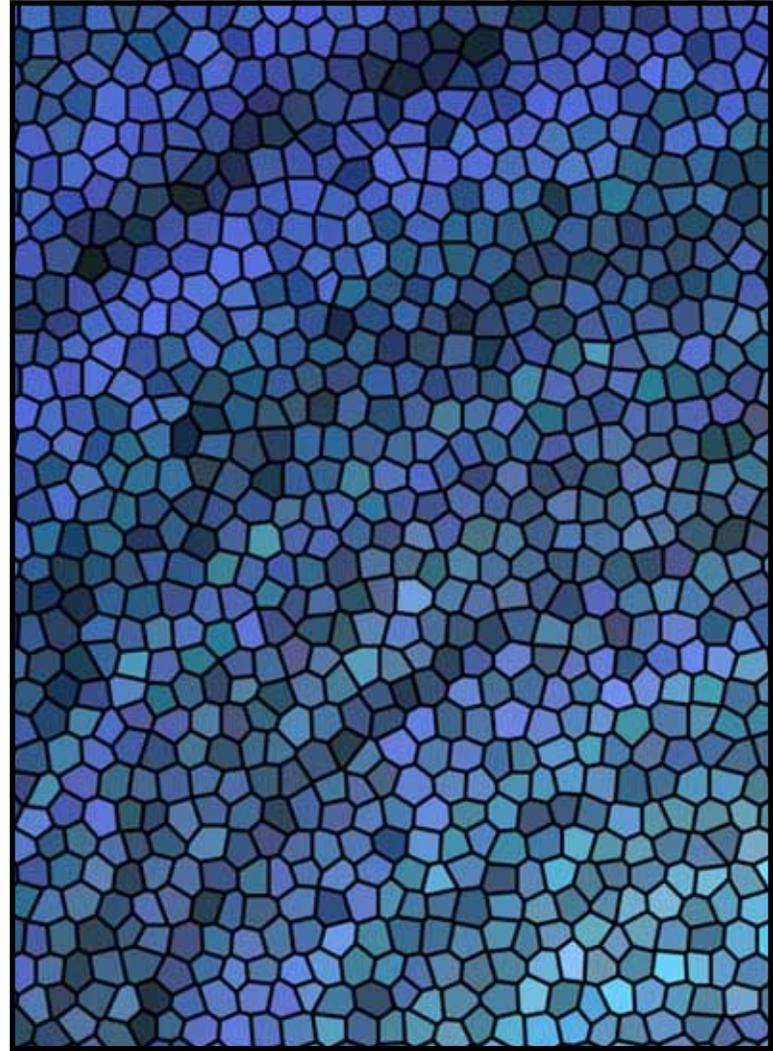
⁹ Bober T, Regehr, C. (2006); Slattery (2009) *Violence Against Women* ; Iliffe, G. & Steed, L. (2000). *Exploring counselor's experience of working with perpetrators and survivors of domestic violence*, 15, 292-412; Pearlman, L.A. & Saakvitne, K.W. (1995). *Trauma and the therapist. Countertransference and vicarious traumatization in psychotherapy with incest survivors*. New York: W.W. Norton. Hesse, A. (2002). *Secondary trauma: How working with trauma survivors affects therapist*. *Clinical Social Work Journal*, 30, 293-309.

¹⁰ Hudnall Stamm

¹¹ Hernandez P., Gangsei D, Engstrom D. (2007). *Vicarious resilience: a new concept in work with those who survive trauma*. *Family Process*, 46(2), 229-241.

work. Recognizing the ways in which one learns about coping and resilience from the coping of victims in the face of adversity, researchers stress the value of consciously attending to this learning and applying it to one's own life. They further underscore the value of recognizing the "complex potential of therapeutic work both to fatigue and to heal."¹²

¹² Hernandez, et.al., p.237.



Glossary
of Legal and Criminal Justice Terms

GLOSSARY

of Legal and Criminal Justice Terms

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10-Day Hearing:

the “return” hearing for a 209A petitioner. The time when both victim and abuser may address the judge.

209A:

a term for Massachusetts General Laws chapter 209A, entitled Abuse Prevention, which grants protective orders for abused persons.

51A:

a term used to describe actions under Massachusetts General Laws chapter 119 which requires reporting of child abuse.

A

Accomplice:

a person who knowingly and voluntarily aids, assists, cooperates or is an accessory with the principal offender in the commission of a crime.

Accusation:

a formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime.

Acquittal:

the legal and formal determination that the evidence is not sufficient to prove that a person who has been charged with a crime actually committed it.

Adjudication:

the determination or decision made by the court, usually resulting in a judgment of acquittal or a judgment of conviction.

Admission to Sufficient Facts:

an acknowledgment on the part of the accused admitting that there is sufficient evidence to warrant a finding of guilty.

Affidavit:

a written or printed declaration or statement of facts, made voluntarily, and confirmed by

the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.

Alibi:

a defense that places the defendant at the relevant time in a different place than the scene involved and so removed there from as to render it impossible for him to be the guilty party.

Allegation:

the assertion, claim, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

Appeal:

a request to a higher court to review the decision of a lower court.

Appellate Court:

a court having jurisdiction of appeal and review; a court to which causes are removable by appeals, certiorari, error or report. A reviewing court, and, except in special cases where original jurisdiction is

conferred, not a “trial court” or court of first instance.

Arraignment:

the initial court appearance of the accused which is held for the purpose of reading the complaint or indictment against the accused, having the accused enter a plea to the charges, and setting bail and other release conditions.

Arrest:

the apprehension or detention of an individual by legal authority for the purpose of charging him or her with a specific offense.

Assistant District Attorney:

a lawyer for the Commonwealth who represents the interests of the general public (also known as the prosecutor or ADA).

Attorney-Client Privilege:

a professional relationship between an attorney and a client which prevents the attorney from disclosing the content of communications with his or her client

without the client's consent.

B

Bail:

an amount of money or property sometimes required by a judge to be paid to the court by the defendant to insure future attendance in court.

Bail Hearing:

a hearing entitled to the defendant if he/she feels the amount of bail set by the judge is too excessive. These hearings may occur at any time during the court proceedings once the bail has been set.

Bench Trial:

a trial held before a judge without a jury.

Binding Over:

the act by which a court or magistrate requires a person to enter into a recognizance or furnishes bail to appear for trial, to keep the peace, to attend as a witness, etc. Also describes act of lower court in transferring

case to higher court or to grand jury after a finding of probable cause to believe that defendant committed crime.

Boston Municipal Court (BMC):

the part of the Massachusetts Trial Court which has jurisdiction over certain cases originating with-in the downtown Boston area.

Burden of Proof:

a legal standard which establishes the amount of evidence that must be met for proving a case. The burden of proof in criminal trials requires prosecutors to prove beyond a reasonable doubt that a defendant is guilty of the alleged crime. The burden of proof in civil trials requires plaintiffs to prove their case by a preponderance of the evidence, which means that it is more likely than not that the facts alleged by the plaintiff occurred.

C

CARI:

Court Activity Record Information

Charge to Jury:

the final address by the judge to the jury before the verdict, in which he sums up the case, and instructs jury as to the rules of law which apply to its various issues, and which they must observe. The term also applies to the address of court to grand jury, in which the latter are instructed as to their duties.

Child in need of services (CHINS):

a child below the age of 17 who persistently runs away from home or refuses to obey the lawful and reasonable commands of his or her parent(s) or legal guardian, thereby resulting in that -parent or guardian's inability to adequately care for and protect that child. OR A child between the ages of 6 and 16 who persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his or her school.

Care and Protection:

an action from the Department of Children and Family which determines whether or not a child is receiving adequate care. Also referred to as a C&P.

Case Law:

the area of law where legal precedent has been created by earlier published court decisions. This law is distinct from the Constitution, state and federal statutes or administrative regulations but often interprets them.

Cause of Action:

the legal basis for a civil lawsuit brought by one party against another, such as the victim against the offender.

Change of Venue:

the transfer of a case from one court to another having the same authority but in a different geographic location.

Civil Action:

a lawsuit to enforce private rights, to obtain

compensation for a violation of those rights, or to recover monetary damages. A civil action is brought directly by the person who is complaining, usually with the help of a private attorney. Civil actions are all types of actions which are not criminal proceedings.

Clerk Magistrate Hearing:

also called a “show cause hearing,” can be one of the first stages of the criminal justice system. See Show Cause Hearing.

Co-defendant:

one of two or more persons charged in the lawsuit or tried in the same criminal proceedings.

Common Law:

as distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts

recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England and the American colonies before the American revolution.

Community Based Advocate:

an individual who works with victims of crime providing support and resource referrals and is directly associated with a non governmental agency.

Commutation:

an act of the Governor, with the assent of the Governor’s Council, changing a sentence imposed for a crime to a less severe punishment after a formal request from the offender.

Competency:

a determination that a defendant has sufficient mental capacity to stand trial and to assist defense counsel in the defense of the charges.

Complaint:

a formal written document submitted to the court to formally initiate a civil or criminal proceeding.

Concurrent Sentence:

a criminal penalty consisting of two or more sentences of any type which are to be served simultaneously.

Confession:

a voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it.

Confidentiality:

the state or quality of being confidential treated as private and not for publication.

Consecutive:

Successive; succeeding one another in regular order; to follow in uninterrupted succession.

Contempt of Court:

the willful failure to obey a court order or the showing of disrespect or unacceptable behavior in the presence of the court.

Continuance:

a postponement of a scheduled court event until a future date.

Contingency Fee Basis:

when an attorney accepts the case and you are not successful in recovering civil damages, you are not required to pay attorney fees; the attorney's fee is contingent upon winning a judgment from the defendant.

Continued Without a Finding (CWOFF):

a procedure by which, after accepting an admission of sufficient facts from a defendant, or finding after trial that there are sufficient facts to support a finding of guilt, the court does not enter a guilty finding, but rather continues the case for a period of time. At the end of that time, if the defendant has not further violated the law and has met the

conditions of the continuance, the charge is dismissed.

Conviction:

the result of a criminal trial which ends in a verdict or finding that the defendant is guilty.

CORI Certification:

a process by which a victim of crime or other citizen becomes eligible to receive certain information about a convicted offender.

Court Officer:

uniformed officers who announce the beginnings and end of court sessions, direct victims and witnesses to where they should be seated in the courtroom, and escort defendants and jurors into and out of the courtroom.

Court Order:

the decision of a judge on any motion or request by which a particular outcome is granted.

Court Record:

official record of court decisions in a particular case.

Court Reporter/Stenographer:

the person who records all proceedings in the court room.

Criminal Case:

matters or cases concerning acts considered harmful to the general public that are forbidden by law and are punishable by fine, imprisonment or both. Most criminal cases are tried in state courts. Those tried in federal courts generally involve mail fraud, robbery or federally insured banks, or illegal drug importation.

Criminal Responsibility:

having sufficient mental capacity to be held responsible for the commission of criminal acts.

Cross-Examination:

a part of a trial when questions are asked of a witness by the opposing counsel, following

the direct examination, usually in the form of leading questions.

Custodial Parent/Guardianship:

the parent who has been given physical custody of a minor child.

Custody:

the care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority.

D

Damages:

a pecuniary compensation or indemnity, which may be recovered in the courts by any

person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another.

Dangerousness Hearing:

court hearing where the judge hears testimony on whether the defendant is a threat to society and he or she should be held without bail.

Deadly Force:

force likely or intended to cause death or great bodily harm; may be reasonable or unreasonable, depending on the circumstances.

Default Warrant:

a warrant issued to arrest an individual who failed to appear in court when scheduled.

Defendant:

a person who is formally charged with committing a crime or, in a civil case, a

person against whom an action is filed for monetary damages or to enforce other rights.

Defense Attorney:

the attorney representing the defendant in criminal or civil proceedings.

Delinquent Children:

an infant of not more than specified age who has violated criminal laws or engages in disobedient, indecent or immoral conduct and is in need of treatment, rehabilitation, or supervision.

Department of Corrections (DOC):

the agency responsible for the care, custody and rehabilitation of state prisoners.

Department of Children and Family Services (DCF):

the leading state agency that responds to child abuse and neglect reports throughout the Commonwealth.

Department of Mental Health (DMH):

the state’s Mental Health Authority, assuring

and providing access to services and supports to meet the mental health needs of individuals of all ages, enabling them to live, work and participates in their communities.

Department of Youth Services (DYS):
the agency responsible for operating the holding facilities for juveniles who committed offenses between the ages of 7 and 17.

Depositions:

pre-trial proceedings in which attorneys for parties in a civil case have the opportunity to question, under oath, the opposing parties and potential witnesses in the case.

Direct Examination:

a part of a trial when questions are asked to a witness by the attorney who called that witness to testify.

Dismissal:

the formal decision to terminate a court action.

Dismissal with Prejudice:

a judge's decision to terminate the prosecution of a pending charge in a case after which the same criminal charge cannot be brought against the defendant at a later date.

Dismissal without Prejudice:

a judge's decision to terminate the prosecution of a pending charge in a case but which does not prevent the prosecution from bringing the same criminal charge against the defendant in the future.

Discovery:

pre-trial process by which both parties seek and obtain the disclosure of facts and evidence about the case from the other.

Disposition:

the outcome of a criminal case, usually referring to the sentence imposed.

District Attorney:

an elected public official in each county who prosecutes crimes on behalf of the

Commonwealth.

District Court Department:

the part of the Massachusetts Trial Court which has jurisdiction over all misdemeanor criminal offenses and certain felony criminal offenses, except for parts of Boston over which the Boston Municipal Court has jurisdiction.

Docket:

the calendar of court cases awaiting action on a particular day; also refers to the books in which all official court action on a case is recorded.

Double Jeopardy:

the constitutional prohibition against a person being tried twice for the same offense.

Due Process:

the constitutional guarantee that legal proceedings will be carried out according to basic rules of fairness established for the protection of an individual's rights.

E

Earned Credits:

a specified period of time which is earned by incarcerated offenders by successfully participating in rehabilitative programs operated by correctional facilities, and is applied as a reduction in the amount of time an offender is to be incarcerated.

Evidence:

any type of admissible information presented before a court that relates to or establishes a point in question, the use of which is dictated by the laws and rules of evidence.

Exculpatory:

clearing or tending to clear from alleged fault or guilt; excusing.

Ex Parte:

on one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken for granted at the instance and

for the benefit of only one party only, and without notice to, or contestation by, any person adversely interested.

Ex Parte Hearing:

hearings in which the court or tribunal hears only one side of the controversy.

Exhibits:

any document or other physical item offered and admitted in evidence at trial.

Expert Witness:

a specialist in a particular subject matter whose training and expertise is sought at trial to provide information and opinions on a contested issue and who is approved as an expert witness by the judge.

F

Finding:

the formal decision of “guilty” or “not guilty” made by a judge upon completion of the trial.

Fines:

a pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor. A pecuniary penalty. It may include a forfeiture or penalty recoverable in a civil action, and, in criminal convictions, may be in addition to imprisonment.

Felony:

a criminal offense deemed to be of a more serious nature and punishable by stiffer penalties, including a sentence to state prison.

Furlough:

the temporary release of an inmate from a correctional institution for a brief period. Inmates convicted of first degree murder are not eligible for furlough releases.

G

Grand Jury:

a group of 23 citizens whose duty is to receive complaints and hear evidence in criminal cases as presented by the prosecutor

and decide whether that evidence is sufficient to charge an individual with a crime by issuing an indictment.

H

Hearing:

a court proceeding in which evidence and arguments on a particular legal issue are presented to a judge.

Hostile Witness:

a witness who is antagonistic and adverse to the party who called the person to testify and, therefore, may be questioned by the use of leading questions.

House of Correction:

a county correctional facility run by the county sheriff to house defendants awaiting trial and those convicted offenders who are sentenced to shorter terms or for crimes which the law determines to be less serious.

Hung Jury:

a jury in a criminal case whose members

cannot agree unanimously as to whether the defendant should be found guilty or not guilty. The case may be retried at a later date with a new jury.

I

Incident Report:

a police officer's written report of a police response to a reported crime.

Indictment:

a formal written statement issued by a grand jury concluding that there is sufficient evidence to charge a person with committing a crime.

Injunction:

a court order directing one or more persons to refrain from doing specified acts.

Insanity Defense:

a criminal defense which is based on the theory that a defendant suffered such a degree of mental impairment that he or she was unable to understand the nature and consequences of his or her criminal actions.

J

Jail:

is usually run by the county sheriff and holds defendants awaiting trials.

Judge:

a public official appointed to preside over legal proceedings and decide questions of law brought before the court. The judge may also be the trier of fact in a jury-waived trial.

Judgment:

the final decision of the court in a given case resolving legal questions.

Jurisdiction:

the subject matter and geographical range of a court's authority to hear a particular issue.

Jury:

a panel consisting of a statutorily defined number of citizens selected according to law and sworn to hear evidence and decide matters of fact in a criminal or civil action and to render a verdict in such action.

Juvenile:

a young person who has not yet attained the age at which he or she should be treated as an adult for purposes of criminal law.

Juvenile Court Department:

the part of the Massachusetts Trial Court which has jurisdiction over cases of delinquency, children in need of services (CHINS) and Care and Protection petitions.

Juvenile Delinquent:

an individual under the age of 17 who has been found to have violated a criminal law.

L

Leading Question:

a question asked by an attorney of a witness which offers information and requires a yes or no answer. Leading questions are permitted only by opposing counsel during cross examination, or of a witness who has been declared a hostile witness during a direct examination.

M

Massachusetts General Laws (M.G.L.):

the collection of laws set forth by the Massachusetts legislature that are used to govern the Commonwealth.

Mandatory Sentence:

a type of sentence which by statute requires that a fixed penalty shall be imposed upon conviction for certain crimes and does not allow a judge discretion in sentencing.

Mediation:

a process by which a trained facilitator assists the conflicting parties in reaching a settlement.

Misdemeanor:

a criminal offense considered by law to be less serious than a felony which may be punished by a house of correction sentence or a fine, but not by imprisonment in state prison.

Mistrial:

a trial which is terminated by a judge prior to its normal conclusion because of circumstances which the judge has concluded prevent fair proceedings, or a trial ending in a hung jury.

Mitigating Circumstances:

factors related to the commission of an offense or the offender which do not excuse a criminal act but which may reduce the severity of the sentence for that act.

Motion:

an application to the court requesting that an order be issued to bring about a specific action.

Motion for Discovery:

a motion made by the defense to determine whether the prosecution has additional evidence or reports that have not been turned over to the defense. This motion is decided by the court and is argued orally by the prosecution and the defense.

Motion to Suppress:

a motion made by the defense to eliminate any evidence that has been illegally obtained. These motions are usually evidentiary hearings, which means that there will be an actual hearing with witnesses and testimony. They may be conducted well before the trial date, or just prior to the jury selection process.

Motion to Continue:

the prosecution or the defense may motion the court for additional time. Such delays become necessary for a variety of reasons, including the unavailability of witnesses, or when more time is needed for medical testing.

Motion to Dismiss:

the defense may motion the court to dismiss one or all of the indictments against the defendant based upon a variety of factors.

Motion for a Required Finding of Not Guilty:

a motion made by the defense at the closing

of the prosecution's case for a required finding of not guilty due to the lack of sufficient evidence to conclude that the defendant is guilty of each and every element of the crime beyond a reasonable doubt.

N

No Bill:

this phrase, endorsed by a grand jury on the indictment, is equivalent to "not found", "no indictment", or "not a true bill". It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

No Contest/Nolo Contendere:

a defendant's formal response in court in which it is stated that the charges are not contested and which, while not an admission of guilt, subjects the defendant to the same sentencing consequences as a plea of guilty.

Nolle Prosequi:

the termination of court action by the prosecutor's decision not to pursue the case.

Not Guilty:

a plea of the general issue in the actions of trespass and case. Plea entered by the accused to criminal charges.

O

Objection:

opposition by either of the parties to some proceeding or evidence in the course of a case on the grounds that what is objected to is illegal or improper. Objections are used to call the court's attention to improper evidence or procedure. Objections are usually made in open court so that they will appear on the record if there is an appeal.

Overruled:

the judge's denial of any objection raised to the judge. If an objection to a question is overruled, the judge allows the question to be answered and the evidence objected to is admitted for the jury's or judge's consideration.

P

Pardon:

an act of the Governor releasing a prisoner from serving the remainder of a sentence.

Parole:

the conditional release of an offender from a house of correction or prison prior to completing the sentence imposed, under the supervision of a parole officer, which is granted at the discretion of the Parole Board and subject to its own rules and certain state statutes. Specific conditions can be placed on an offender's conduct while on parole.

Parole Board:

the state agency authorized to determine whether and under what conditions an eligible offender should be released on parole to serve the remainder of his or her sentence in the community. The Parole Board also makes recommendations to the Governor on the merits of petitions for pardons and commutations, supervises all those released on parole, and revokes parole

permits for violations of parole conditions.

Parole Officer:

an employee of the Parole Board whose responsibility it is to supervise offenders throughout their parole period.

Parole Revocation Hearing:

parole revocation hearing is in the nature of an administrative proceeding for the purpose of determining whether a parolee has violated the conditions of his parole.

Peremptory Challenge:

removal of a prospective juror without stating a reason. The number of such challenges permitted to the prosecution and the defense is limited, and challenges are not allowed if they are part of an effort to exclude based on race, sex, national origin or other discriminatory factors.

Personal Recognizance:

a pre-trial release in which the defendant signs a promise to appear in court whenever notified to do so, but does not pledge

anything of value to be forfeited upon non-appearance on a court date.

Plaintiff:

the party which brings suit or complaint in court.

Plea Agreement:

an admission in court by the defendant to some or all of the charges, based on an agreement that the prosecutor will make a certain sentence recommendation. If the defendant enters a guilty plea, there is no need for a trial.

Police Complaint:

a formal charge brought by the police.

Preponderance of the Evidence:

is the burden of proof required in a civil trial, where one side provides more convincing evidence and such evidence is probably the truth. See Burden of Proof.

Presentence Report:

a report completed by the probation officer

and submitted to the judge before the sentencing of a defendant. The report is based on an investigation by the probation officer into the defendant's background, the circumstances of the crime and information supplied by the victim.

Presumption of Innocence:

a fundamental principle of law which assumes that the defendant is innocent of the offense charged, and requires that the prosecution prove the guilt of the defendant beyond a reasonable doubt.

Pretrial Conference:

a meeting, before trial, between the prosecutor and the defense attorney. During this meeting the attorneys may discuss the merits of the case, exchange discovery information, and possibly work out a plea agreement.

Pretrial Hearing:

it is a court hearing that happens before the trial, and both attorneys exchange the required information and discuss how the case may

proceed.

Privileged Communications:

statements made by persons with a certain relationship to each other, such as husband/wife, priest/ penitent, attorney/client and doctor/patient, which by law either do not have to be disclosed, or may not be disclosed.

Probable Cause:

a set of facts or circumstances which would indicate to a reasonable person that an offense was committed by a particular individual.

Probable Cause Hearing:

a court proceeding held before a judge to determine whether there is sufficient evidence to transfer the criminal case from District Court to Superior Court; Also, a court proceeding held before a judge or clerk magistrate to determine whether there is sufficient evidence to hold a defendant who was arrested without an arrest warrant until his or her arraignment.

Probation:

a sentence whereby conditional freedom is granted by a judge to a convicted offender. The offender is required to abide by established conditions or face a period of imprisonment.

Probation Department:

a court agency whose primary functions include the investigation and supervision of individuals placed on probation by the court and the preparation of presentence reports to assist judges in determining the appropriate penalty.

Probation Officer:

an employee of the probation department whose main responsibility is the supervision of a convicted offender who is not incarcerated.

Prosecutor:

an attorney employed by a government agency whose primary responsibility is to conduct criminal proceedings against individuals accused of committing criminal

offenses. See Assistant District Attorney.

PTSD:

Post-Traumatic Stress Disorder. immediate and/or prolonged emotional reactions as a result of victimization.

Public Defender:

an attorney employed by a government agency to represent defendants who are unable to pay the costs of hiring an attorney; Also, term sometimes applies to a private attorney when appointed by the court to represent defendants who are unable to pay the costs of hiring an attorney.

R

Reasonable Doubt:

reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is doubt which reasonable man or woman might entertain, and is not fanciful doubt, is not imagined doubt, and is not doubt that juror might conjure up to avoid performing

unpleasant task or duty.

Redirect:

after the “cross-examination” both attorneys have another opportunity to ask you further questions in order to clarify your responses.

Restitution:

a condition of a sentence imposed by a court which requires the offender to pay for crime-related financial losses incurred by the victim because of the offender’s crime, such as repair or replacement costs for damaged or stolen property.

Restraining Order:

see 209A.

Revise and Revoke:

this means that the defendant is seeking to have his/her sentence reviewed by the trial court.

S

Safety Plan:

is a valuable tool to use in abusive relationships or if you are planning on leaving an abusive relationship. Safety plans are tools to help you keep safe. It is important to have a conversation with an advocate when creating a safety plan.

Sentencing:

the post-conviction stage of the criminal justice process in which the defendant is brought before the court for imposition of sentence. Usually a trial judge imposes sentence, but in some jurisdictions sentencing is performed by jury or by sentencing councils.

Sentencing Guidelines:

an instrument developed to indicate to judges a range of appropriate sentences for a particular offense.

Sequester:

to set witnesses apart from the court

proceedings so that they do not hear the testimony of other witnesses. Also, to set apart a jury during court proceedings and/or deliberations so that the jurors are not unduly influenced in reaching their verdict in a case.

Sexually Dangerous Person Petition:

is a civil proceeding for those convicted on sex offenses during which the District Attorney's Office presents evidence through police reports, trial transcripts, and experts who can offer testimony with regards to the defendant's current state of mind.

Sheriff:

the chief executive and administrative officer of a county, being chosen by popular election. His principal duties are in aid of the criminal courts and civil courts of record; such as serving process, summoning juries, executing judgments, holding judicial sales and the like. He is also chief conservator of the peace within his territorial jurisdiction. When used in statutes, the term may include a deputy sheriff. He is in general charge of the county jail in most states.

Show Cause Hearing:

a hearing, usually before a clerk magistrate, that shows reason a criminal charge may be filed.

Split Sentence:

one where penalty of fine and imprisonment, as provided by statute, is imposed and imprisonment part is suspended and fine part enforced. It is also exemplified in a sentence by which the defendant serves some time and the balance of the sentence is suspended.

State Prison:

a correctional facility run by the Department of Correction to house convicted offenders who are sentenced to longer terms or for crimes which the law determines to be more serious.

Status Offenses:

a juvenile crime that would not be a crime if committed by an adult runaway, truancy, stubborn child, etc.

Statute of Limitations:

a law which sets forth the period of time within which a civil action or criminal prosecution must be started after the date of the crime or wrongful act.

Statutory Credits:

a set amount of time that is automatically deducted from the amount of time an offender is to be incarcerated. This practice was discontinued for offenders convicted of crimes after July 1, 1994.

Stay Away Order:

an order by a judge were the defendant is told not to contact the victim or witness of the criminal case.

Subpoena:

a court-issued written command to appear at a certain time to give testimony about a crime or other matter.

Superior Court Department:

the part of the Massachusetts Trial Court which has jurisdiction over all crimes and

generally exercises jurisdiction over the most serious felony matters (those carrying potential sentences of ten years or more in state prison).

Supreme Judicial Court:

the highest court in the state (court of last resort). 7 justices sit on the court; 5 justices sit en banc. Mandatory jurisdiction in civil, criminal, judge disciplinary, advisory opinion, and original proceeding cases. Discretionary jurisdiction in civil, criminal, administrative agency, juvenile and interlocutory decision cases.

Suspended Sentence:

a conviction of a crime followed by a sentence that is given formally, but not actually served. A suspended sentence in criminal law means in effect that defendant is not required at the time sentence is imposed to serve the sentence.

Sustain:

a judge's acceptance of any objection. If an objection is sustained, the evidence or

conduct objected to will not be admitted for the jury's or judge's consideration.

T

Testimony:

statements given under oath by witnesses as evidence in court.

Time Served:

a period of time spent in confinement during the pendency of a case, prior to conviction and sentence, which is subtracted from the amount of time an offender is required to be incarcerated.

Transfer Hearing:

is held to determine whether a juvenile defendant should be tried as an adult.

Trial:

a legal proceeding consisting of an examination in court of the issues of fact and law in a case, for the purpose of reaching a judgment of conviction or acquittal of the defendant in a criminal case or the liability

and damages caused by a defendant in a civil case.

Trial Court:

the court of original jurisdiction; the first court to consider litigation. Used in contrast to appellate court.

True Bill:

the endorsement made by a grand jury upon a bill of indictment, when they find it sustained by the truth of the accusation. The endorsement made by a grand jury when they find sufficient evidence to warrant a criminal charge. An indictment.

Truth in Sentencing Law:

enacted July 1, 1994, changes the formula for determining parole eligibility dates for offenders who committed crimes after July 1, 1994.

V

Vacate:

To annul; to set aside; to cancel or rescind.

To render an act void; as, to vacate an entry of record, or a judgment. As applied to a judgment or decree it is not synonymous with “suspend” which means to stay enforcement of judgment or decree.

Venue:

a place from which a jury is drawn and where a trial is held.

Verdict:

a formal decision by a jury at the end of the trial.

Victim:

one who has suffered as the result of the commission of a crime or some other wrong.

Victim Impact Statement:

a written or oral statement made by the victim to the court at sentencing describing the physical, emotional and financial effects of the crime and recommending a sentence to be imposed on the offender.

Victim Witness Advocate:

an individual employed by the prosecutor's office or other criminal justice agency to inform crime victims of their rights and available services and to assist them through the criminal justice system.

Voir Dire:

a process of examining prospective jurors by prosecutors and defense attorneys through which persons who might be biased or incapable of rendering a fair verdict may be screened out of the jury pool.

W

Warrant:

an order issued by a court which directs a law enforcement officer to arrest a person, search a location, seize an object, or do some other specified act.

Witness:

someone who has personal knowledge of relevant circumstances of a case and who testifies under oath as to what has been seen,

heard, or otherwise observed by that person.

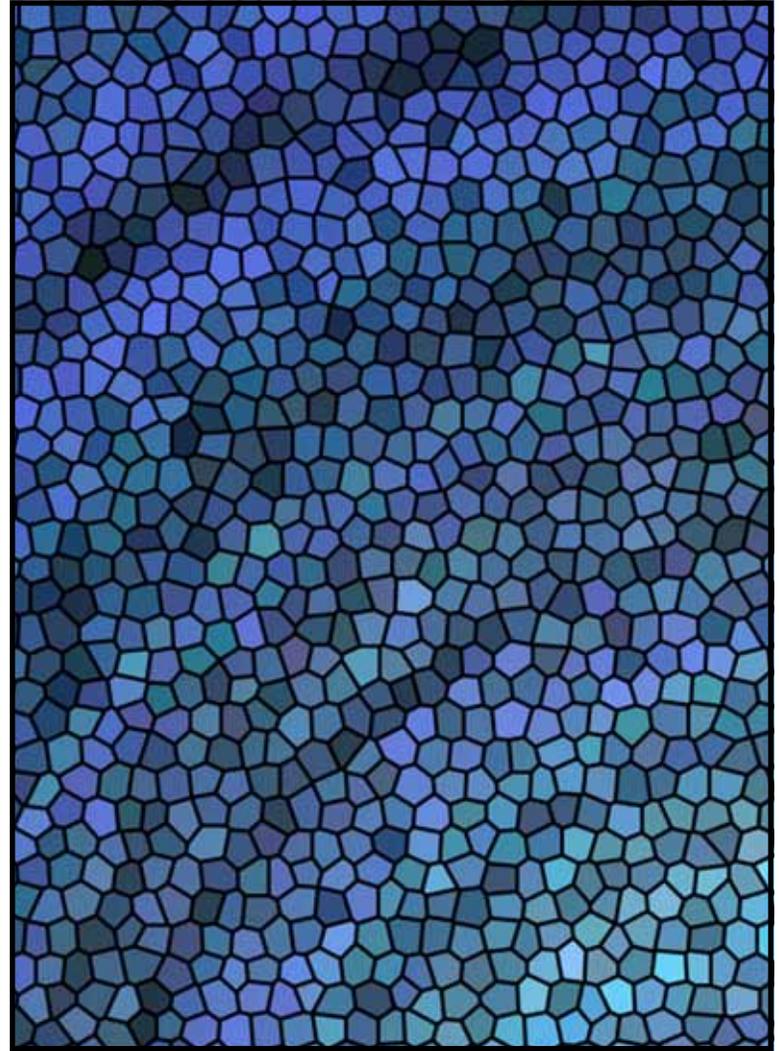
Witness Fee:

a token fee provided to victims and other witnesses to cover travel expenses for each day they are required to come to court or otherwise participate in a criminal proceeding.

Y

Youthful Offender:

a juvenile who, between the ages of fourteen and seventeen, is charged with a felony and has previously been committed to the Department of Youth Services, or has committed an offense which involves the infliction or threat of serious bodily harm, or has committed certain firearm offenses.



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