

# Comparison Chart of the House and Senate Anti-Gang Bills

<u>Issue</u>	<u>House</u>	<u>Senate</u>
<p style="text-align: center;"><b>Witness Protection Program Membership</b></p> <p style="text-align: center;"><b>Relevant Section:</b>  House – Sec. 1, subsection 1-2  Senate – Sec. 1, subsection 1-2</p>	<p style="text-align: center;"><b><u>WITNESS PROTECTION PROGRAM</u></b></p> <ul style="list-style-type: none"> <li>• 4 member board: Sec. of Public Safety  Attorney General  State Auditor  One District Attorney  (appt. by the MDAA)</li> <li>• The Board has no designated chair</li> <li>• The Board will be under EOPS</li> <li>• HOUSE AMENDMENT/JONES –  A majority vote will be “two or more board members”.</li> </ul>	<ul style="list-style-type: none"> <li>• 7 member board: Sec. of Public Safety  Attorney General  Colonel, State Police  One Chief of Police  (Appt. by the MPCA)  Attorney from CPCS  Two District Attorneys  (appt. by the MDAA)</li> <li>• The Board has no designated chair</li> <li>• The Executive Director will be voted on by a majority of the Board</li> <li>• The Executive Director will serve for three years.</li> <li>• The Board will be under EOPS</li> </ul>
<p style="text-align: center;"><b>Who may Participate?</b></p>	<ul style="list-style-type: none"> <li>• Any person participating in a criminal investigation</li> </ul>	<ul style="list-style-type: none"> <li>• Any person with information that would be relevant or material to a criminal investigation</li> </ul>

<p><b>Who may Participate?</b> (cont.)</p> <p><b>Relevant Section:</b> House – Sec. 1, subsection 3 Senate – Sec. 1, subsection 3</p>	<ul style="list-style-type: none"> <li>• Any person who is subpoenaed and is, in the prosecutor's judgment, is essential to the case</li> <li>• Any relatives, guardians, friends, or associates who are reasonably endangered by such person's participation</li> </ul>	
<p><b>Who may initiate the request for Protective Services?</b></p> <p><b>What must the request consist of?</b></p> <p><b>Relevant Section:</b> House – Sec. 1, subsection 3-4 Senate, Sec. 1, subsection 3</p>	<ul style="list-style-type: none"> <li>• A prosecutor initiates the request for protective services</li> <li>• The request must outline projected costs, method and anticipated duration of the services.</li> <li>• If there is an imminent threat to a witness, the prosecutor may immediately take action to protect him, and subsequently apply to the board within 48 hours.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Both a prosecutor and a witness</b> can initiate the request for protection from a law enforcement officer, a prosecutor, a victim witness advocate, or the Board itself.</li> <li>• If there is an imminent threat to a witness, the prosecutor may immediately take action to protect him, and subsequently apply to the board as soon as practical and may be reimbursed if the protection meets guidelines set for by the board.</li> <li>• Guidelines for requests, costs, and reimbursements will be left to the board to promulgate.</li> </ul>
<p><b>What kind of protection is provided?</b></p> <p><b>Relevant Section:</b> House - Sec. 1, subsection 5 Senate – Sec. 1, subsection 4</p>	<ul style="list-style-type: none"> <li>• Armed protection or escort</li> <li>• Surveillance or periodic visits, during, or subsequent to a criminal proceeding</li> <li>• Relocation to an alternate residence</li> <li>• Payment of housing or basic living expenses</li> <li>• Transportation or storage of personal</li> </ul>	<ul style="list-style-type: none"> <li>• Armed protection or escort</li> <li>• Surveillance or periodic visits, during, or subsequent to a criminal proceeding</li> <li>• Relocation to an alternate residence</li> <li>• Payment of housing or basic living expenses</li> <li>• Transportation or storage of personal</li> </ul>

<p><b>What kind of protection is provided?</b> (cont.)</p> <p><b>Relevant Section:</b> House - Sec. 1, subsection 5 Senate – Sec. 1, subsection 4</p>	<p>possessions</p> <ul style="list-style-type: none"> <li>• Basic living expenses</li> <li>• Petition for a protective order against a person who is a threat to a witness</li> <li>• Defense Council must be informed of what protection is provided.</li> <li>• HOUSE AMENDMENT/JONES – The Board 's records are confidential and the prosecuting officer may disclose or refuse to disclose the identity or location of a protected witness after balancing the danger such discloser would pose to the protected witness. Only upon request of court order shall the identity and location be disclosed or if the witness is under criminal investigation or has been arrested.</li> <li>• This amendment criminalizes knowingly disclosing information without authorization: <ul style="list-style-type: none"> <li>1. To 2 ½ year House of Correction</li> <li>2. \$5000 Fine</li> </ul> </li> </ul>	<p>possessions</p> <ul style="list-style-type: none"> <li>• Basic living expenses</li> <li>• Petition for a protective order against a person who is a threat to a witness</li> <li>• Defense Council must be informed of what protection is provided.</li> </ul>
<p><b>Reimbursement</b></p>	<ul style="list-style-type: none"> <li>• The Board may reimburse witness protection costs only with a majority vote of the Board.</li> </ul>	<ul style="list-style-type: none"> <li>• Reimbursement shall be made if the request for protection meets the board's guidelines and a majority vote</li> </ul>

<p><b>Reimbursement (cont.)</b>  <b>Relevant Section:</b>  House – Sec. 1, subsection 2  Senate – Sec. 1, subsection 3</p>	<ul style="list-style-type: none"> <li>• Reimbursement is subject to appropriation.</li> <li>• Reimbursement regulations and guidelines will be promulgated by the Board.</li> <li>• HOUSE AMENDMENT/DELEO  If costs exceed \$750,000 then excess costs will be paid by the prosecuting office.</li> </ul>	<p>of board.</p> <ul style="list-style-type: none"> <li>• Reimbursement is subject to appropriation.</li> <li>• Reimbursement regulations and guidelines will be promulgated by the Board.</li> </ul>
<p><b>Reports</b>  <b>Relevant Section:</b>  House – Sec. 1, subsection 11  Senate – Sec. 2</p>	<ul style="list-style-type: none"> <li>• Requires the Witness Protection board to make an annual report to the House and Senate Ways and Means Committees and the Joint Committee on the Judiciary on the fiscal and operation status of the program.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires the Witness Protection board to make an annual report to the House and Senate Ways and Means Committees and the Joint Committee on Criminal Justice on the fiscal and operation status of the program.</li> </ul>

<p style="text-align: center;"><b>Memorandum of Understanding</b></p> <p style="text-align: center;"><b>Relevant Section:</b> House – Section 1, subsection 6-7</p>	<ul style="list-style-type: none"> <li>• Prior to providing services, a <b>Memorandum of Understanding</b> must be executed by the witness and the prosecuting officer listing each party's obligations under the program including: <ul style="list-style-type: none"> <li>- <b>Full disclosure</b> of criminal past and any outstanding legal obligations.</li> <li>- To cooperate fully and truthfully</li> <li>- To take precautions so as not to reveal participation in the witness protection program</li> </ul> </li> <li>• If a witness violates the MOU, the prosecutor may terminate protective services.</li> </ul>	<ul style="list-style-type: none"> <li>• Allows the Board to promulgate its own regulations.</li> </ul>
<p style="text-align: center;"><b>What if witness rejects protective services?</b></p> <p style="text-align: center;"><b>Relevant Section:</b> House – Sec. 1, subsection 7 Senate – Sec., subsection 5</p>	<ul style="list-style-type: none"> <li>• If a protective order is rejected, the prosecuting officer shall request that the witness make such refusal in writing.</li> </ul>	<ul style="list-style-type: none"> <li>• If a protective order is rejected, the prosecuting officer shall request that the witness make such refusal in writing.</li> </ul>
<p style="text-align: center;"><b>Do you have to tell Defense Council about the protective services provided to the witness/es?</b></p> <p style="text-align: center;"><b>Relevant Section:</b> House – Sec. 1, subsection 5 Senate – Sec. 1, subsection 4</p>	<ul style="list-style-type: none"> <li>• Yes, any protective services provided to a critical witness shall be made known to defense counsel pursuant to Rule 14 of the Mass. Rules of Criminal Procedure.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes, any protective services provided to a critical witness shall be made known to defense counsel pursuant to Rule 14 of the Mass. Rules of Criminal Procedure.</li> </ul>

<p><b>Placement of Protective Witnesses</b></p> <p><b>Relevant Section:</b> House – Sec. 1, subsection 8-9</p>	<ul style="list-style-type: none"> <li>Allows for witness to be placed in public housing or in a public school notwithstanding waiting lists, class capacity limits or residency requirements.</li> </ul>	<ul style="list-style-type: none"> <li>The Board shall promulgate its own rules concerning placement of witnesses.</li> </ul>
<p><b>Funding for the Witness Protection Program</b></p> <p><b>Relevant Sections:</b> House – Section 11 Senate – Section 11</p>	<ul style="list-style-type: none"> <li>\$750,000 is allocated for this program</li> </ul>	<ul style="list-style-type: none"> <li>\$750,000 is allocated for this program</li> </ul>
<p><b><u>PERJURY STATUTORY CHANGES</u></b></p>		
<p><b>Statutory Changes</b></p> <p><b>Relevant Sections:</b> House – Section 2, subsection 1 Senate – Section 4</p>	<ul style="list-style-type: none"> <li>Adds to the existing statutory language that perjury may be <b>proven not only by false statement</b> under oath in a judicial proceeding, as in current law, <b>but also, as in the Senate Version</b>, by proof of two or more declarations, one of which necessarily must be false or are irreconcilably contradictory and are material to a point in question in a judicial proceeding. Ultimate proof of perjury must be by a jury.</li> </ul>	<ul style="list-style-type: none"> <li>If you make two false statements, you are guilty of perjury – federal standard.</li> <li>Strikes language in Sec. 1A of Chapter 268 which provides the elements to prove perjury and inserts new language allowing perjury to be proven if: <ol style="list-style-type: none"> <li>Making <b>two or more statements in a judicial proceeding</b>, one of which must be false, or,</li> <li>By making declarations in a judicial proceeding that are material and irreconcilably contradictory.</li> </ol> </li> </ul>

<p><b>Statutory Changes (cont.)</b></p> <p><b>Relevant Sections:</b>  House – Section 2, subsection 1  Senate – Section 4</p>	<ul style="list-style-type: none"> <li>• Criminal penalties: <ul style="list-style-type: none"> <li>○ Perjury during capital crimes: <ol style="list-style-type: none"> <li>1. Any term of years in State Prison</li> </ol> </li> <li>○ Perjury for other crimes <ol style="list-style-type: none"> <li>1. Not more than 20 years in a State Prison.</li> <li>2. Not more than 21/2 years.</li> <li>3. \$1000 fine</li> </ol> </li> </ul> </li> <li>• AMENDMENT TO HOUSE DURING FORMAL/CABRAL AMEND:  Up to a \$10,000 fine for refusing to testify after being protected in the program</li> </ul>	<ul style="list-style-type: none"> <li>• A prosecution for perjury is barred:  If a person admits to lying during the proceeding while it is still pending, and the lie has not substantially affected the proceeding, or it was not clear that the lie was or would be exposed.</li> </ul>
	<p><b><u>WITNESS INTIMIDATION STATUTORY CHANGES</u></b></p>	
<p><b>Further Defining Witness Interference</b></p> <p><b>Relevant Section:</b></p>	<ul style="list-style-type: none"> <li>• Strikes existing language in MGL Cpt. 268, Section 13B (2002) and inserts in its place a broader definition of witness intimidation to include penalties for the intimidation of any: <ol style="list-style-type: none"> <li>1. individual providing information in an</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Strikes existing language in MGL Cpt. 268, Section 13B (2002) and inserts in its place a broader definition of witness intimidation to include penalties for the intimidation of any: <ol style="list-style-type: none"> <li>1. individual providing information in an</li> </ol> </li> </ul>

<p style="text-align: center;"><b>House – Section 2</b> <b>Senate – Section 10</b></p> <p style="text-align: center;"><b>Further Defining Witness Interference</b> (cont.)</p>	<p style="text-align: center;">investigation</p> <ol style="list-style-type: none"> <li>2. grand jury proceeding</li> <li>3. witnesses and potential witnesses at any stage of an investigation</li> <li>4. grand jury proceeding or trial</li> <li>5. Persons aware of information relative to criminal violations, judges and other trial figures and individuals who observe criminal proceedings.</li> </ol>	<p style="text-align: center;">investigation</p> <ol style="list-style-type: none"> <li>2. grand jury proceeding</li> <li>3. witnesses and potential witnesses at any stage of an investigation</li> <li>4. grand jury proceeding or trial</li> <li>5. Persons aware of information relative to criminal violations, judges and other trial figures and individuals who observe criminal proceedings.</li> </ol>
<p style="text-align: center;"><b>Issuance of Grand Jury Minutes</b></p> <p style="text-align: center;"><b>Relevant Section:</b> <b>House: Sec. 4</b> <b>Senate: Sec. 5</b></p>	<p><b><u>GRAND JURY MINUTES</u></b></p>	<ul style="list-style-type: none"> <li>• Grand Jury transcripts will be filed and maintained under seal, unless the documents relate to a criminal prosecution for perjury before the Grand Jury.</li> <li>• The Commonwealth may seek a protective order to prevent dissemination of Grand Jury Transcripts if the defendant is charged with a ‘violent crime’, as defined in Section 120 of Cpt. 140 of the General Laws.</li> <li>• Specific and articulable facts must support a reason to believe that the</li> </ul>
<p style="text-align: center;"><b>Issuance of Grand Jury Minutes</b></p> <p style="text-align: center;"><b>Relevant Section:</b> <b>House: Sec. 4</b> <b>Senate: Sec. 5</b></p>	<ul style="list-style-type: none"> <li>• When defendant is charged with a violent crime resulting from gang activity, the grand jury transcripts, and written or recorded statement of witnesses shall not be provided to the defense under the rules of discover.</li> <li>• For a defense attorney to gain access to such information, he/she must file a motion for such discovery.</li> <li>• The court must consider: <ol style="list-style-type: none"> <li>1. The circumstances under which the crime was committed</li> <li>2. The potential for witness</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Grand Jury transcripts will be filed and maintained under seal, unless the documents relate to a criminal prosecution for perjury before the Grand Jury.</li> <li>• The Commonwealth may seek a protective order to prevent dissemination of Grand Jury Transcripts if the defendant is charged with a ‘violent crime’, as defined in Section 120 of Cpt. 140 of the General Laws.</li> <li>• Specific and articulable facts must support a reason to believe that the</li> </ul>



<p style="text-align: center;"><b>Issuance of Grand Jury Minutes (cont.)</b></p> <p style="text-align: center;"><b>Relevant Section: House: Sec. 4 Senate: Sec. 5</b></p>	<p style="text-align: center;">intimidation</p> <p style="text-align: center;">3. Whether the safety of the public will be endangered</p> <ul style="list-style-type: none"> <li>• The standard to be applied is “the interest of justice” (same standard as under Rule 14 of Mass. Rule of Crim. Pro.)</li> <li>• If the court orders such information released, in whole or in part, upon motion of the Commonwealth and “for cause shown,” the court may restrict release of such information to defendant’s counsel only.</li> <li>• The bill provides that a defense attorney may provide the testimony to his client, an investigator, or co-counsel; unless a protective order prohibits such dissemination.</li> </ul>	<p>defendant poses a threat to a witness Or a victim based on his history of violence and the nature of the charges.</p> <ul style="list-style-type: none"> <li>• The Court shall consider whether the defendant has an ‘exceptional need’ to receive the transcripts before issuing a protective order.</li> <li>• The bill provides that a defense attorney may provide the testimony to his client, an investigator, or co-counsel; unless a protective order prohibits such dissemination.</li> </ul>
<p style="text-align: center;"><b>Criminal Penalties for Unlawful Possession of Grand Jury Minutes</b></p> <p style="text-align: center;"><b>Relevant Section: House - Sec. 4 Senate – Sec. 5</b></p>	<ul style="list-style-type: none"> <li>• The bill provides criminal penalties for someone who possesses Grand Jury Testimony without a legitimate purpose or without court authorization, as well as, possession or distribution of Grand Jury testimony with the intent to distribute such testimony for “misuse” or with intent to interfere with a criminal proceeding or</li> </ul>	<ul style="list-style-type: none"> <li>• The bill provides criminal penalties for someone who possesses Grand Jury Testimony without a legitimate purpose or without court authorization, as well as, possession or distribution of Grand Jury testimony with the intent to distribute such testimony for “misuse” or with intent to interfere with a criminal proceeding or intimidate a witness.</li> </ul>

<p><b>Criminal Penalties for Unlawful Possession of Grand Jury Minutes (cont.)</b></p> <p><b>Relevant Section:</b> House - Sec. 4 Senate – Sec. 5</p>	<p>intimidate a witness.</p> <ul style="list-style-type: none"> <li>• The criminal penalties for violation of a protective order for discovery for grand jury minutes are: <ul style="list-style-type: none"> <li>○ Up to 1 year</li> <li>House of Correction</li> <li>○ Up to a \$1,000 fine</li> </ul> </li> <li>• The criminal penalties for violation of a protective orders for a victim or witness are: <ul style="list-style-type: none"> <li>○ Up to 2-2 1/2 years</li> <li>House of Correction</li> <li>○ Up to a \$5,000 fine</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The criminal penalties for violation of a protective order are: <ul style="list-style-type: none"> <li>○ Up to 2 1/2 years</li> <li>House of Correction</li> <li>○ Up to a \$5,000 fine</li> </ul> </li> </ul>
<p><b>Issuance of Protective Orders</b></p> <p><b>Issuance of Stay Away Orders as a Condition of Bail</b></p>	<ul style="list-style-type: none"> <li>• Allows a judge to issue a protective order for the safety of any victim or witness of gang-related activity.</li> <li>• The criminal penalties for violation of a protective order are: <ul style="list-style-type: none"> <li>○ 2-2 1/2 years</li> <li>House of Correction</li> <li>○ \$5,000 fine</li> </ul> </li> <li>• Allows a judge or clerk, when releasing a defendant on personal recognizance, to require that defendant stay away from the victim, potential witnesses, or otherwise restrict the defendant's</li> </ul>	<ul style="list-style-type: none"> <li>• Allows a judge to issue a protective order for the safety of any victim or witness of gang-related activity.</li> <li>• The criminal penalties for violation of a protective order are: <ul style="list-style-type: none"> <li>○ 2-2 1/2 years</li> <li>House of Correction</li> <li>○ \$5,000 fine</li> </ul> </li> <li>• Amends MGL Cpt. 276, Sec. 58 (2002) to allow courts to have broader discretion to apply specified restrictions on contact with an alleged victim of the crime and any witnesses who may testify</li> </ul>

<p><b>Relevant Section:</b> House – Section 5, Section 9 Senate – Section 6, Section 7</p>	<p>personal associations as a condition of release.</p> <ul style="list-style-type: none"> <li>Allows the judge to revoke recognizance if the defendant violates a condition of his/her release.</li> </ul>	<p>concerning the offense as a condition of release on bail.</p> <ul style="list-style-type: none"> <li>Allows the judge to revoke recognizance if the defendant violates a condition of his/her release.</li> </ul>
<p><b><u>PREVENTION OF ILLEGAL GUN TRAFFICKING</u></b></p>		
<p><b>Illegal Possession and Transfer of a Firearm, Rifle, or Shotgun</b></p> <p><b>Relevant Section:</b> House – Section 7-8 Senate – Section 3</p>	<ul style="list-style-type: none"> <li>Provides criminal penalties for leaving a firearm, rifle, or shotgun unattended with the intent to transfer possession of it.</li> <li>The criminal penalties for illegal possession and transfer are: <ul style="list-style-type: none"> <li>1<sup>st</sup> Offense: <ul style="list-style-type: none"> <li>2-years House of Correction \$500 Fine</li> </ul> </li> <li>2<sup>nd</sup> Offense: <ul style="list-style-type: none"> <li>2 years House of Correction \$1000 Fine</li> </ul> </li> </ul> </li> <li>Creates the felony crime of leaving a firearm unattended with the intent to transfer it for the purpose of</li> </ul>	<ul style="list-style-type: none"> <li>Provides criminal penalties for leaving a firearm, rifle, or shotgun unattended with the intent to transfer possession of it.</li> <li>Provides criminal penalties for illegally transferring possession of a firearm, rifle, shotgun, or ammo.</li> <li>The criminal penalties for transfer are: <ul style="list-style-type: none"> <li>2-2 1/2 years House of Correction</li> <li>2-5 years State Prison</li> </ul> </li> <li>Creates the felony crime of leaving a firearm unattended with the intent to transfer it for the purpose of committing or concealing a crime.</li> </ul>

	<p>committing or concealing a crime.</p> <ul style="list-style-type: none"> <li>Creates an on and after sentence of up to 2 ½ years House of Correction to be added to a sentence for the underlying conviction of Cpt. 269, Sec. 10 (a) and (c),</li> <li>The criminal penalties for illegal possession and transfer with the intent to conceal a crime are: 1<sup>st</sup> Offense: <ul style="list-style-type: none"> <li>2 1/2years House of Correction</li> <li>2-5 years State Prison</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Creates an on and after sentence of up to 2 ½ years House of Correction to be added to a sentence for the underlying conviction of Cpt. 269, Sec. 10 (a) and (c),</li> <li>The criminal penalties for illegal possession and transfer with the intent to conceal a crime are: 1<sup>st</sup> Offense: <ul style="list-style-type: none"> <li>2 1/2years House of Correction</li> </ul> </li> </ul>
<p><b>Illegal Possession of a Loaded Gun</b></p> <p><b>Relevant Section:</b> House – Section 8 Senate – Section 3</p>	<ul style="list-style-type: none"> <li>The criminal penalties for illegal possession of a loaded weapon: <ul style="list-style-type: none"> <li>To 2 ½ years House of Correction</li> </ul> </li> <li>When ammunition is contained in an unlawfully owned firearm, judge may allow a defendant to serve the sentences for illegal firearm and ammunition possession concurrently.</li> </ul>	<ul style="list-style-type: none"> <li>The criminal penalties for illegal possession are: 1<sup>st</sup> Offense: <ul style="list-style-type: none"> <li>2-2 1/2 years House of Correction</li> <li>\$500 Fine</li> </ul> </li> <li>2<sup>nd</sup> Offense: <ul style="list-style-type: none"> <li>2 years House of Correction</li> <li>\$1000 Fine</li> </ul> </li> </ul>