

SUMMARY OF ANTI-GANG BILL AS AMENDED IN THE SENATE

- Adds an emergency preamble.
- Creates a Witness Protection Board within the Executive Office of Public Safety to consist of the Secretary of Public Safety or his designee; the Attorney General or his designee; the Auditor or his designee; a District Attorney appointed by the Massachusetts District Attorneys Association; and a Chief of Police appointed by the Massachusetts Chiefs of Police Association.
- Establishes a Witness Protection Program to assist law enforcement officials in protecting the health, safety and welfare of witnesses and their family members.
- Appropriates \$2 million for the operation of the Witness Protection Program.
- Designates a liaison to work with federal government to maximize witness protection measures.
- Provides that a prosecutor or law enforcement agency that determines that an imminent threat to a witness's safety exists may take specified temporary action necessary to protect the witness and such costs may be reimbursed by the witness protection board. Protection services may include:
 - Armed protection or escort, surveillance or periodic visits prior, during or subsequent to a criminal proceeding
 - Relocation to an alternate residence
 - Payment of housing or basic living expenses
 - Petition for a protective order against a person who is a threat to a witness.
- Provides that the witness protection board shall oversee the witness protection program and reimburse prosecutors for program expenses via applications which comply with the board's regulations and guidelines.
- Exempts records of the witness protection board from the public records law and certain functions of the board from the open meeting law.
- Punishes whoever knowingly discloses information relative to the witness protection program if such disclosure poses the risk of harm to a program participant or the disclosure of a program participant, or which jeopardizes the objectives of the program by up to 2 ½ years in the house of correction.
- 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 operational status of the program.
- Applies penalties of perjury to any defendant who has knowingly made two or more

declarations under oath which are inconsistent to the degree that one of them is necessarily false. The prosecution need not specify which of the statements is false if: (1) both declarations were material to the point in question; and (2) at least one declaration was made within the statute of limitations for this offense. A defendant may avoid criminal liability if he believed the inconsistent statement to be true when he made it or, under certain circumstances, if he makes an admission to a false statement during the same proceeding in which it was made.

- Criminalizes the knowing distribution of or the possession with intent to distribute any transcript or substantially verbatim description of grand jury testimony with the intent to interfere with any criminal investigation, proceeding, victim or witness by imprisonment for up to 2½ years in a house of correction or a fine of up to \$5,000.
- Provides for the issuance of a protective order, after a hearing, to ensure the safety of any victim or witness of gang-related violence and for the prosecution of a violator of such a protective order under G.L. ch. 209A, the domestic abuse prevention statute.
- Allows a court, after a hearing, to issue a protective order prohibiting defense counsel from providing Grand Jury minutes to his client in violent crime cases if the prosecution has demonstrated specific and articulable facts to establish that the defendant poses a danger to a victim or witness.
- Allows specific restrictions on a defendant's contact with a victim of the alleged crime, and with any witnesses who may testify, as a condition of the defendant's release on bail.
- Expands the court's ability to impose conditions of bail designed to protect the defendant and the general public.
- Increases the minimum mandatory sentence for illegal possession of a firearm from 1 year to 18 months in the house of correction.
- Establishes the crime of leaving a firearm or ammunition unattended with the intent to transfer possession to an unlicensed person for the purpose of committing a crime, which is punishable by imprisonment for up to 2½ years in the house of correction or up to 5 years in state prison.
- Imposes up to an additional 2 ½ years to the sentence of anyone convicted of illegal possession of a loaded firearm, machine gun or sawed-off shotgun. This sentence must be served after completion of the sentence for the underlying offense of illegal gun possession.
- Broadens the offense of witness intimidation to include intimidation or interference with judges, prosecutors, law enforcement personnel, investigators, defense counsel, court personnel, probation officers or parole officers. The offense also

includes intimidation of any person who is planning to attend a criminal proceeding. Witness intimidation is further expanded to include the threat or infliction of emotional injury, economic injury or property damage. The offense is punishable by not more than 2½ years in a house of correction or not more than 10 years in a state prison.

S. 2133

AN ACT TO REDUCE GANG VIOLENCE IN THE COMMONWEALTH

SENATOR JARRETT T. BARRIOS (D-CAMBRIDGE)

REPRESENTATIVE STEPHEN CANESSA (D-NEW BEDFORD)

Summary:

I. Establishing a Witness Protection Program

SECTIONS 1-2 (inclusive) establishes a state-wide witness protection program to be administered by a witness protection board made up of seven members including the Secretary of Public Safety, the Attorney General or his designee, two District Attorneys appointed by the MDAA, the Colonel of the State Police, and two chiefs of police who shall be appointed by the MCOPA. The Massachusetts witness protection program will coordinate the efforts of state, county and local law enforcement agencies to protect the health, safety, and welfare of witnesses and their family members and reimburse those agencies for the costs of such efforts. Protection services provided to a witness may include, but shall not be limited to, armed protection or escort, marked or unmarked surveillance, and physical relocation. The bill includes an appropriation of \$750,000 to fund this program.

II. Preventing Illegal Gun Trafficking

Current Law: Mass. Gen. Laws ch. 269, §10 (2002) defines unlawful firearm, weapon, and ammunition possession and transfer and establishes the penalty of imprisonment in a jail or house of correction for not more than two years or by a fine of not more than \$500 for violations of this section.

SECTION 3 amends Mass. Gen. Laws ch. 269, §10 (2002) by inserting a new paragraph, paragraph (k), which shall punish any person who illegally transfers possession of a firearm, rifle, shotgun, or ammunition by a term of imprisonment in a jail or house of correction for not less than two years nor more than two and one half years, or in the state prison for not less than

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two years nor more than five years.

III. Adopting the Federal Perjury Standard

Current law: Mass. Gen. Law ch. 268, §1A (2002) provides that a person who willfully provides a materially false written statement shall be subject to the penalty of perjury pursuant to Mass. Gen. Law ch. 268, §1 (2002).

SECTION 4 amends Mass. Gen. Law ch. 268, §1A (2002) by including within the crime of perjury two or more irreconcilably contradictory declarations material to the point in question made by a defendant under oath under.

IV. Preventing Improper Use of Grand Jury Transcripts

SECTION 5 amends Mass. Gen. Laws ch. 268 by inserting a new section, section 13D, defining the criminal acts of knowingly possessing, distributing or possessing with intent to distribute any transcript of grand jury testimony or any essentially verbatim description of grand jury testimony, without authorization of court; or knowingly distributing or possessing with intent to distribute any transcript of grand jury testimony or any essentially verbatim description of grand jury testimony with the intent to interfere with any criminal proceeding. An attorney representing a defendant in a criminal proceeding may provide a grand jury transcript unless such transfer would be in violation of a protective order from a court. A member of the press who receives a grand jury transcript will not be prosecuted so long as the transcript is used for a legitimate lawful purpose.

V. Protecting Victims of Crime through Protective Orders

SECTION 6 amends Mass. Gen. Laws ch. 268 by inserting a new section, section 13E, allowing a court with jurisdiction over any delinquency, grand jury, or criminal matter, after a hearing and within its discretion, to issue a protective order against the defendant or any other

person for the safety of any victim or witness. A protective order may include any order under Mass. Gen. Laws ch. 209A, §3 or an order to maintain a prescribed geographical distance from any specified victim or witness.

VI. Allowing Stay Away Orders as a Condition of Bail

Current Law: Mass. Gen. Laws ch.276, §58 (2002) provides for the determination of a defendant's bail.

SECTIONS 7-8 (inclusive) amends Mass. Gen. Laws ch.276, §58 (2002) to allow for specified restrictions on contact with an alleged victim of the crime and any witnesses who may testify concerning the offense as a condition of release on bail.

VII. Increased Penalties for Possessing Loaded Firearms

Current Law: Mass. Gen. Laws ch.269, §10 (2002) defines unlawful firearm, weapon, and ammunition possession and transfer and establishes penalties for violation of this section.

SECTION 9 amends Mass. Gen. Laws ch. 269, §10 (2002) by inserting a new paragraph, paragraph (n), punishing a person who possesses a firearm containing ammunition with a term of imprisonment of not less than 2 1/2 years nor more than 5 years in state prison, or imprisonment for not less than 2 years nor more than 2 1/2 years in a jail or house of correction, beginning from and after the expiration of the sentence for possession of an unlawful firearm, provided that a the sentence imposed on such person shall not be reduced to less than two years.

VIII. Further Defining Witness Interference

Current Law: Mass. Gen. Laws ch.268, §13B (2002) defines witness intimidation and penalties for violation of this section.

SECTION 10 strikes Mass. Gen. Laws ch.268, §13B (2002) and inserts in its place a broader definition of witness intimidation to include penalties for the intimidation of any

individual providing information in an investigation or grand jury proceeding, witnesses and potential witnesses at any stage of an investigation, grand jury proceeding, or trial, persons aware of information relative to criminal violations, judges and other trial figures and individuals who observe criminal proceedings.

IX. Gang Prevention Grant Program

SECTION 11 establishes a gang prevention grant program to be administered by the Executive Office of Public Safety. The \$11 million will be distributed to cities and towns that have significant gang problems and will be used for community-based outreach programs, after-school programs, summer jobs programs, and community policing initiatives. All applicants must demonstrate a comprehensive plan to work with law enforcement, community-based outreach programs, and government officials to address gang activity in the community.