

## **Gang Bill Talking Points**

### **Witness Protection**

In April of 2001, State Senator Creem, then co-chair of the Joint Committee on Criminal Justice, released a report detailing the need for a statewide witness protection program in Massachusetts. Citing the budget constraints faced by District Attorneys and local law enforcement departments and the success of programs in other states such as California and Connecticut, Senator Creem's report called for the establishment of a statewide witness protection program and a much stiffer penalty for criminals convicted of witness intimidation.

In 2004, the Governor's Crime Commission – led by Lieutenant Governor Kerry Murphy Healey – recommended that the Commonwealth create a statewide witness protection program to help encourage witness participation in the criminal justice system. The Lieutenant Governor has subsequently expressed full support for strengthening witness protection laws and the development of a witness protection program.

The Legislature should take immediate action on the witness protection recommendations promoted by Senator Creem and Lieutenant Governor Healey.

Highlight of our witness protection piece:

-Establishes 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, a chief of police who shall be appointed by the MCOPA, and an attorney appointed by CPCS

-The board will be responsible for reviewing applications from prosecutors for reimbursements for witness protection services.

-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 legislation ensures that defense attorneys are treated fairly and requires prosecutors to disclose any protection services being offered to a witness pre-trial.

### **Witness Intimidation**

- Gang members use a variety of intimidation tactics to prevent witnesses from testifying against them.

- This bill includes penalties for the intimidation of any individual providing information in an investigation, witnesses and potential witnesses at any stage of an investigation, persons aware of information relative to criminal violations, judges and other trial figures and individuals who observe criminal proceedings.

## **Preventing Illegal Gun Trafficking**

-Law enforcement testimony before the Joint Committee on Public Safety recounted numerous instances of gang members engaging in gun trafficking. The so-called "community gun" tactic features a gang's use of one illegal firearm for a series of crimes and passing it from one gang member to another.

-This legislation makes it illegal to leave a firearm unattended (in a playground or park, for instance) with the intent of transferring the weapon to another unlicensed person.

-Where ammunition is contained in an unlawfully owned firearm, judges may allow a defendant to serve the sentences for illegal firearm and ammunition possession concurrently, effectively creating no additional penalty for possession of an illegal, loaded firearm. This bill requires penalties for ammunition and firearms to be served concurrently.

-Responsible gun owners do not engage in illegal trafficking. The Gun Owners Action League have reviewed this legislation and we have included language to protect legal gun owners.

## **Adopting the Federal Perjury Standard**

-District Attorneys testified to our Committee about the frequency of witnesses perjuring themselves during trial, effectively sinking major cases.

-Current law 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).

-Prosecutors are required to prove, beyond a reasonable doubt, that a contradictory statement made under oath is false. This burden is extremely high and hard to prove, making the potential prosecution for perjury an essentially an idle threat to a witness who intends on lying under oath.

-This bill mirrors federal law, 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.

### **Illegal Use of Grand Jury Transcripts**

-A grand jury transcript contains a verbatim report of a witness testimony at a criminal grand jury proceeding and often contains the witness' name and address.

-The information contained in this transcript can be used by violent criminals to frighten or intimidate witnesses, victims, or their families.

-This legislation will punish individuals who use a grand jury transcript to interfere with a criminal trial without interfering with a defense attorney's ability to properly represent a defendant.

### **Stay Away Orders as a Condition of Bail**

-A defendant released on bail can often put fear into the hearts of potential witnesses, alleged victims, or other personal associates. Committee testimony documents a number of released defendants who have attempted to bribe, intimidate, or communicate with the parties to his case.

-Currently, Massachusetts law permits a court to order a defendant to stay away from potential witnesses, alleged victims, or other personal associates only in specific cases, mostly those involving a felony offense that includes the use of physical force against a person.

-In order to protect witnesses from inappropriate – and often threatening – contacts by the defendant, this legislation will allow courts to have broader discretion to apply a stay away condition whenever it may be appropriate, allowing the courts to determine the necessity for a stay away order on a case-by-case basis.

### **Gang Prevention Grant Program**

This legislation 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.