

## **AN ACT REDUCING GANG VIOLENCE.**

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to forthwith reduce gang violence in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** The General Laws are hereby amended by adding after chapter 263, the following chapter:-

### **CHAPTER 263A. WITNESS PROTECTION IN CRIMINAL MATTERS**

Section 1. For the purposes of this chapter, the following words shall have the following meanings:-

"Board", the witness protection board established in section 2.

"Prosecuting officer", the attorney general or a district attorney from each county.

"Critical witness", any person who is participating in a criminal investigation, or has received a subpoena or who is reasonably expected to give testimony that is, in the judgment of the prosecuting officer, essential to a criminal investigation or proceeding or such person's relatives, guardians, friends or associates who are reasonably endangered by such person's participation in the criminal investigation or proceeding.

Section 2. There is hereby established a witness protection board within the executive office of public safety consisting of the secretary of public safety, the attorney general, the auditor, a chief of police appointed by the Massachusetts Chiefs of Police Association, and a district attorney appointed by the Massachusetts District Attorney's Association, or any member's respective designees. The board shall oversee the commonwealth's witness protection program and coordinate the efforts of state, county and law enforcement agencies to protect the health, safety and welfare of witnesses including, but not limited to, the administration and approval of funding for witness protection services. The board shall promulgate rules and regulations for the administration of the commonwealth's witness protection program and establish procedures to maximize federal funds for witness protection services.

Section 3. In any criminal investigation or proceeding, the prosecuting officer with jurisdiction over the investigation or proceeding may file a petition with the board requesting witness protection services for a critical witness if the prosecuting officer certifies that such witness's participation in the investigation or proceeding places the witness at risk of harm including, but not limited to, intimidation or retaliatory

violence. The petition shall include a proposed plan for protective services which shall include, but not be limited to, projected costs, method of protection and likely duration of services. The board shall review the petition as soon as possible and if, by a vote of 3 or more board members, finds that the petition and plan comply with the rules and regulations established by the board, the board shall assist the prosecuting officer to coordinate the efforts of state, county and local agencies to secure witness protection services. The board shall, subject to appropriation, reimburse the prosecuting officer for any witness protection related costs that comply with the regulations and guidelines established by the board.

Section 4. If a prosecuting officer determines that exigent circumstances exist regarding an imminent threat to the safety of a critical witness, he may take any appropriate temporary action he determines is necessary to protect the safety of the witness without prior approval of the board. The prosecuting officer shall inform the board of the action taken and the related costs within 48 hours. Any such costs, which would otherwise be in compliance with the rules and regulations established by the board pursuant to section 2, may be reimbursed to the prosecuting officer.

Section 5. Protective services provided to a critical witness may include, but not be limited to:-

- (a) any necessary armed protection or escort, marked or unmarked surveillance or periodic visits or contact by law enforcement officials prior, during or subsequent to a criminal proceeding;
- (b) physical relocation to an alternate shelter, housing or residence;
- (c) reasonable housing expenses;
- (d) transportation or storage of personal possessions;
- (e) basic living expenses; and
- (f) petition for a protective order on any individual identified as a threat to a critical witness.

Any protective services provided to a critical witness shall be made known to defense counsel pursuant to Rule 14 of the Massachusetts Rules of Criminal Procedure.

Section 6. Before providing witness protection services to any critical witness under this chapter, except where it is determined that temporary protective services are necessary pursuant to section 4, the prosecuting officer shall enter into a written memorandum of understanding with such witness. If temporary protective services have been provided pursuant to section 4, a written memorandum of understanding shall be entered into as soon as practicable. The written memorandum of understanding shall be signed by: the prosecuting officer or his designee; the witness to be afforded protective services; the witness' guardian if the witness is a minor; and the witness' attorney if the witness is represented by counsel. Such written memorandum of understanding shall not be considered a grant of immunity. The written memorandum of understanding shall include:-

- (a) The responsibilities agreed to by the witness while receiving protective services, shall include, but not limited to, an agreement to:-
  - (i) provide complete and truthful information to all relevant law enforcement officials related to all relevant investigations, and to testify completely and truthfully in all

appropriate proceedings;

- (ii) not commit any crime;
- (iii) take all necessary precautions to avoid making known to others his participation in the witness protection program or the provision of protective services under such program;
- (iv) comply with any legal obligations or civil judgments against the witness;
- (v) cooperate with all reasonable requests of officers and employees of the commonwealth who are providing protective services under this chapter;
- (vi) designate another person to act as an agent for the service of process. Under no circumstances shall the person so designated be an employee of the prosecuting officer or other law enforcement agency, or be a member of or perform duties on behalf of the witness protection board;
- (vii) make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation, and child support;
- (viii) disclose any probation or parole conditions, obligations, or responsibilities; and
- (ix) regularly inform the prosecuting officer of the activities and current address of the witness.

(b) The responsibilities agreed to by the commonwealth while providing protective services shall include, but not be limited to:

- (i) The names and telephone numbers of representatives of the prosecuting officer or law enforcement personnel to contact if the witness has questions or concerns related to the protective services or the witness' safety;
- (ii) The protective services that the prosecuting officer has determined will be requested, and, if authorized, to be provided to the witness under this chapter; and
- (iii) The procedures to be followed, if there is a determination by the prosecuting officer that there has occurred a material breach of the memorandum of understanding, as established by the prosecuting officer.

Section 7. If a witness, after being offered protective services under this chapter, at any time declines to receive such services, the prosecuting officer shall request that the witness make such refusal in writing, or, if the witness refuses to document such refusal of services in writing, the prosecuting officer shall document the refusal and inform the witness protection board forthwith that the witness has declined protective services. If a witness violates the terms of the memorandum of understanding set forth in section 6 or any other condition of receiving witness protection services under this chapter, the prosecuting officer may revoke and terminate all protective services, and shall so advise the witness in writing. The prosecuting officer shall notify the board forthwith of such revocation and grounds therefore.

Section 8. Notwithstanding any general or special law to the contrary, or any regulation, rule or ordinance, if a petition and plan for witness protection, approved by the board, requires relocation of a critical witness within the public housing system, such relocation shall be effectuated without regard to any impediment including, but not limited to, any existing waiting list.

Section 9. Notwithstanding any general or special law to the contrary, or any regulation, rule or ordinance, if a petition and plan for witness protection, approved by the witness

protection board, requires relocation of a critical witness to another public school within or without of the witness's current school system, such relocation shall be effectuated without regard to any impediment including, but not limited to, class capacity limits and jurisdictional boundaries of any given school district.

Section 10. Nothing in this section shall be construed as creating a right, entitlement or cause of action on behalf of any person against any public employee, public agency, the commonwealth, or any agency responsible for the provision of services set forth in this chapter. The commonwealth, its officers and employees, and law enforcement personnel shall have immunity from suit based on any decision, act or omission related to this chapter.

Section 11. The board shall establish a liaison with the United States Marshal's office in order to facilitate the legal processes over which the federal government has sole authority. The liaison shall coordinate all requests for federal assistance relating to witness protection.

The board shall pursue all federal sources that may be available for implementing this chapter. For that purpose, the board shall establish a liaison with the United States Department of Justice.

The board shall, in conjunction with the executive office of administration and finance and the senate and house ways and means committees, establish procedures to maximize federal funding for witness protection services.

Section 12. Records of the board and all records relating to petitions and filed with the board shall be confidential and shall not be public records. Section 11A and section 11A½ of chapter 30A shall not apply to meetings, discussions or deliberations of the board.

Section 13. (a) A prosecuting officer may disclose or refuse to disclose the identity or location of a protected witness, or any other matter concerning a protected witness or the program, after balancing the danger such disclosure may pose to the protected witness, the detriment it may cause to the general effectiveness of the program, and the benefit it may afford to the public or the person seeking discovery, except that a prosecuting officer shall, upon the request of a federal, state or local law enforcement official, or pursuant to a court order, disclose to such official the identity, location and criminal records relating to the protected witness when the prosecuting officer knows, or the request from such official indicates, that the protected witness is under criminal investigation for, or has been arrested for, or charged with, a felony.

(b) Whoever, without the express written authorization of the prosecuting officer, knowingly discloses any information received from the prosecuting officer or generated in connection with witness protection services and which poses a risk of harm: to a program participant; of disclosure of any person's participation in such program; or of jeopardizing the objectives of the program shall be punished by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$5,000, or by both such fine and imprisonment. This section shall not apply to: any members of the board; members of the attorney general's office; members of the district attorneys'

offices; law enforcement; or agents thereof, acting in the lawful discharge of their duties.

**SECTION 2.** Section 1 of chapter 268, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:-

An indictment or complaint for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury proceedings relating to an indictment or complaint for the commission of a violent crime, as defined in section 121 of chapter 140, the defendant under oath has knowingly made 2 or more declarations, which are inconsistent to the degree that 1 of them is necessarily false, need not specify which declaration is false if: (1) each declaration was material to the point in question and (2) each declaration was made within the period of the statute of limitations for the offense charged under this section. In any prosecution under this section, the falsity of a declaration set forth in the indictment or complaint shall be established sufficient for conviction by proof that the defendant, while under oath, made irreconcilably contradictory declarations material to the point in question. If, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits to such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed. It shall be a defense to an indictment or complaint made pursuant to this section that the defendant, at the time he made each declaration, believed each such declaration to be true or its falsity was the result of a good faith mistake or error.

**SECTION 3.** Said chapter 268 is hereby further amended by striking out section 13B, as so appearing, and inserting in place thereof the following section:-

Section 13B. (1) Whoever, directly or indirectly, willfully

(a) threatens, or attempts or causes physical injury, emotional injury, economic injury or property damage to;

(b) conveys a gift, offer or promise of anything of value to; or

(c) misleads, intimidates or harasses another person who is:

(i) a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type;

(ii) a person who is or was aware of information, records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail;

(iii) a judge, juror, grand juror, prosecutor, police officer, federal agent, investigator, defense attorney, clerk, court officer, probation officer or parole officer;

(iv) a person who is or was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type; or

(v) a person who is or was attending or had made known his intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type shall be punished by

imprisonment for not more than 2½ years in a jail or house of correction or not more than 10 years in a state prison, or by a fine of not less than \$1,000 nor more than \$5,000.

(2) As used in this section, "investigator" shall mean an individual or group of individuals lawfully authorized by a department or agency of the federal government, or any political subdivision thereof, or a department or agency of the commonwealth, or any political subdivision thereof, to conduct or engage in an investigation of, prosecution for, or defense of a violation of the laws of the United States or of the commonwealth in the course of his official duties.

(3) As used in this section, "harass" shall mean to engage in any act directed at a specific person or persons, which act seriously alarms or annoys such person or persons and would cause a reasonable person to suffer substantial emotional distress. Such act shall include, but not be limited to, an act conducted by mail, electronic mail, internet communications, facsimile communications, or other telephonic or telecommunications device.

(4) A prosecution under this section may be brought in the county in which the criminal investigation, grand jury proceeding, trial or other criminal proceeding is being conducted or took place, or in the county in which the alleged conduct constituting an offense occurred.

**SECTION 4.** Said chapter 268, as so appearing, is hereby further amended by inserting after section 13C the following section:-

Section 13D. (a) Whoever knowingly distributes or possesses with intent to distribute any transcript of grand jury testimony or any substantially verbatim description of grand jury testimony with the intent to impede, obstruct, delay or otherwise interfere with any criminal proceeding, or the participation of any victim, witness or juror in any stage of a trial, grand jury, or other criminal proceeding, or the continued participation of any person furnishing information to a criminal proceeding, or the continued participation of any person furnishing information to a criminal investigator relating to a violation of any criminal statute, shall be punished by imprisonment in a house of correction for not more than 2½ years or in the state prison for not more than 5 years, or by a fine of not more than \$5,000, or both. Nothing in this subsection shall abridge any right protected by the First Amendment to the United States Constitution.

(b) Nothing in this section shall be construed so as to prohibit any person performing an official function in relation to the grand jury from disclosing a grand jury transcript or description thereof pursuant to Massachusetts Rules of Procedure or Federal Rule of Criminal Procedure 6.

(c) Any attorney representing a defendant in a criminal proceeding, including court appointed counsel, who receives a grand jury transcript or a description thereof related to such proceeding from a prosecutor, may provide the transcript or description to his client or any investigator employed by such attorney or another attorney employed by, or

appointed by the court to represent, his client, unless such transfer would be in violation of a protective order from a court of competent jurisdiction. Such attorney may further disclose a grand jury transcript or description thereof related to such proceeding to assist in the legal defense of another defendant in a criminal proceeding, unless such transfer would be in violation of a protective order from a court of competent jurisdiction.

(d) Upon motion of the commonwealth and after hearing, a court may issue a protective order prohibiting defense counsel from distributing grand jury transcripts to a criminal defendant, if the commonwealth demonstrates that the defendant is accused of a violent crime, as defined in section 121 of chapter 140, and that there is a reason to believe, based on specific and articulable facts including, but not limited to, the defendant's past history of violence and the nature of the charges against the defendant, that the defendant poses a threat to a witness or victim. The defendant shall have a right to cross examine any commonwealth witness. In making a determination relative to the issuance of a protective order under this section, the court shall consider whether the defendant has an exceptional need to receive such grand jury transcripts.

(e) Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal, unless the paper is filed in a criminal prosecution for perjury before a grand jury.

**SECTION 5.** Section 10 of chapter 269 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended, by striking out, in lines 30, 32 and 35, the words "one year", each time they appear, and inserting in place thereof, in each instance, the following word:- 18 months.

**SECTION 6.** Said section 10 of said chapter 269, as so appearing, is hereby further amended by striking out paragraph (h) and inserting in place thereof the following paragraph:-

(h)(1) Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than \$500. Whoever commits a second or subsequent violation of this paragraph shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$1,000, or both. Any officer authorized to make arrests may arrest without a warrant any person whom the officer has probable cause to believe has violated this paragraph.

(2) Any person who leaves a firearm, rifle, shotgun or ammunition unattended with the intent to transfer possession of such firearm, rifle, shotgun or ammunition to any person not licensed under section 129C of chapter 140 or section 131 of chapter 140 for the purpose of committing a crime or concealing a crime shall be punished by imprisonment in a house of correction for not more than 2½ years or in state prison for not more than 5 years.

**SECTION 7.** Said section 10 of said chapter 269, as so appearing, is hereby further amended by adding the following 2 paragraphs:-

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

(o) For purposes of this section, “loaded” shall mean that ammunition is contained in the weapon or within a feeding device attached thereto.

For purposes of this section, “ammunition” shall mean cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun.

**SECTION 8.** The first paragraph of section 58 of chapter 276 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- If the justice or clerk or assistant clerk of the district court, the bail commissioner or master in chancery determines it to be necessary, the defendant may be ordered to abide by specified restrictions on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense, as a condition of release.

**SECTION 9.** Section 58B of said chapter 276, as so appearing, is hereby amended by striking out, in line 2, the word “fifty-eight A” and inserting in place thereof the following words:- section 58 or section 58A.

**SECTION 10.** To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2006, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items.

EXECUTIVE OFFICE OF PUBLIC SAFETY  
*Witness Protection Program*

8000-0038 For the operation of a witness protection program pursuant to chapter 263A of the General Laws; provided, that of the funds appropriated in this item, \$500,000 shall be available for expenditure in fiscal year 2006 and \$1,000,000 in fiscal year 2007 . . . . .  
..... \$1,500,000.

**SECTION 11.** The witness protection board shall make an annual report to the general



court, including the house and senate ways and means committees and the joint committee on the judiciary, not later than January 1 of each year on the fiscal and operational status of the witness protection program including, but not limited to, the number of memoranda of understanding issued by each district attorney pursuant to chapter 263A of the General Laws.

**Approved March 30, 2006.**