

501 CMR 10.00: WITNESS PROTECTION PROGRAM

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10.01: Purpose

The purpose of 501 CMR 10.00 is to provide guidance to critical witnesses, prosecuting officers, the judiciary, law enforcement, and the public concerning the Witness Protection Program. 501 CMR 10.00 sets forth the procedures by which a prosecuting officer may petition the Witness Protection Board for assistance in protecting a witness from potential dangers related to the witness's participation in a criminal investigation or prosecution.

10.02: Statutory Authorization

501 CMR 10.00 is promulgated pursuant to St. 2006, c. 48: *An Act Reducing Gang Violence* in statute as M.G.L. c. 263A.

10.03: Definitions

For the purposes of 501 CMR 10.00, the following words shall have the following meanings:

Board. The Witness Protection Board, comprised 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 Attorneys' Association, or any member's respective designee.

Critical Witness. Any person who:

- (a) is participating in a criminal investigation; or
- (b) has received a subpoena in the context of a criminal investigation; or
- (c) is reasonably expected to give testimony

and, in the judgment of the prosecuting officer, is essential to a criminal investigation or proceeding. For purpose of 501 CMR 10.00, the term "person" shall mean the critical witness, or that witness's relatives, guardians, friends, or associates who are endangered by the witness's participation in the criminal investigation or proceeding. For purpose of 501 CMR 10.00, the term "essential" shall mean the prosecuting officer has a reasonable basis for believing that the witness will provide material, relevant information or testimony.

Prosecuting Officer. The Attorney General or a District Attorney for any district.

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10.04: Scope

501 CMR 10.00 shall apply to the Executive Office of Public Safety, members of the Witness Protection Board, all prosecuting officers who seek witness protection services for a critical witness, all critical witnesses accepting protection services, any law enforcement official assigned to provide witness protection services, any person receiving information regarding witness protection services, a superintendent of any school district directed to accept the transfer of a critical witness, an administrator of any housing authority directed to accept the transfer of a critical witness, and any other person called upon by the Board to assist in maintaining the safety and security of a critical witness.

10.05: Eligibility

Any person who, in the judgment of the Board, meets the definition of a critical witness shall be deemed eligible to receive witness protection services.

10.06: Petition for Witness Protection Services

Requests by prosecuting officers to the Board for witness protection services shall be submitted on witness protection petition forms developed and issued by the Board. Any witness protection petition shall contain, at a minimum, the following information:

- (1) a description of the criminal investigation or prosecution;
- (2) an explanation of how the prospective protectee meets the definition of a “critical witness”;
- (3) an assessment by the prosecuting officer of the potential risk of harm to the critical witness;
- (4) a proposed plan for protection services, including projected costs, method of protection, and expected duration of services; and
- (5) a signed memorandum of understanding between the prosecuting officer and the critical witness. The written memorandum of understanding shall be signed by the prosecuting officer or his designee, the witness to be afforded protection services, and the witness’s attorney if he or she is represented by counsel. If the witness is a minor, the witness’s guardian shall sign the memorandum for the witness.

10.07: Petition Authority

A prosecuting officer may delegate the authority to petition for witness protection services to his or her designee.

10.08: Review of Petition by Witness Protection Board

- (1) A petition for witness protection services submitted by a prosecuting officer shall be distributed to the Board at the earliest opportunity. The Board shall meet as often as necessary to review, deliberate, and act on petitions submitted by prosecuting officers.
- (2) The Board may approve, in whole or in part, any submitted witness protection petition. The Board may also deny a witness protection petition, or may require a prosecuting officer to resubmit the petition with additional information. Before acting on a petition, the Board may consult with a prosecuting officer, in person or otherwise, and request any additional information it deems necessary. Three or more members of the Board must vote to approve a petition for witness protection services. The Board’s decision will be immediately communicated to the prosecuting officer by the Chair of the Board or his or her designee.
- (3) Subject to the requirements of 501 CMR 10.10(2) and (3), and 10.12(2), an approved witness protection request shall authorize a prosecuting officer to receive reimbursement up to a dollar amount specified by the Board, and for a period of time determined by the Board or his or her designee.

10.08: continued

(4) The prosecuting officer shall notify the Board in writing each time a critical witness commits a breach of the memorandum of understanding. Such notice shall be submitted to the Board within three business days of the prosecuting officer's first learning of the breach. If a breach occurs of a term of the memorandum of understanding, the prosecuting officer may revoke and terminate all protective services, and shall so advise the witness in writing. The prosecuting officer must notify the Board in writing within three business days of his or her decision to terminate a critical witness for committing a breach. If a breach occurs, the Board may terminate or limit reimbursement for witness protection services, require a witness to sign a new memorandum of understanding containing additional terms or restrictions, or take any other action it deems necessary, as a condition of continued reimbursement.

(5) In any case where a prosecuting officer requires additional funds for witness protection services, or must extend the length of time that witness protection services are provided to a critical witness, the prosecuting officer must submit a new petition for witness protection services to the Board. The supplemental petition shall include:

- (a) the previously-filed petition;
- (b) a description of services provided to date,
- (c) a description of funds spent to date, including financial records;
- (d) certification that the witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board;
- (e) the reason why additional witness protection services are needed or have been more expensive to provide than was originally estimated; and
- (f) an updated plan for protection services, including projected costs, method of protection, and expected duration of services.

(6) The Board shall meet periodically, and in no event less than four times per calendar year, in order to conduct business essential to the effective maintenance and administration of the program. These quarterly meetings shall be held in the Office of the Secretary of Public Safety or other location as designated by the Chair, and shall require the attendance of Board members or their designees.

(7) Notwithstanding any general or special law or regulation to the contrary, and pursuant to the authority vested in the Board by M.G.L. c. 263A, § 9, the Board shall have the authority to relocate a critical witness to any public school, within or without the witness's current school system, without requiring that the witness change his or her place of residence, and without regard to any waiting list or other impediment to the relocation.

(8) Notwithstanding any general or special law or regulation to the contrary, and pursuant to the authority vested in the Board by M.G.L. c. 263A, § 8, the Board shall have the authority to relocate a critical witness who resides within the public housing system to another residence within the public housing system, without regard to any waiting list or other impediment to the relocation.

(9) Pursuant to M.G.L. c. 236A, § 12, M.G.L. c. 30A, §§ 11A and 11A½ shall not apply to any meeting, discussion, or deliberation of the Board.

10.09: Emergency Authorization

If a prosecuting officer determines that there is an imminent threat to the safety of a critical witness, the prosecuting officer may take any reasonable, appropriate temporary action he or she deems necessary to protect the safety of the witness without prior approval of the Board. In order to obtain reimbursement for expenses incurred in providing emergency protection services, the prosecuting officer must notify the Board of the action taken and the related costs as soon as it is reasonably practical to do so, and in no event longer than 48 hours after the prosecuting officer begins expending funds for emergency witness protection services. Within 14 days of expending funds for emergency witness protection services, or within a period of time set by the Board, the prosecuting officer shall file with the Board a petition for witness protection services which includes all of the information detailed in 501 CMR 10.06, as well as an explanation of the exigent circumstances which required the prosecuting officer to act to secure the safety of the witness, the emergency witness protection services provided to date, and the amount of funds expended to provide emergency witness protection. Any costs incurred by a prosecuting officer on an emergency basis which the Board determines, by a vote of three or more members, are otherwise in compliance with 501 CMR 10.00 and which are communicated to the Board in compliance with the terms of 501 CMR 10.09 may be reimbursed, in whole or in part.

10.10: Additional Responsibilities of the Board

- (1) The Board shall reimburse all approved witness protection expenses incurred by prosecuting officers, subject to appropriation.
- (2) The Board shall issue guidelines relative to the payment of witness protection expenses, in addition to accounting and reporting requirements for prosecuting officers.
- (3) At regular intervals to be determined by the Board, the Board shall require the prosecuting officer to certify that:
 - (a) he or she has taken reasonable and appropriate steps to monitor the conduct of the critical witness;
 - (b) to the best of his or her knowledge and belief, the critical witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board.
- (4) All records of the Board, whether generated by the Board or received from a prosecuting officer, related to witness protection services shall be stored in a secure location established by the Secretary of Public Safety. This secure location shall be accessible only to the Secretary of Public Safety, his or her designee, and any other person whose access is determined by the Secretary of Public Safety to be essential to the successful operation of the witness protection program. Computer files and programs used by the Board containing information related to a critical witness will be protected by appropriate security procedures. Each Board member and prosecuting officer shall develop similar security procedures for his or her office, to ensure the confidentiality of sensitive law enforcement information and the safety of critical witnesses. Each prosecuting officer shall be required to report his or her security procedures to the Board prior to receiving reimbursement for witness protection services. Any officer or employee of the Commonwealth or its political subdivisions who receives information related to witness protection services shall maintain the confidentiality of the information.
- (5) The Board shall develop and implement any other necessary policy, rule, or guideline necessary for the successful operation of the witness protection program.

10.11: Responsibilities of the Critical Witness

- (1) The critical witness must, at a minimum, sign a memorandum of understanding in which he or she agrees to undertake the following responsibilities:
 - (a) provide complete and truthful information to law enforcement officials, and testify completely and truthfully in all appropriate proceedings;
 - (b) not commit any crime;
 - (c) take all precautions necessary to avoid making known his or her participation in the witness protection program, except as authorized by a prosecuting officer or the Board;

10.11: continued

- (d) cooperate with all requests by all officers and employees of the Commonwealth and its political subdivisions who are providing protection services at the direction of the prosecuting officer;
- (e) designate another person to act as an agent for the service of process;
- (f) make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation, and child support, as well as any probation or parole conditions, obligations or responsibilities;
- (g) undertake to comply with all court orders, legal obligations or civil judgments;
- (h) report his or her activities to the prosecuting officer on a regular basis.

(2) Failure by the critical witness to comply with any of the terms of the memorandum of understanding may lead to termination of protection services.

(3) If a witness, after being offered witness protection services, declines those services, the prosecuting officer shall request that the critical witness document that decision on a form developed and issued by the Board. If the witness refuses to memorialize his or her refusal of protection services, the prosecuting officer shall document the refusal and inform the Board within three business days of learning of the witness's refusal that the witness has declined protection services.

10.12: Responsibilities of Prosecuting Officer

(1) The prosecuting officer must, at a minimum, sign a memorandum of understanding in which he or she agrees to undertake the following responsibilities:

- (a) provide the witness with the names and telephone numbers of the prosecuting officer or law enforcement personnel to contact if the witness has questions or concerns related to the protection services or the witness's safety;
- (b) certify that the protection services requested by the prosecuting officer and authorized by the Board will be provided to the witness; and
- (c) establish procedures to be followed if, in the determination of the prosecuting officer, the witness has committed a breach of the agreement.

(2) Subject to the requirements of 501 CMR 10.10(3), the prosecuting officer must certify that:

- (a) he or she has taken reasonable and appropriate steps to monitor the conduct of the critical witness;
- (b) to the best of his or her knowledge and belief, the critical witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board.

The Board shall develop certification forms to accompany reimbursement requests by prosecuting officers.

10.13: Disclosure of Witness Protection Information in a Criminal Case

With respect to any request by a defendant for information on protection services provided to a witness, the prosecuting officer shall seek appropriate court orders to ensure that the information concerning the witness remains as confidential as possible and is disseminated to as few persons as possible. With an appropriate court order, a defendant may obtain the witness's signed memorandum of understanding, a statement detailing the witness protection services provided, and the approximate cost of providing those services. This statement shall not contain any information which could lead any person to determine where the witness resided while receiving protection services. The Board shall develop model disclosure forms to accompany discovery produced to a defendant by a prosecuting officer.

10.14: All Other Disclosures Related to Witness Protection

(1) Notwithstanding any general or special law or regulation to the contrary, no document, record, or petition, in whatever form, generated by the Board or by a prosecuting officer and related to witness protection services shall be a public record.

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(2) So long as witness protection services are being provided to a critical witness, the prosecuting officer shall disclose the identity and location of a protected critical witness upon the request of a federal, state, or local law enforcement official, or pursuant to a court order, if the prosecuting officer knows, or the request from the law enforcement official reveals, that the protected witness is under criminal investigation for, or charged with, a felony.

(3) In all other instances where information related to witness protection services is requested, no information or document shall be disclosed without the approval of three or more members of the Board or a valid court order.

10.15: Waiver

The Board may, by a vote of three or more members, waive any provision of 501 CMR 10.00 not required by statute.

10.16: Immunity

Nothing in 501 CMR 10.00 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 herein. The Commonwealth, its officers and employees, and law enforcement personnel shall have immunity from suit based on any decision, act, or omission related to 501 CMR 10.00.

10.17: Severability

If any article, section, subsection, clause, or phrase of 501 CMR 10.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Secretary of Public Safety or the Witness Protection Board, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 501 CMR 10.00.

REGULATORY AUTHORITY

501 CMR 10.00 St. 2006, c. 48 and M.G.L. c. 263A.