December 15, 2021

To the Honorable Senate and House of Representatives,

To meet the fundamental government responsibility of keeping our Commonwealth safe, I am submitting for your consideration “An Act to Protect Victims of Crimes and the Public.” This updated version of legislation I first filed several years ago is part of a package of proposals I am filing today that together will strengthen protections for survivors and our communities.

Since I first filed this legislation and throughout the time our administration has advocated for it, we have heard personal stories of survivors and the families of victims whose lives have been upended by the gaps in our state law that do not provide adequate protections from dangerous persons. In our efforts to promote this legislation, we have been grateful to partner with survivors, domestic violence providers, advocacy organizations and others who speak to the urgency of enacting these critical public safety reforms. Those individuals have shared stories of dangerous individuals whose actions had wreaked havoc on their lives. And in many cases, the procedures by which the court system deals with such individuals failed to provide them with the protection and peace of mind they deserve. These stories underscore the importance of acting quickly to enact these reforms. To announce the filing of this legislation today, Lt. Governor Polito and I held a roundtable event where we heard several such stories from survivors, which deepened our commitment to this proposal that will protect our families and communities.

This bill does not change the legal standard applicable to dangerousness hearings, and will continue to require that, before detaining an individual, a judge hold a hearing and determine that no conditions of release can ensure public safety. But the existing limitations on the current system of pretrial detention unnecessarily expose victims to potential harm. For example, a prosecutor must either seek a dangerousness hearing during a defendant’s first appearance in court or forfeit that ability entirely, ignoring the possibility that circumstances arise after that first court appearance that no less conclusively establish that the community is at risk from the defendant. It also means that a defendant initially held on
cash bail cannot later be subject to a dangerousness hearing. The tragic consequence of that limitation was evident in the summer of 2020, when a defendant charged with rape was held on a high cash bail, obviating the need for a dangerousness hearing. When a non-profit organization posted that bail on the defendant’s behalf, however, prosecutors could not argue that he should be detained because he was also dangerous, and the defendant then allegedly committed another rape while on release. The provisions of this legislation could have avoided that result by permitting prosecutors to request a dangerousness hearing after the defendant had been released on bail.

This bill also aligns the pretrial detention statute with a commonsense understanding about how criminal behavior poses a danger to community members. A person alleged to have committed an indecent assault and battery on a child or a statutory rape is not currently subject to a dangerousness hearing, and a defendant’s history of serious criminal convictions is also not grounds for that hearing. It does the public little good to have a dangerousness statute that fails to protect victims from conduct that plainly puts the public at risk. Furthermore, the current statute only provides for protection for a defined period, rather than until the disposition of the criminal charges. A person who is so dangerous that his or her release threatens the safety of a specific victim or of the community at large does not become safe to release merely because three or four months have passed since the time of arrest. The bill I am filing today ensures that dangerous crimes are not exempt from a dangerousness hearing, and that a dangerousness detention lasts until the underlying criminal proceedings are final.

Most individuals arrested in Massachusetts are released pending trial, and that will continue to be the case. But when a person is arrested and released on pretrial conditions—aimed at ensuring the person obeys the law—victims and other members of the public should be able to rely on those conditions for protection and to trust that there will be consequences for a defendant who violates them. First, the legislation improves the system for notifying victims of crimes of abuse and other dangerous crimes when a defendant is going to be released. Next, the bill empowers police to detain people who they observe violating court-ordered release conditions. Current law does not allow this, and instead requires a court to first issue a warrant. But it is our police officers, not our judges and probation officers, who are on the streets of our cities and towns, and who are in position to see and to act when offenders are violating conditions of release. Finally, the legislation authorizes judges to revoke a person’s release when the offender has violated a court-ordered condition, such as an order to stay away from a victim, or from a public playground. Current law requires an additional finding of dangerousness before release may be revoked.

Additional provisions of this legislation:

- Extend the requirement that police take the fingerprints of people arrested for felonies to all people arrested, regardless of the charge, and allows a court to order fingerprinting of any person arraigned on any criminal charge, to ensure that decisions about release can be made with knowledge of a person’s true identity and full criminal history.
• Enhance the collection and value of data for the cross-tracking system required by G.L. c. 6A, § 18¾, by ensuring that information about an individual who is arrested or arraigned can be linked to a unique fingerprint identifier.

• Require that the probation department, bail commissioners and bail magistrates notify authorities who can take remedial action when a person who is on pre-trial release commits a new offense anywhere in the Commonwealth or elsewhere.

• Allow bail commissioners and bail magistrates to consider dangerousness in deciding whether to release an arrestee from a police station when court is out of session.

• Create a new felony offense for cutting off a court-ordered GPS device.

• Create a level playing field for appeals of district court release decisions to the superior court by allowing appeals by prosecutors, in addition to defendants, and giving more deference to determinations made in the first instance by our district court judges.

• Require that the courts develop a text message service to remind defendants of upcoming court dates.

• Create a task force to recommend adding information to criminal records so that prosecutors and judges can make more informed recommendations and decisions about conditions of release and possible detention on grounds of dangerousness.

• Clarify the permissible sentences following conviction for certain serious crimes: that probation is not a permissible sentence for home invasion or commission of a felony after two prior significant felony convictions; and that the sentence imposed on a person convicted of committing a felony while in possession of a firearm is a minimum mandatory sentence.

I urge your prompt enactment of this legislation.

Respectfully submitted,

[Signature]

Charles D. Baker
Governor