



# **The Commonwealth of Massachusetts Witness Protection Program**

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An Overview of Cases During Fiscal Years 2012, 2013, and 2014

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## *Introduction*

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On March 30, 2006, “An Act Reducing Gang Violence” was signed into Massachusetts law.<sup>1</sup> The law’s principal objective was to create the Commonwealth’s first statewide witness protection program.

The Act established a five-member “Witness Protection Board” (the “Board”), which includes the Secretary of Public Safety and Security (or designee), the Attorney General (or designee), the State Auditor (or designee), a representative from the Massachusetts District Attorneys’ Association, and a representative from the Massachusetts Chiefs of Police Association.<sup>2</sup> The statute allows the Attorney General and District Attorneys (or designated prosecutors) to apply for funds to protect a “critical witness,” defined as a person who is essential to the investigation or prosecution of a criminal matter and whose participation places him or her in danger.<sup>3</sup> These funds can also be used to protect “endangered” persons, defined as individuals who are placed in danger due to an association with the critical witness.<sup>4</sup> The statute requires prosecutors to file a petition for witness protection services with the Board. The petition must provide a description of the criminal investigation or prosecution, an explanation of why the individual is considered a critical witness, an assessment by the prosecuting officer of the potential risk of harm to the critical witness, a proposed or completed plan for protection services, a proposed or actual budget for providing those services, and a memorandum of understanding between the prosecuting officer and the critical witness.<sup>5</sup> Typical protection services include relocation, transportation, housing, and basic living expenses.<sup>6</sup> The Witness Protection Board reviews the petition and can approve it in whole or in part, or it can deny the petition.<sup>7</sup> The statute and regulations also allow prosecuting officers to take immediate steps to protect a witness facing an imminent threat, and to subsequently be reimbursed for providing such emergency protection services to witnesses.<sup>8</sup>

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<sup>1</sup>M.G.L. c. 263A, added by St.2006, c. 48, “An Act Reducing Gang Violence.” This report to the General Court is filed in part to comply with the requirements of the Act. See § 11 (requiring an annual report to be filed with the General Court, the House and Senate Committees on Ways and Means, and the Joint Committee on the Judiciary).

<sup>2</sup> M.G.L. c. 263A, §2.

<sup>3</sup> M.G.L. c. 263A, §1.

<sup>4</sup> Id.

<sup>5</sup> See 501 C.M.R. 10.06.

<sup>6</sup> M.G.L. c. 263A, § 5.

<sup>7</sup> 501 C.M.R. 10.08

<sup>8</sup> See M.G.L. c. 263A, § 4; 501 C.M.R. 10.08.

The statute places significant requirements on the witness as well. Before receiving witness protection funds, the witness and prosecuting officer must sign a Memorandum of Understanding. The Memorandum of Understanding requires critical witnesses to provide complete and truthful information to police and prosecutors, to testify truthfully in all necessary court proceedings, to not commit any crime, to cooperate with all reasonable requests of those providing protective services, to make a sworn statement of all legal and court obligations (such as child support) and to disclose any probation or parole conditions, to avoid disclosing to others their participation in the program, and to keep police and prosecutors updated on their activities and current address.<sup>9</sup> If a critical witness fails to abide by any of the conditions set forth in the Memorandum of Understanding, the prosecuting officer may revoke and terminate all protection services.

In Fiscal Year (FY) 2012, the Board received 52 petitions; 44 were new and eight sought additional services. The number of petitions decreased to 46 in FY 2013; 34 were new and 12 sought additional services.<sup>10</sup> In FY 2014, the number of petitions increased; 53 were new and eight sought additional services.

When first created in 2006, the Board received funding totaling \$1 million. However, despite heightened awareness and interest in the program in the years since 2006, the Board received only \$168,799 in funding for FY 2009, and has been level funded at \$94,245 for FY 2010 through FY 2014. As a result, the Board continues to reduce its funding of high-cost temporary hotel and motel stays and instead focuses on arranging longer-term housing for witnesses. The reduced funding has also forced the Board to approve mostly reimbursements, instead of anticipated expenditures. The Witness Protection Program has proven to be a critical tool to keep witnesses safe and to secure their testimony, without which an indictment or conviction might be impossible.

This report presents information on witness protection services in Massachusetts during FY 2012, 2013, and 2014. Data in this report is taken from the witness protection petitions filed by the District Attorneys' Offices and the Attorney General's Office.

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<sup>9</sup> See M.G.L. c. 263A, §6; 501 C.M.R. 10.11.

<sup>10</sup> The decrease in petitions resulted from the Board running out of funds prior to the end of the fiscal year (i.e., March 2013), when it was forced to stop accepting petitions.

## ***Case Characteristics***

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### ***Petition Overview***

The prosecuting agency files a petition on behalf of the critical witness, which is then presented to the Board for review.<sup>11</sup> For a petition to be approved, a majority of the Board must vote in favor of funding the petition. If a critical witness requires protection services beyond those provided by the original petition, the prosecuting officer must file a new petition for additional services.<sup>12</sup> A single case consists of an original petition as well as any subsequent petitions for additional services. In FY 2012 this represented a total of 52 petitions, of which 51 were funded at least in part. Of the 52 petitions, eight were requests for additional services. In FY 2013 the Board funded a total of 46 petitions, 12 of which were requests for additional services. In FY 2014, the Board funded 59 out of a total 61 petitions submitted, eight of which were for additional services.

### ***Funding Overview***

The Board approved \$120,948 for the petitions funded during FY 2012. The Board approved approximately 75% of petitions for the full amount requested in FY 2012, approved 25% for partial funding, and denied less than 1%. In FY 2013, the Board approved \$95,056 for all petitions funded. The Board approved approximately 80% of petitions for the full amount requested in FY13 and approved 20% for partial funding. No petitions were denied in FY 2013. The Board approved \$134,295 for the petitions funded in FY 2014. The Board approved approximately 80% of petitions for the full amount, approved 19% for partial funding, and denied 1% of petitions submitted in FY 2014.

### ***Funding For FY 2012, 2013, and 2014***

Figure 1 compares the amount of witness protection funding that the state budget gave to the Board in FY 2012, FY 2013, and FY 2014 to the amount of witness protection funding that the Board actually approved during each of those years. For FY 2012 the Board received \$94,245

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<sup>11</sup> The Board is scheduled to meet every other week subject to number of petitions and/or presence of a quorum.

<sup>12</sup> 501 C.M.R. 10.08(5)

from the state budget and approved \$120,948.29 for protection services. The extra \$26,703.29 was a one-time allotment from an Executive Office of Public Safety and Security special fund. In FY 2013, the Board received \$94,245 from the state budget. Because there were no additional sources of funding available, when the fund was depleted the Board stopped accepting petitions. The fund was depleted in April of 2013, resulting in a cessation of all petition submissions until July 1, 2013, the beginning of the next fiscal year. In FY 2014, the Board received \$94,245 from the state budget; the Board allocated that amount months before the next fiscal year. The FY 2014 funds were depleted in March of 2014; however, the Board decided to continue accepting petitions and to approve qualifying petitions pending the availability of funds. No additional funds became available to the Board during FY 2014, and at the end of FY 2014 the Board had received more petitions than available funding, leaving \$40,050 in unfunded petitions.

**Figure 1**

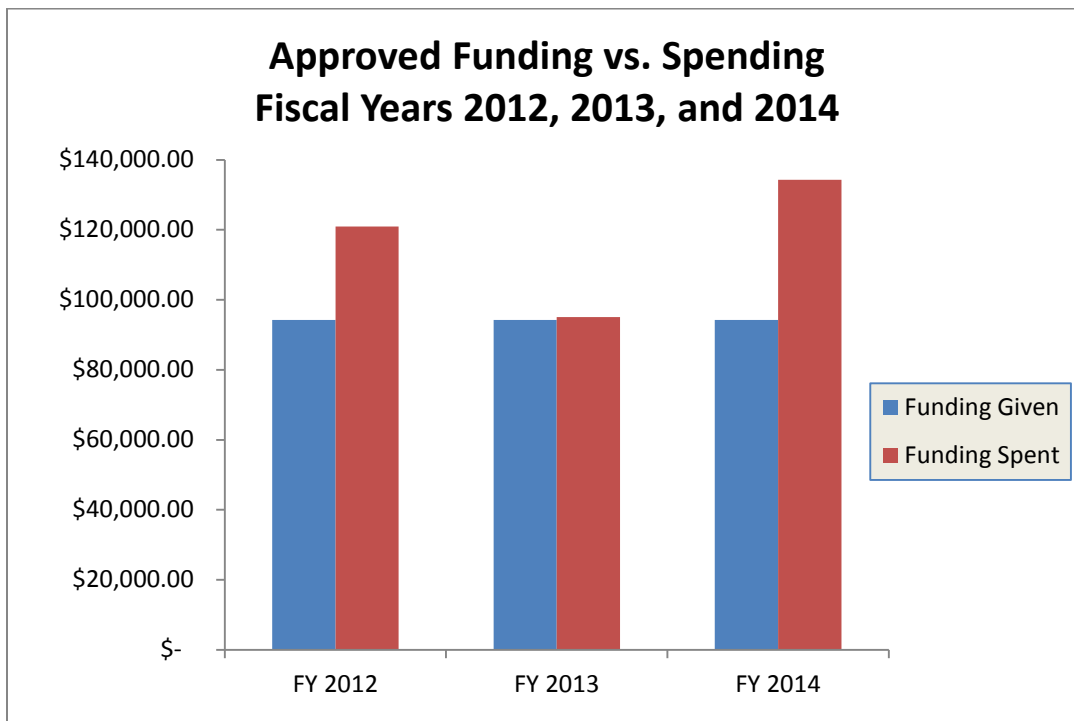
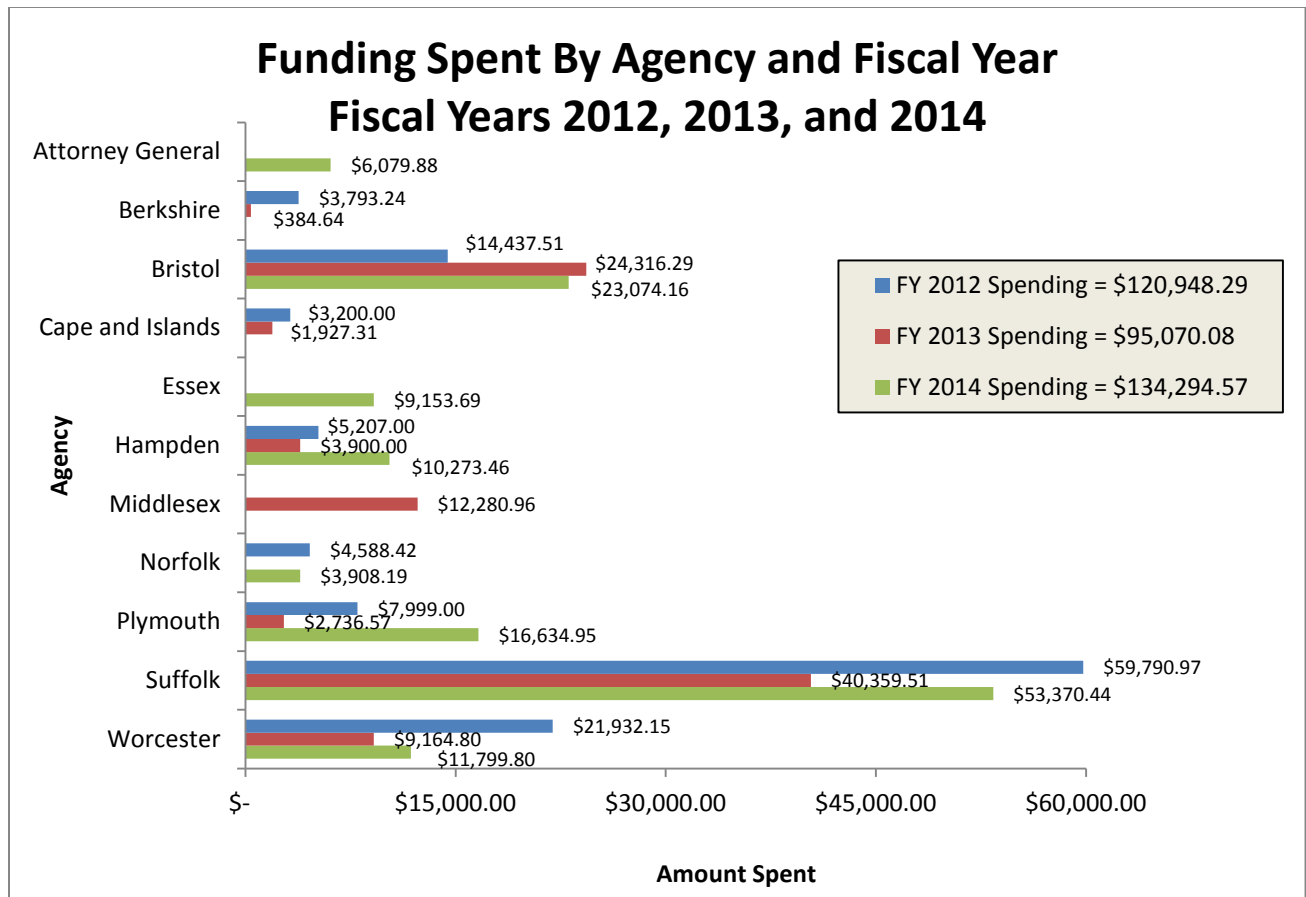


Figure 2 shows how the funds were allocated among the various District Attorneys' offices (identified by county) and the Attorney General's Office. In FY 2012, FY 2013, and FY 2014, the Suffolk County District Attorney's Office received the most witness protection funding.

**Figure 2**





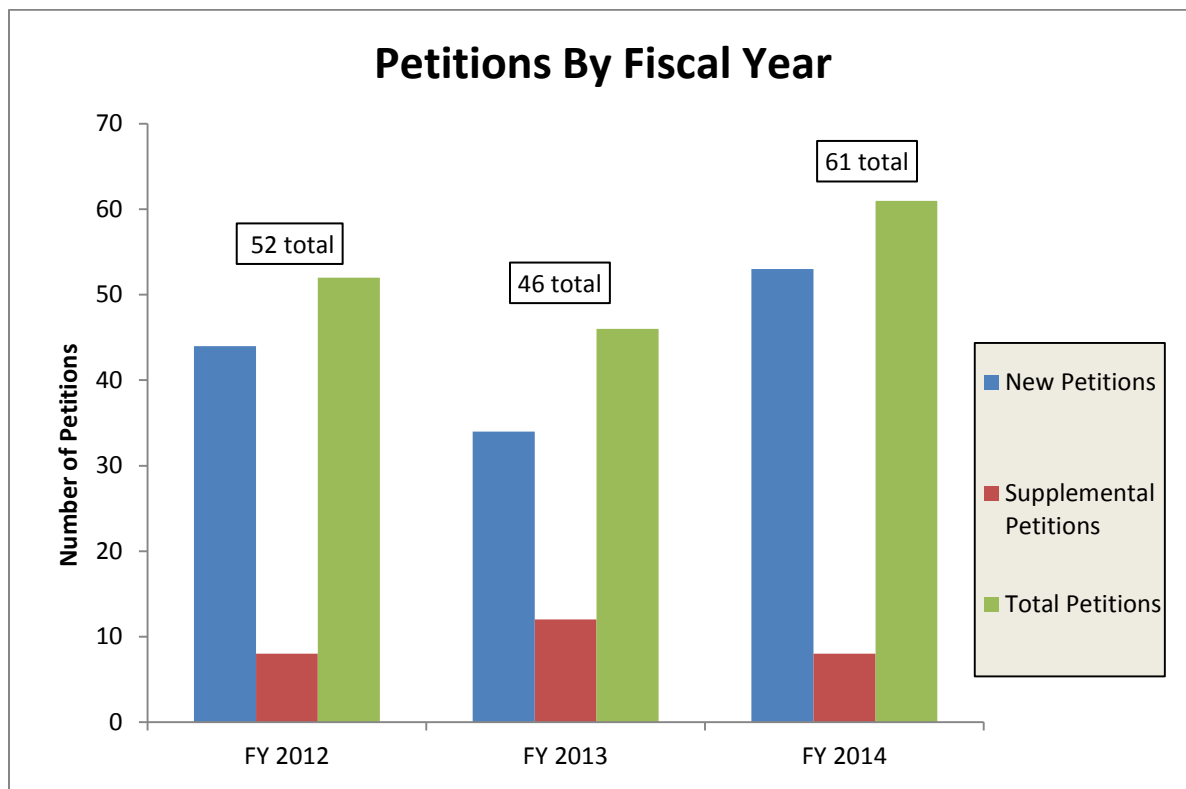
### ***Funding Per Petition***

The following tables and figures compare the number of petitions and average funding amounts per petition for FY 2012, FY 2013, and FY 2014. Table 1 and Figure 3 indicate the number of petitions that were funded by the Board by prosecuting office (identified by county) and fiscal year. Table 2 shows the average amount of funding spent per case by prosecuting agency and fiscal year, and Figure 4 shows the number of new, approved petitions by agency and fiscal year.

**Table 1**

<b>Fiscal Year</b>	<b>New Petitions</b>	<b>Supplemental Petitions</b>	<b>Total Petitions</b>
FY 2012	44	8	52
FY 2013	34	12	46
FY 2014	53	8	61

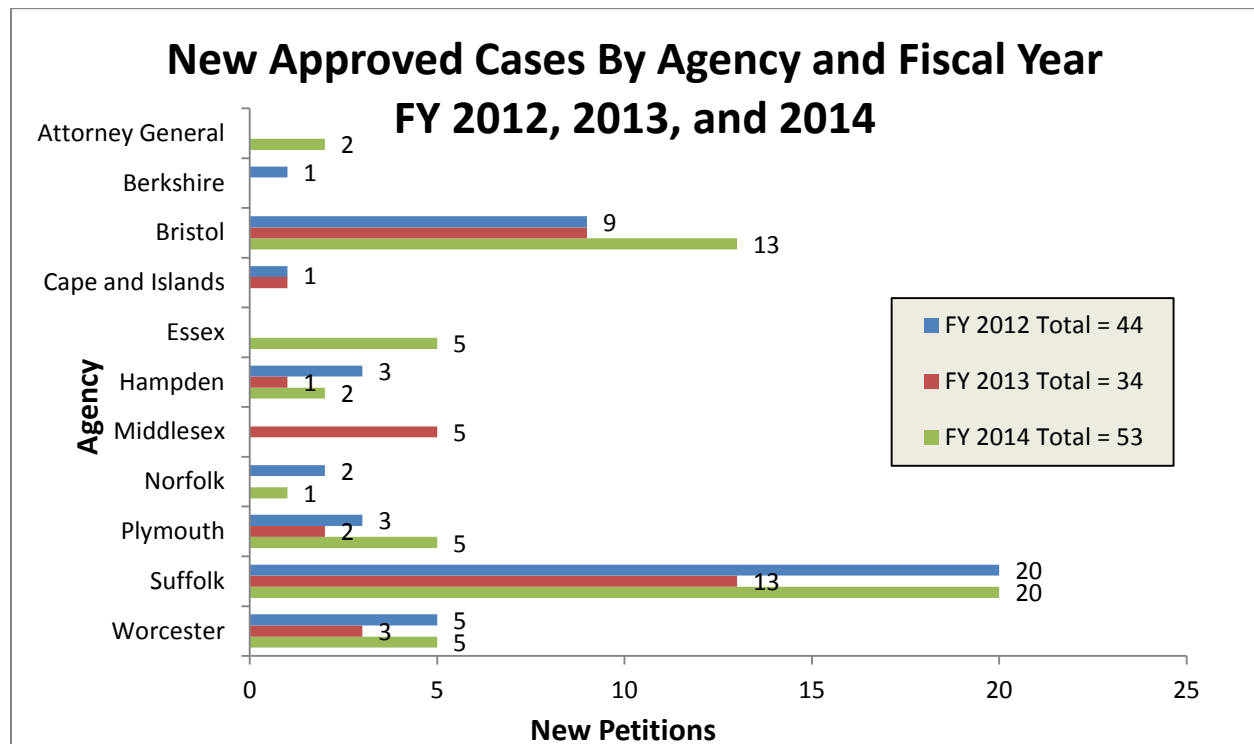
**Figure 3**



**Table 2**

Average Funding Spent Per Case By Agency and Fiscal Year FY 2012, 2013, and 2014			
Agency	FY 2012	FY 2013	FY 2014
Attorney General	\$0	\$0	\$ 3,039.94
Berkshire	\$ 3,793.24	\$ 384.64	\$0
Bristol	\$ 1,443.75	\$ 2,431.63	\$ 1,774.94
Cape and Islands	\$ 3,200.00	\$ 1,927.31	\$0
Essex	\$0	\$0	\$ 1,525.62
Hampden	\$ 1,735.67	\$ 1,950.00	\$ 5,136.73
Middlesex	\$0	\$ 2,046.83	\$0
Norfolk	\$ 2,294.21	\$0	\$ 1,954.10
Plymouth	\$ 2,666.33	\$ 1,368.29	\$ 3,326.99
Suffolk	\$ 2,391.64	\$ 1,921.88	\$ 2,134.82
Worcester	\$ 3,133.16	\$ 3,054.93	\$ 2,359.96
<b>Total</b>	<b>\$ 2,325.93</b>	<b>\$ 2,066.74</b>	<b>\$ 2,238.24</b>

**Figure 4<sup>13</sup>**



<sup>13</sup> One petition in FY 2012 from Suffolk and two petitions in FY 2014 from Bristol were denied.

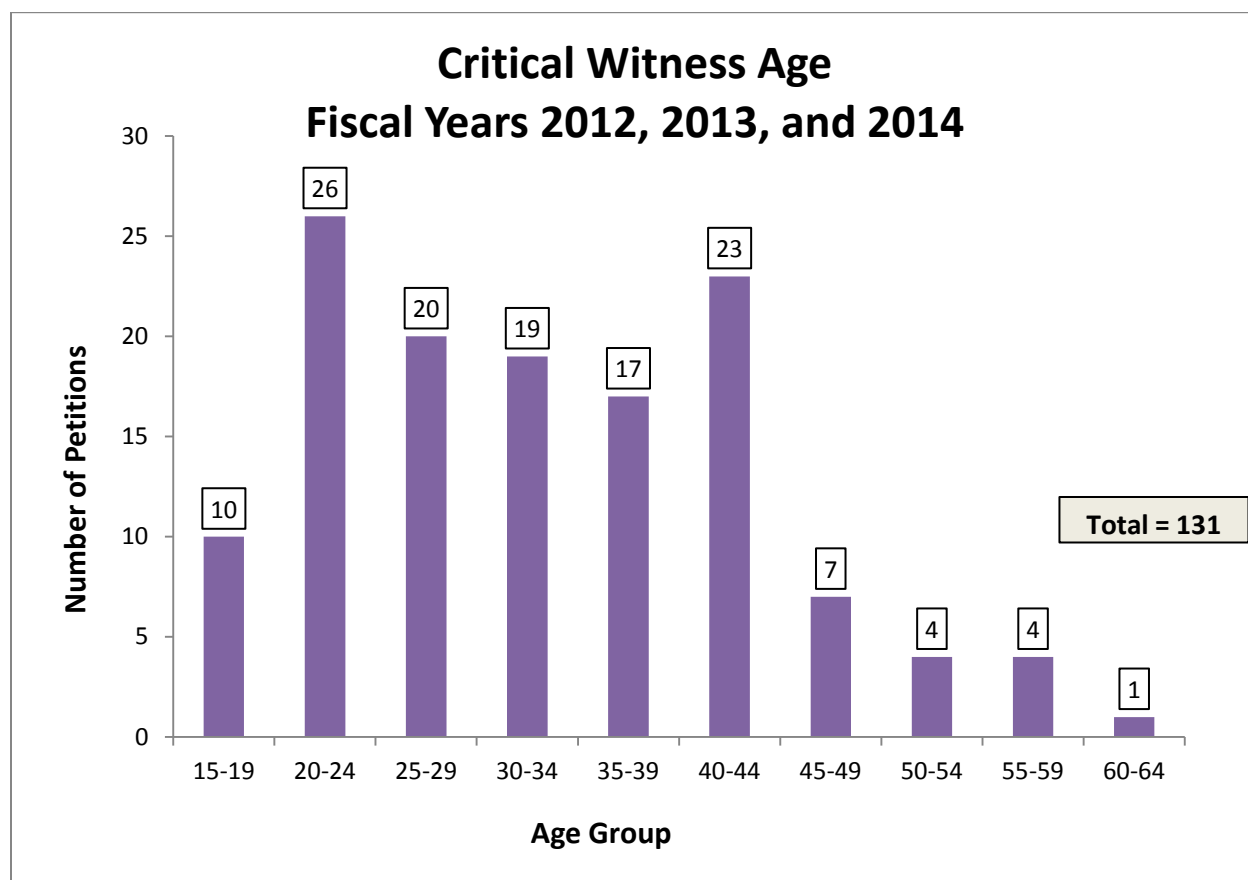
## ***Witness Characteristics***

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### ***Critical Witness Age and Gender***

The following analysis of witness characteristics for FY 2012, FY 2013, and FY 2014 will not include persons whose petitions originated in a previous fiscal year. In FY 2012 through FY 2014, the average age of the critical witness was 33, the median age was 32, and the mode was 21. The youngest critical witness was 15 years old, and the oldest was 61 years old. During the same time period, there were similar numbers of male and female critical witnesses: FY 2012 was 49% female and 51% male; FY 2013 was 56% female and 44% male; and FY 2014 was 53% female and 47% male.

**Figure 5**



### ***Relationship and Age of Endangered Persons***

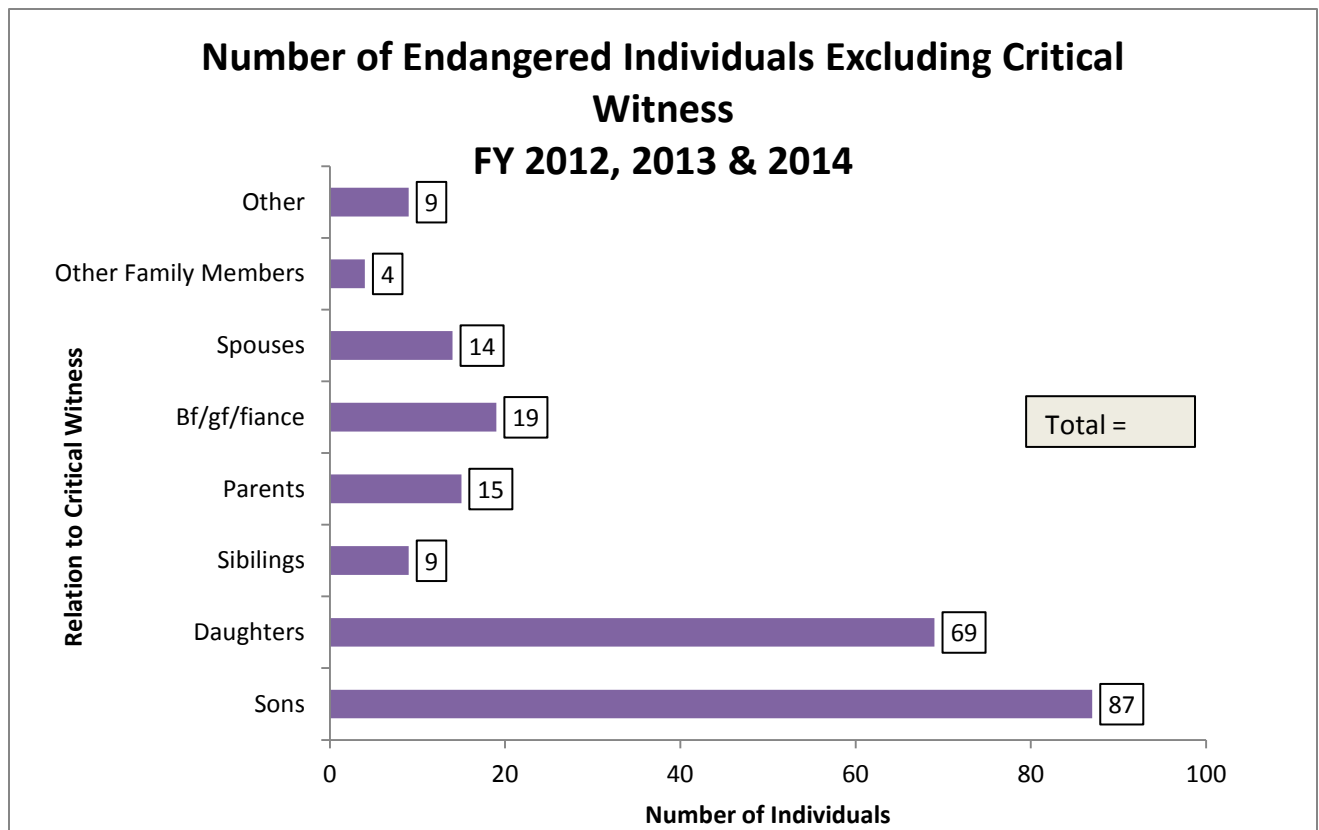
The number of persons protected per case ranged from one to ten people, the former indicating that the critical witness was the only individual protected, which occurred in 11% of cases in Fiscal Years 2012 through 2014.

**Table 3**

<b>Individuals Protected Per Case In FY 2012, 2013, and 2014</b>								
<b>Individuals Protected Per Case</b>	<b>Cases</b>				<b>Individuals Protected</b>			
	<i>FY 2012</i>	<i>FY 2013</i>	<i>FY 2014</i>	<i>Total</i>	<i>FY 2012</i>	<i>FY 2013</i>	<i>FY 2014</i>	<i>Total</i>
1	9	14	17	40	9	14	17	40
2	11	5	15	31	22	10	30	62
3	8	7	8	23	24	21	24	69
4	6	5	7	18	24	20	28	72
5	3	2	3	8	15	10	15	40
6	3	1	3	7	18	6	18	42
7	2	0	0	2	14	0	0	14
8	1	0	0	1	8	0	0	8
10	1	0	0	1	10	0	0	10
<b>Total</b>	<b>44</b>	<b>34</b>	<b>53</b>	<b>131</b>	<b>144</b>	<b>81</b>	<b>132</b>	<b>357</b>

In FY 2012, FY 2013 and FY 2014, the endangered persons protected under the petitions were generally family members of the critical witness. Approximately 69% of the endangered persons were children of the critical witness. Figure 6 shows the breakdown of endangered persons by relationship to the critical witness.

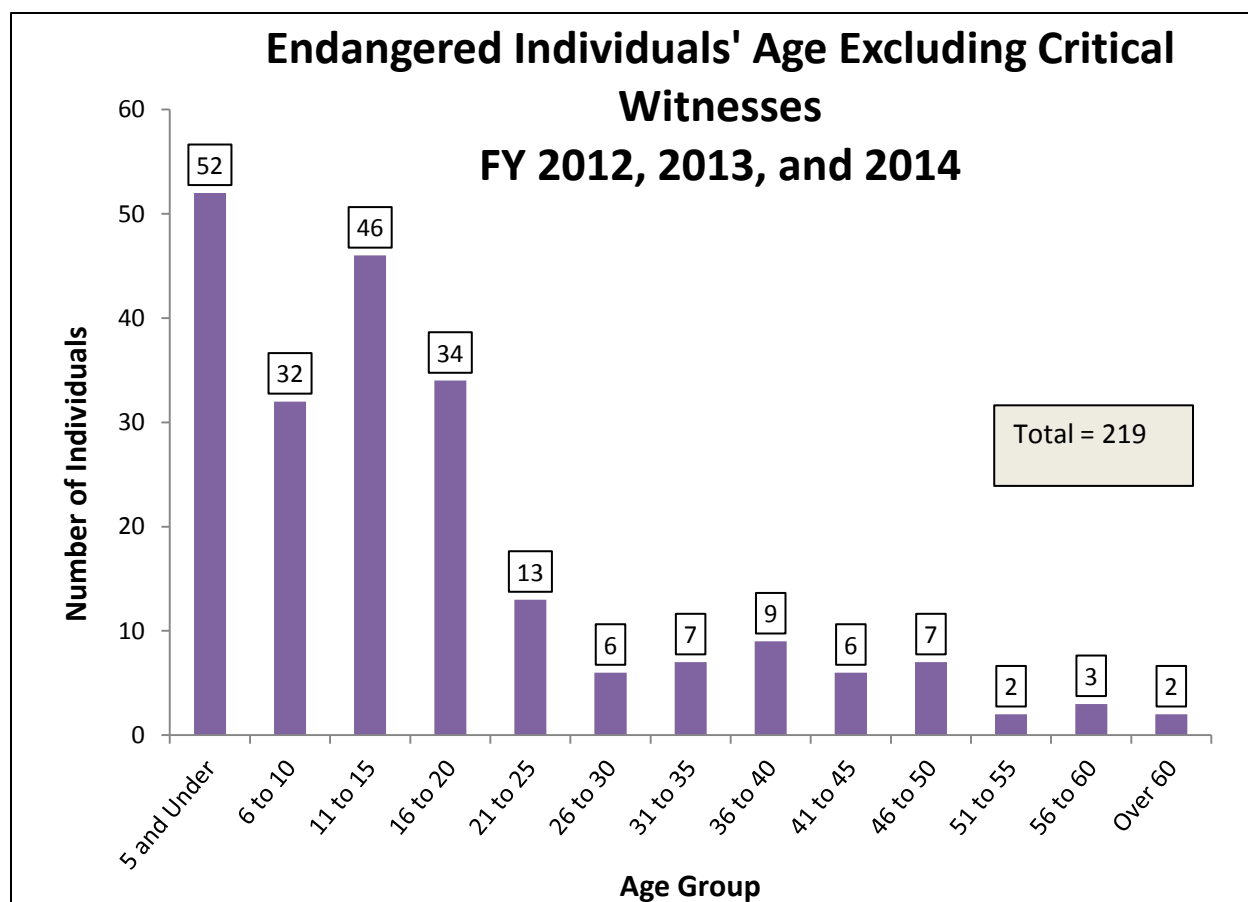
Figure 6<sup>14</sup>



The endangered persons protected during FY 2012 through FY 2014 tended to be younger than the critical witnesses, which is not surprising given that 69% of the endangered persons were children of the critical witness. Approximately 33% of endangered persons were age 5 and under, and 78% were under age 21. The average age of endangered persons was 15 years, and the median age was 10.

<sup>14</sup> The “other” category included relationships such as in-laws, girlfriends’/boyfriends’ children, and step-children.

Figure 7<sup>15</sup>



## ***Incident Characteristics***

### ***Incident Type, Nature, and Weapon Used***

In each petition, the prosecutor provides information about the underlying investigation or prosecution for each case. Incident characteristics, nature of the offense, and weapons used for cases spanning fiscal years 2012 through 2014 are described below. It is important to note that the categories of incident type, offense nature, and weapons in Tables 4, 5, and 6, as well as in the corresponding Figures 8, 9, 10, and 11 are not necessarily mutually exclusive because some

<sup>15</sup> Two petitions with four individuals from FY 2013 and five petitions from FY 2014 did not indicate endangered individual's age and/or indicated too many ages.

cases involved multiple incident types, weapons, etc. The analysis of each fiscal year will only include cases that were initiated in that fiscal year and not cases that were initiated in a previous fiscal year.

In fiscal years 2012 through 2014, cases involved the crime of murder far more often than other incidents.

**Table 4**<sup>16</sup>

<b>Number and Percentage of Incidents by Incident Type FY 2012, 2013, and 2014</b>						
<b>Incident Type</b>	<b>FY 2012</b>		<b>FY 2013</b>		<b>FY 2014</b>	
	<b>Number of Incidents</b>	<b>Percentage</b>	<b>Number of Incidents</b>	<b>Percentage</b>	<b>Number of Incidents</b>	<b>Percentage</b>
Assault & Battery	4	7.41%	7	14.89%	16	21.62%
ABDW	2	3.70%	7	14.89%	4	5.41%
Attempted Murder	12	22.22%	9	19.15%	10	13.51%
Conspiracy	1	1.85%	0	0.00%	1	1.35%
Home Invasion/B&E	3	5.56%	1	2.13%	1	1.35%
Kidnapping	0	0.00%	1	2.13%	5	6.76%
Murder	24	44.44%	12	25.53%	24	32.43%
Rape/Attempted Rape	1	1.85%	2	4.26%	1	1.35%
Robbery	2	3.70%	3	6.38%	8	10.81%
Other	5	9.26%	5	10.64%	4	5.41%
<b>Total</b>	<b>54</b>	<b>100%</b>	<b>47</b>	<b>100%</b>	<b>74</b>	<b>100%</b>

The “nature of the incident” was also recorded, which includes categories such as domestic violence, narcotics trafficking, gang-related incidents, and organized crime. As shown in Table 5, gang-related incidents are the most common, comprising approximately 52% of incidents in FY 2012, 46% in FY 2013, and 39% in FY 2014.

<sup>16</sup> “Other incidents” involved crimes such as firearms violations, extortion and threats, and drug-related crimes.

**Table 5**

<b>Incident Type Frequency FY 2012, 2013, and 2014</b>						
<b>Incident Type</b>	<b>FY 2012</b>		<b>FY 2013</b>		<b>FY 2014</b>	
	<b>Number of Incidents</b>	<b>Percentage</b>	<b>Number of Incidents</b>	<b>Percentage</b>	<b>Number of Incidents</b>	<b>Percentage</b>
Domestic Violence	3	5.56%	5	12.20%	9	13.43%
Gang	28	51.85%	19	46.34%	26	38.81%
Narcotics	8	14.81%	5	12.20%	5	7.46%
Organized Crime	1	1.85%	0	0.00%	3	4.48%
Random Violence	1	1.85%	3	7.32%	2	2.99%
Personal Dispute	4	7.41%	1	2.44%	4	5.97%
Witness Intimidation	6	11.11%	5	12.20%	10	14.93%
Other	3	5.56%	3	7.32%	8	11.94%
<b>Total</b>	<b>54</b>	<b>100%</b>	<b>41</b>	<b>100%</b>	<b>67</b>	<b>100%</b>

The petitions also include information regarding weapons used during an incident. The most common weapon involved in a funded case was a firearm. Firearms were used in 67% of cases in FY 2012, 43% of cases in FY 2013, and 59% of cases in FY 2014.

**Table 6**

<b>Number and Percentage of Incidents Involving Weapons FY 2012, 2013, and 2014</b>						
<b>Weapons Used</b>	<b>FY 2012</b>		<b>FY 2013</b>		<b>FY 2014</b>	
	<b>Number of Incidents</b>	<b>Percentage</b>	<b>Number of Incidents</b>	<b>Percentage</b>	<b>Number of Incidents</b>	<b>Percentage</b>
Blunt Object	1	2%	4	10%	8	14%
Firearm	30	67%	17	43%	33	59%
Knife/Cutting Instrument	4	9%	7	18%	5	9%
Hands/Feet/Body Part	9	20%	12	30%	10	18%
Other Weapon	1	2%	0	0%	0	0%
<b>Total</b>	<b>45</b>	<b>100%</b>	<b>40</b>	<b>100%</b>	<b>56</b>	<b>100%</b>

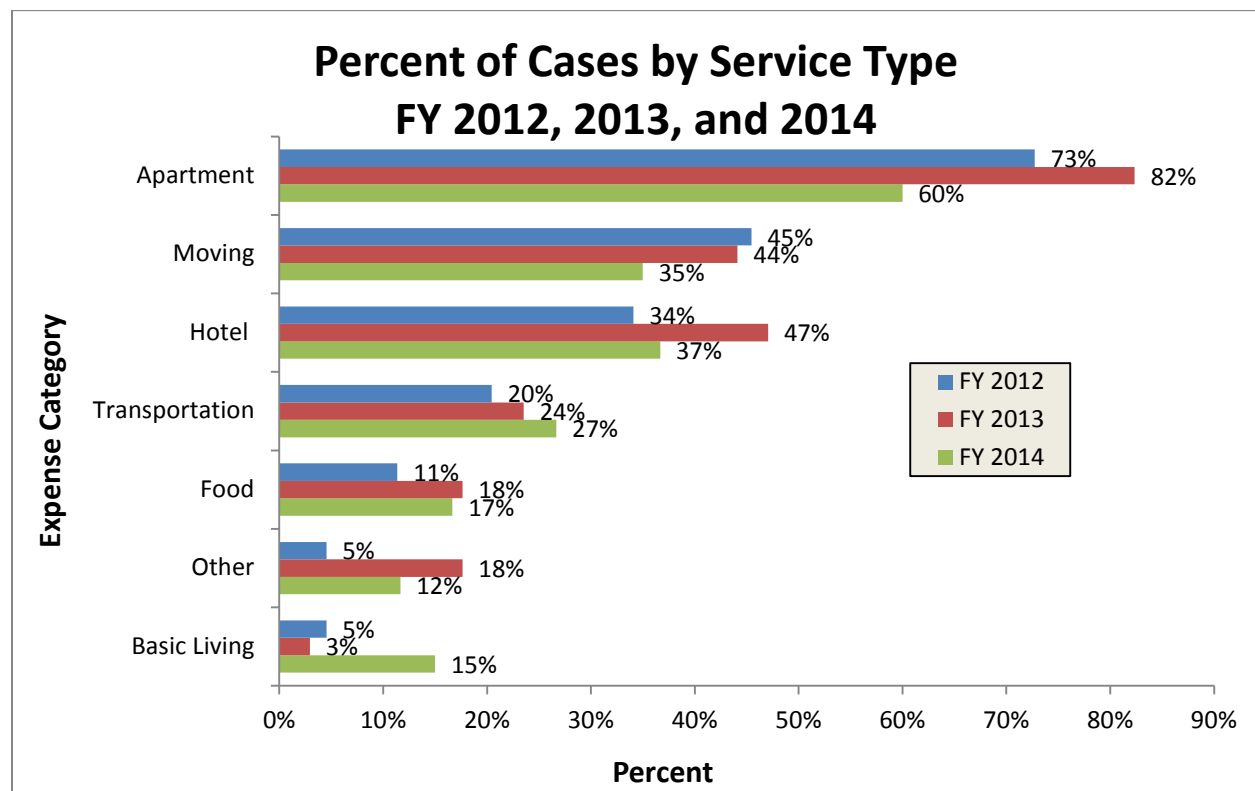


### ***Funding for FY 2012, FY 2013, and FY 2014 Cases***

A prosecuting agency is required to detail not only the amount of funding that it is requesting, but also the specific purpose for that funding. Figure 8 shows the most commonly funded services for cases initiated in FY 2012, FY 2013, and FY 2014.

In FY 2012, FY 2013, and FY 2014, approximately 73%, 82%, and 60% of cases respectively received funding for apartment-related costs, and approximately 45%, 44%, and 35% for moving expenses, respectively. Other commonly funded services were hotel/motel costs (34% of cases in FY 2012, 47% in FY 2013, and 37% in FY 2014) and transportation (20% of cases in FY 2012, 24% in FY 2013, and 27% in FY 2014).

**Figure 8**



Figures 9, 10, and 11 show the total witness protection funding spent by service type in fiscal years 2012 through 2014. There were similar patterns of funding in all three years, with apartment costs accounting for the majority of expenses (i.e., 59% in FY 2012, 63% in FY 2013, and 52% in FY 2014). Hotel/motel costs were the second largest expense for service type (20%

in FY 2012, 16% in FY 2013, and 22% in FY 2014), followed closely by moving expenses (14% in FY 2012, 14% in FY 2013, and 53% in FY 2014). Transportation costs comprised the next largest expense, but only amounted to single digit percentages across all three fiscal years. Similarly, the remaining categories (i.e., basic living, food, utilities, and other) were consistently below 5% across all three years.

**Figure 9**

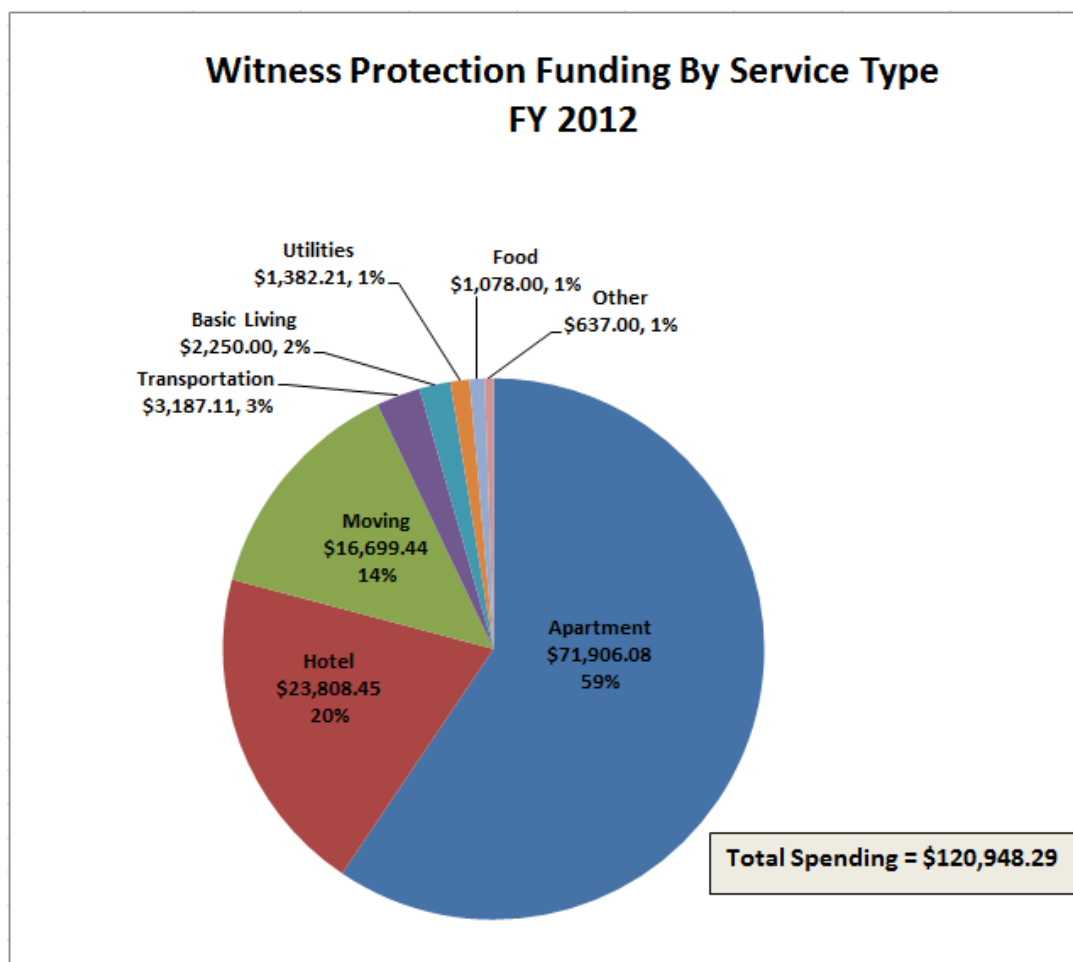


Figure 10

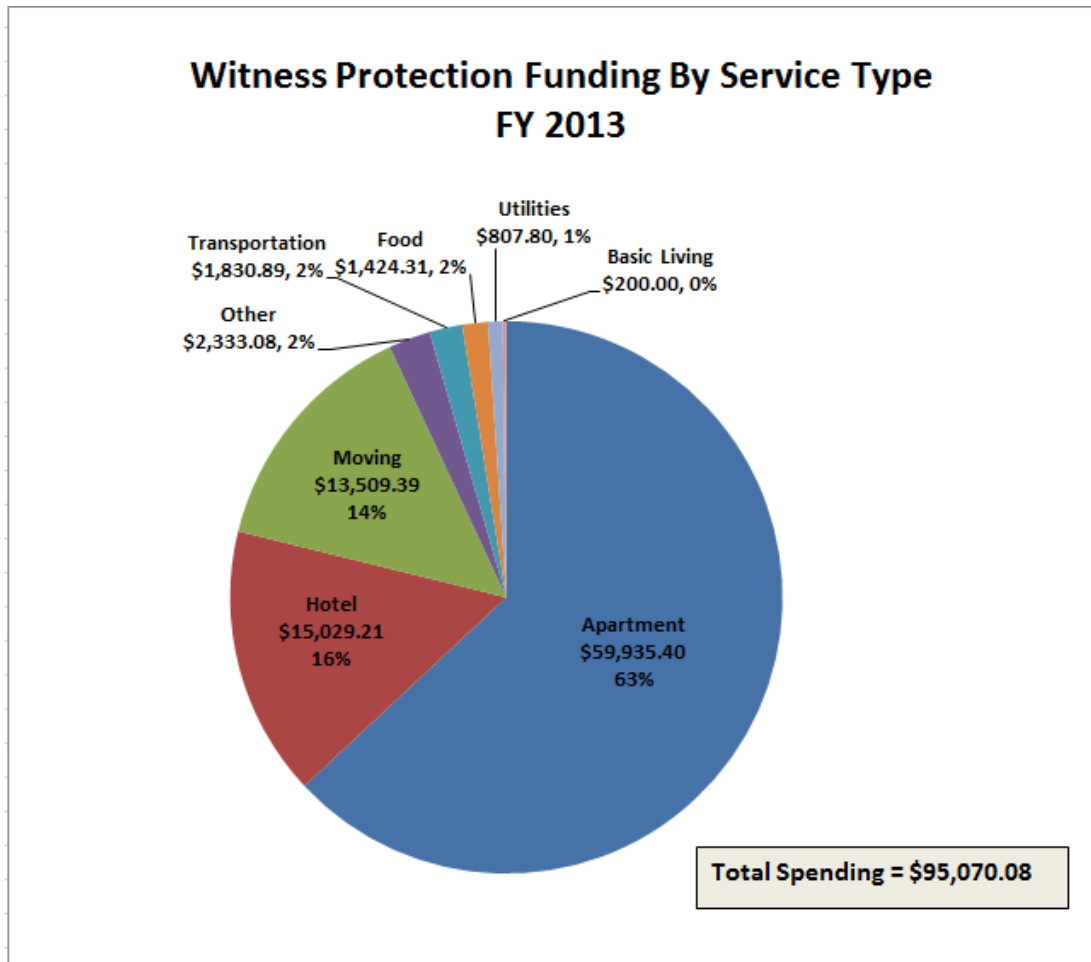
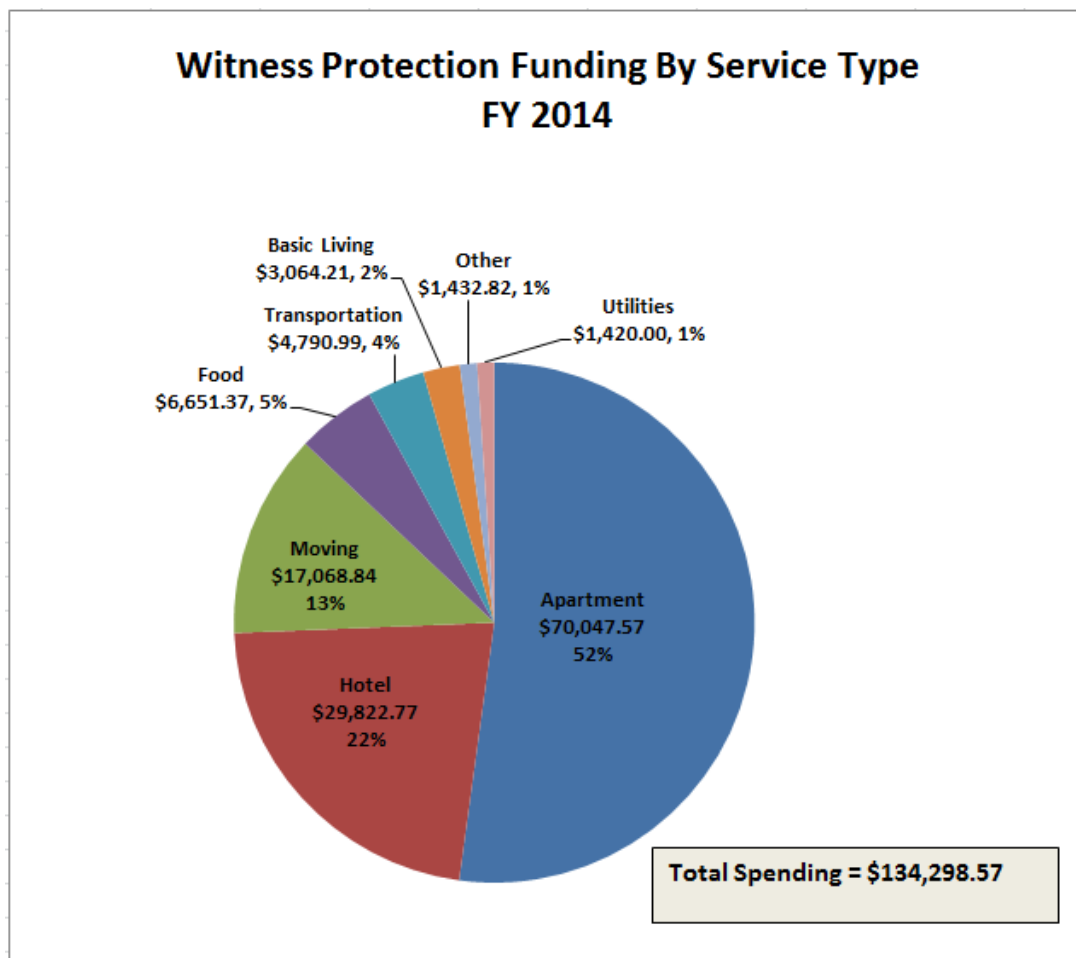


Figure 11<sup>17</sup>



The Witness Protection Board is effectively using its funding to assist prosecutors across the Commonwealth to protect the health, safety, and welfare of critical witnesses facing dangers such as intimidation and retaliatory violence. Additional funding would allow the Board to extend these protections to additional witnesses and increase the ability to prosecute the most dangerous criminals.

<sup>17</sup> One petition had an approved amount which was \$4 less than the spent amount.

## Appendix

### 501 CMR: EXECUTIVE OFFICE OF PUBLIC SAFETY

#### **501 CMR 10.00:                      Witness Protection Program**

10.01	Purpose
10.02	Statutory Authorization
10.03	Definitions
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10.05	Eligibility
10.06	Petition For Witness Protection Services
10.07	Petition Authority
10.08	Review of Petition by Witness Protection Board
10.09	Emergency Authorization
10.10	Additional Responsibilities of the Board
10.11	Responsibilities of the Critical Witness
10.12	Responsibilities of Prosecuting Officer
10.13	Disclosure of Witness Protection Information in a Criminal Case
10.14	All Other Disclosures Related to Witness Protection
10.15	Liaisons
10.16	Waiver
10.17	Immunity
10.18	Severability

#### **10.01:                      Purpose**

The purpose of 501 C.M.R. 10.00 is to provide guidance to critical witnesses, prosecuting officers, the judiciary, law enforcement, and the public concerning the Witness Protection Program. 501 C.M.R. 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 *et. seq.* is promulgated pursuant to St. 2006, c. 48, "An Act Reducing Gang Violence."

#### **10.03:                      Definitions**

For the purposes of 501 C.M.R. 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 C.M.R. 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 C.M.R. 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.

10.04:

**Scope**

501 C.M.R. 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, provided that the prosecuting officer submits a letter to the Board naming the designee before the designee submits a petition.

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, and in any event not more than forty eight (48) hours after receipt of the petition. 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.

(3) Subject to the requirements of 501 C.M.R. 10.10 (2), (3), and 501 C.M.R. 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.

(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 (4) 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, § 8, 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, § 9, 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) M.G.L. c. 30A, §§ 11A and 11A ½ 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 C.M.R. 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 these regulations and which are communicated to the Board in compliance with the terms of this section 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 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;
- (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 C.M.R. 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.
- (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:

**Liaisons**

(1) 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.

(2) The Board shall establish a liaison with the United States Department of Justice in order to pursue all federal sources of funding that may be available for implementing this program.

(3) In conjunction with the Executive Office of Administration and Finance and the Senate and House Committees on Ways and Means, the Board shall establish procedures to maximize federal funds for witness protection services.

10.16:

**Waiver**

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

10.17:

**Immunity**

Nothing in 501 C.M.R. 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 these regulations.

10.18:

**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.