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SENATE . . . . . No. 2158

Message from His Excellency the Governor recommending legislation relative to updating laws relating to dangerous drugs and protecting witnesses

The Commonwealth of Massachusetts

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
· , MA

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GOVERNOR

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August 30, 2017

To the Honorable Senate and House of Representatives,

I am submitting for your consideration "An Act Updating Laws Relating to Dangerous Drugs and Protecting Witnesses." This legislation draws on a number of ideas that are the subject of pending legislation and brings them together in a single package that will achieve important updates to our laws relating to dangerous drugs and witness protection.

First, the Commonwealth continues to suffer from an ongoing opioid and heroin epidemic. I was pleased to join with you last year in enacting landmark opioid legislation. Our administration has been working tirelessly to implement that legislation, with tremendous assistance from our cities and towns. It is only through education, prevention and treatment that, together, we will solve this public health crisis. Our focus must remain on these three pillars of our strategy. While maintaining that focus, however, we should also ensure that those who cause our citizens the most harm by illegally selling drugs that kill people are held accountable for their actions.

In order to ensure that accountability, this legislation establishes enhanced penalties that directly target those who cause death by illegally selling drugs. No new conduct would be made illegal. When illegal drug distribution causes a death, laws that were designed to punish the act are inadequate to recognize the seriousness of the resulting harm. This legislation would provide for a penalty of up to life in prison and, like the offense of manslaughter while driving drunk, would also require a mandatory minimum sentence of at least five years.

Second, when new dangerous drugs are introduced to the Commonwealth, it takes time for the law to adapt. Our law contains a detailed list of controlled substances, divided into five classes. Until the Legislature amends the law to reference the new drug and assign it to one of the five classes, the new drug is not a controlled substance at all. People selling the drug face no consequences.

In order to fill the gap while the Legislature considers how best to classify new drugs, this legislation provides that any drug that is added to the various schedules of controlled substance by the federal government will automatically be considered a controlled substance under Massachusetts law. Historically, the federal government has responded faster to dangerous new drugs than our state has. New drugs would be assigned to one of the five classes of controlled substances under our laws in parallel with the five schedules provided for under federal regulations. The Legislature would retain the discretion to assign any new drug to a different class, or to except any new drug from our controlled substance law altogether.

Third, our justice system can function effectively only if those who participate in it—witnesses, law enforcement officers, lawyers, jurors, judges and other court staff—are free from intimidation. From 1970 to 2006, our laws protected witnesses from retaliatory conduct that took place after a witness had testified or cooperated with police by making intimidation of a witness a felony. However, in 2006 the law was rewritten in an effort to reduce gang violence. The Supreme Judicial Court considered those 2006 amendments and ruled that the law no longer covered retaliatory conduct. Therefore, in 2011, the Court ruled that a person who threatened to harm the daughter of his probation officer in retaliation for his supervision could not be convicted of this felony offense. While this may not be the result the Legislature intended in 2006, it remains the law of the Commonwealth today.

Witnesses and other participants in the justice system deserve protection not just during criminal investigations and trials, but also when they return to their communities. This legislation rewrites our witness intimidation statute so that it once again covers retaliatory conduct, while preserving the 2006 enhancements and clarifying the statutory language. The legislation also:

- Ensures that witness protection funds may be used for assistance to witnesses who remain reasonably fearful of retaliation in the aftermath of their cooperation with the government, even though the underlying investigation or proceeding has concluded;

- Provides explicit protection for family members of witnesses, court staff and law enforcement;

- Provides that if the intimidation relates to a case involving a felony punishable by life imprisonment, such as murder, that the maximum punishment could be up to life in prison rather than the current ten year maximum; and

- Clarifies that the District Court and Boston Municipal Court have jurisdiction to adjudicate any violation of this statute.

Finally, this legislation also provides a set of enhanced penalties for solicitation to commit a felony that parallel the penalties for conspiracy to commit a crime. The lack of an appropriate punishment under our law, which punishes solicitation to commit murder as a misdemeanor, has led to Massachusetts authorities requesting federal assistance in cases where a person has solicited someone to commit murder for hire in Massachusetts.

I urge your prompt enactment of this legislation.

Respectfully submitted,

Charles D. Baker,
Governor

SENATE . . . . . No. 2158

Message from His Excellency the Governor recommending legislation relative to updating laws relating to dangerous drugs and protecting witnesses

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act updating laws relating to dangerous drugs and protecting witnesses.

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. Section 31 of chapter 94C of the General Laws as appearing in the 2016 Official Edition is hereby amended by adding to "CLASS A" the following subsection:-

(d) Any substance controlled in Schedule I of Title 21 of the Code of Federal Regulations Part 1308.11 unless specifically excepted or unless listed in another class in this section.

SECTION 2. Said section 31 of said chapter 94C, as so appearing, is hereby further amended by adding to "CLASS B" the following subsection:-

(f) Any substance controlled in Schedule II of Title 21 of the Code of Federal Regulations Part 1308.12, unless specifically excepted or unless listed in another class in this section.

SECTION 3. Said section 31 of said chapter 94C, as so appearing, is hereby further amended by adding to "CLASS C" the following subsection:-

(g) Any substance controlled in Schedule III of Title 21 of the Code of Federal Regulations Part 1308.13, unless specifically excepted or unless listed in another class in this section.

SECTION 4. Said section 31 of said chapter 94C, as so appearing, is hereby further amended by adding to "CLASS D" the following subsection:-

(c) Any substance controlled in Schedule IV of Title 21 of the Code of Federal Regulations Part 1308.14, unless specifically excepted or unless listed in another class in this section.

SECTION 5. Said section 31 of said chapter 94C, as so appearing, is hereby further amended by adding to "CLASS E" the following subsection:-

(c) Any substance controlled in Schedule V of Title 21 of the Code of Federal Regulations Part 1308.15, unless specifically excepted or unless listed in another class in this section.

SECTION 6. Section 54 of chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words "violation of," in line 26, the following words:- section 13B of chapter 268 or

SECTION 7. Section 26 of chapter 218 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word "sixty-six," in line 21, the following words:- , section 13B of chapter 268.

SECTION 8. Said section 26 of said chapter 218, as so appearing, is hereby further amended by inserting after the word "age," in line 26, the following words:-

conspiracy under section 7 of chapter 274, or solicitation to commit a felony under section 8 of chapter 274.

SECTION 9. Said section 26 of said chapter 218, as so appearing, is hereby further amended by striking out, in lines 26 to 27, the words intimidation of a witness or juror under section thirteen B of chapter two hundred and sixty-eight,.

SECTION 10. Section 1 of chapter 263A of the General Laws, as so appearing, is hereby amended by striking out the definition of "Critical witness" and inserting in place thereof the following definition:-

"Critical witness", any person who is participating, has participated, or is reasonably expected to participate in a criminal investigation, motion hearing, trial, show cause hearing, or other criminal proceeding, or a proceeding involving an alleged violation of conditions of probation or parole, or the commitment of a sexually dangerous person pursuant to chapter 123A; or who has received a subpoena requiring such participation; who is, or was, in the judgment of the prosecuting officer, a necessary witness at one or more of the aforementioned types of proceedings, and who is or may be endangered by such person's participation in the aforementioned proceeding; or such person's relatives, guardians, friends or associates, who are or may be endangered by such person's participation in the aforementioned proceeding.

SECTION 11. Chapter 265 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following section:-

Section 59.

Any person who, in violation of chapter 94C, manufactures, distributes, or dispenses heroin, fentanyl, methamphetamine, lysergic acid diethylamide, phencyclidine (PCP) or any other controlled substance in Class A, Class B, or Class C, as set forth at section 31 of chapter 94C, is strictly liable for a death which results from the injection, inhalation or ingestion of that substance, and shall be punished by imprisonment for life or for any term of years as the court may order, and by a fine of not more than $25,000; provided, however, that the sentence of imprisonment imposed upon such person shall not be reduced to less than 5 years, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive a deduction from his or her sentence for good conduct until such person shall have served 5 years of such sentence.

For purposes of this section, a person's act of manufacturing, distributing, or dispensing a substance is the cause of a death when:

(a) The injection, inhalation or ingestion of the substance is an antecedent but for which the death would not have occurred; and

(b) The death was proximately caused by a person who manufactured, distributed, or dispensed such substance.

It shall not be a defense to a prosecution under this section that the decedent contributed to his or her own death by such decedent's purposeful, knowing, reckless or negligent injection, inhalation or ingestion of the substance or by such decedent's consenting to the administration of the substance by another. Nothing in this section shall be construed to preclude or limit any other prosecution for homicide.

SECTION 12. Chapter 268 of the General Laws is hereby 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;

(2) another person who is

(a) a witness or potential witness,

(b) 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, bail, or other court order,

(c) a judge, juror, grand juror, attorney, victim witness advocate, police officer, federal agent, investigator, clerk, court officer, court reporter, court interpreter, probation officer or parole officer,

(d) a person who is or was attending, or had made known his or her intention to attend a proceeding described in subsection (3)(a), or

(e) a family member of a person described in subsections 2(a) through 2(d);

(3) with the intent to, or with reckless disregard that it may,

(a) impede, obstruct, delay, prevent or otherwise interfere with

(i) a criminal investigation at any stage, a grand jury proceeding, a dangerousness hearing, a motion hearing, a trial or other criminal proceeding of any type, or a parole hearing, or parole violation proceeding, or probation violation proceeding; or

(ii) an administrative hearing, or a probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation, or any other civil proceeding of any type; or

(b) punish, harm or otherwise retaliate against any person described in subsection (2) for such person’s or such person’s family member’s participation in any of the proceedings described in subsection (3)(a) shall be punished by imprisonment in the state prison for not more than ten years, or by imprisonment in the house of correction for not more than two and one half years, or by a fine of not less than $1,000 nor more than $5,000, or by both such fine and imprisonment; or, if the proceeding which the misconduct is directed at is the investigation or prosecution of a crime punishable by life imprisonment, or the parole of a person convicted of a crime punishable by life imprisonment, shall be punished by imprisonment in the state prison for life or for any term of years.

(4) 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.

(5) 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 or by use of a telephonic or telecommunication device or electronic communication device including but not limited to any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

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

SECTION 13. Chapter 274 of the General Laws is hereby amended by adding the following section:-

Section 8. Whoever solicits, counsels, advises, or otherwise entices another to commit a crime that may be punished by imprisonment in the state prison and who intends that the person, in fact, commit or procure the commitment of the crime alleged shall, except as otherwise provided, be punished as follows:

First, by imprisonment for not more than 20 years in the state prison or for not more than 2½ half years in a jail or house of correction, or by a fine of not more than $10,000, or by both

such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement is a crime punishable by imprisonment for life.

Second, by imprisonment for not more than 10 years in the state prison or for not more than 2½ years in a jail or house of correction, or by a fine of not more than $10,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement is a crime punishable by imprisonment in the state prison for 10 years or more.

Third, by imprisonment for not more than 5 years in the state prison or for not more than 2½ years in a jail or house of correction, or by a fine of not more than$5,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement is a crime punishable by imprisonment in the state prison for 5 years or more.

Fourth, by imprisonment for not more 2½ years in a jail or house of correction, or by a fine of not more than $2,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement is a crime punishable by imprisonment in the state prison for less than 5 years.

If a person is convicted of a crime of solicitation, counsel, advice or enticement for which crime the penalty is expressly set forth in any other section of the General Laws, the provisions of this section shall not apply to said crime and the penalty therefor shall be imposed pursuant to the provisions of such other section.